

Legislation dealing with Cultural Asset Preservation in Sri Lanka are:
Antiquities Ordinance of 1940 (Revised in 1956 & 1998)
Cultural Property Act 1988

Antiquities Ordinance

CHAPTER 188

Antiquities

Ordinance No, 9 of 1940 Act, Amendment 1955 No.2, 1955 No.22 and 1998 No. 24

1. An Ordinance to provide for the better preservation of the antiquities of Sri Lanka, and of sites and buildings of historical or archaeological importance in Sri Lanka.

Short Title

This Act may be cited as the Antiquities (Amendment) Act, No. 24 of 1998.

PART I

Property in Antiquities

2. (1) No antiquity shall, by reason only of its being discovered in or upon any land in the ownership of any person, be or be deemed to be the property of such person:

Provided that such person shall be deemed to be interest in such antiquity in accordance with the provisions of this Ordinance.

(2) Every ancient monument which on the date on which this Ordinance comes into operation is not owned by any person or the control of which is not vested in any person as trustee, incumbent or manager, shall be deemed to be absolute property of the Crown.

(3) All undiscovered antiquities (other than ancient monument), whether lying on or hidden beneath the surface of the ground or in any river or lake or within the territorial sea of Sri Lanka, shall be deemed to be the absolute property of the Crown, subject to the provisions of this Ordinance.

Payment by the Crown of market value of certain antiquities

3. On the discovery of any antiquity (other than an ancient monument), the Director General of Archaeology on behalf of the Crown, shall be entitled to the custody and possession of such antiquity, unless in any case the Director General of Archaeology does not consider it necessary that such antiquity shall be retained by the Crown; and where any such antiquity is retained by the Director General of Archaeology on behalf of the Crown, there shall be paid by the Crown.

PART II

Discovery of Antiquities

EXCAVATIONS

No excavation except upon licence from Director General of Archaeology

6. Subject as hereinafter provided, no person shall excavate for the purpose of discovering antiquities, whether on land belonging to himself or otherwise, except under the authority of a license issued by the Director General of Archaeology.

Provided that nothing in this section shall apply to any excavation carried out by or on behalf of the Director General of Archaeology.

DISCOVERY OF ANTIQUITIES OTHERWISE THAN UNDER A LICENCE TO EXCAVATE

Discovery of antiquities otherwise than under a licence to excavate

14.(1) Every person who discovers any antiquity otherwise than under the authority of a license to excavate-

- (a) shall forthwith report the discovery to the nearest peace officer and, if it is practicable so to do, deliver the antiquity to such officer and obtain a receipt therefore from such officer, and
- (b) shall within several days of discovery, report the discovery, together with the prescribed particulars relating thereto, to the Government Agent of the district in which the discovery was made.

(2) It shall be the duty of the Government Agent to whom the discovery of any antiquity is reported under paragraph (b) of subsection (1), to communicate forthwith to the Director General of Archaeology the fact of such discovery together with the particulars furnished to him.

OFFENCE RELATING TO DISCOVERY OF ANTIQUITIES

Offence relating to discovery of antiquities

15.(1) Every person who-

- (a) excavates in contravention of the provisions of section 6; or
- (b) commits a breach of any condition of any license issued under section 6; or
- (c) fails to report the discovery of any antiquity in accordance with the provisions of section 10, or commits a breach of any other provision of that section; or
- (d) fails to report the discovery of any antiquity in accordance with the provisions of section 14, or commits a breach of any other provision of that section; or
- (e) knowing or having reason to believe that any antiquity has been excavated in contravention of the provisions of section 6, purchases or removes, or otherwise acquires or purports to acquire, any such antiquity, whether for himself or on account of or as agent for any other person,

shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year:

Provided that no person shall be liable to be convicted of an offence under paragraph (c) or paragraph (d) where the antiquity is in the opinion of the court, insignificant or of trivial value;

Provided, further that any person convicted of an offence under paragraph (c) or paragraph (d) in respect of any antiquity (other than an ancient monument), shall by virtue of such conviction, forfeit all claim or interest to or in that antiquity or the value thereof, and in any such case the Magistrate may order that the antiquity be delivered to the Director General of Archaeology within such time as may be specified by the Magistrate; and where the Magistrate makes such order, it shall be the duty of any person in whose possession that antiquity may be to deliver it within the specified time to the Director General of Archaeology.

(2) If any person who has been ordered to deliver any antiquity to the Director General of Archaeology under subsection (1) does not deliver such antiquity within the specified time the Magistrate may order the Fiscal or a peace officer to make immediate possession of such antiquity and deliver it to Director General of Archaeology.

OFFENCE RELATING TO THEFT AND DESTRUCTION OF ANTIQUITIES

Offence relating to theft of antiquities

15A. Any person who commits theft within the meaning of section 366 of the Penal Code, in respect of antiquity, in the possession of any other person shall be guilty of an offence under this Ordinance and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a term not less than two years and not more than five years or to both such fine and imprisonment.

Penalty for destruction & c. of antiquity

15B. Any person who wilfully destroys, injure, defaces or tampers with any antiquity or willfully damages any part of it, shall be guilty of an offence under this Ordinance and shall on conviction after summary trial before a Magistrate be liable to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a term not less than two years and not more than five years or to both such fine and imprisonment.

Offences under this Ordinance to be non-bailable

15C. Notwithstanding anything to the contrary in the Code of Criminal Procedure Act, No. 15 of 1979 or any other written law, no person charged with, or accused of an offence under this Ordinance shall be released on bail.

Evidence

15D. In a prosecution for an offence under this Ordinance, a certificate purporting to be signed by the Director General and to the effect that the object described therein is an antiquity, shall be admissible in evidence without further proof, and shall be prima facie evidence of the facts stated therein.

PART III

ANCIENT MONUMENTS

Declaration of a monument in existence not less than hundred years

16.(1) Minister may by Order in writing declare that any specified monument which has existed or is believed to have existed for a period of not less than hundred years, shall notwithstanding that such monument does not or is not believed to date to a period prior to the 2nd day of March, 1815, be deemed to be an ancient monument for the purpose of this Ordinance

(2) Upon the publication in the Gazette of an Order under subsection (1), the monument to which the Order relates shall be deemed to be an ancient monument and all the provisions of this Ordinance relating to ancient monuments shall apply to that monument as if it were an ancient monument.

Declaration of specified trees as ancient monuments

17. (1) Where it appears to the Minister that any tree, whether growing in crown land or any other land, is of such historical or archaeological importance, that it is necessary in order to secure the preservation or protection of such tree that the provisions of this Ordinance relating to ancient monuments should apply to such tree, the Minister may by Order in writing declare that such tree shall be deemed to be an ancient monument for the purpose of this Ordinance.

(2) Upon the publication in the Gazette of an Order under subsection (1), the tree to which the Order relates shall be deemed to be an ancient monument and all the provisions of this Ordinance relating to ancient monuments shall mutatis mutandis, apply to such tree as if it were an ancient monument.

Notification of protected monuments

18. (1) Where it appears to the Minister that any ancient monument situated on any land other than Crown land is in danger of destruction or removal, or damage from neglect or injudicious treatment, and that it is in the public interest that such monument should be protected, he may subject to the provisions of section 19, by Order published in the Gazette, declare such monument to be a protected monument; and from the date of the publication of such Order, the monument to which the Order relates shall be a protected monument for the purpose of this Ordinance.

No restoration, &c., of protected monument, except upon permit

21. (1) No person shall, except under the authority and in accordance with the, conditions of a permit issued by the Director General of Archaeology, or in accordance with an agreement entered into under section 20, commence or carry out any work of restoration, repair, alteration or addition in connection with any protected monument.

Prohibition or restriction of building, mining, &c., in vicinity of certain monuments

24. (1) Regulations may be made prohibiting, or restricting subject to the prescribed conditions, the erection of buildings or the carrying on of mining, quarrying, or blasting operations on any land within the prescribed distance of any ancient monument situated on Crown land or any protected monument.

Penalty for destruction, desecration, &c., of ancient monuments

31. Any person who-

- (a) willfully destroys, injures, defaces or tampers with any protected monument or any ancient monument on Crown land; or
- (b) does in, upon to, near or in respect of any ancient monument which is held sacred or in veneration by any class of persons, any act which wounds or offends or is likely to wound or offend the religious susceptibilities of the class of persons by whom such ancient monument is held sacred or in veneration,

shall be guilty of an offence and shall notwithstanding anything to the contrary in any other written law, be liable on conviction after summary trial before a Magistrate to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment.

Further Offences

32. Every person who commits a breach of-

- (a) any provision of section 21, or
- (b) any regulation made under sect. 24

shall be guilty of an offence and shall notwithstanding anything to the contrary in any other written law, be liable on conviction after summary trial before a Magistrate to a fine not exceeding fifty thousand rupees or to imprisonment of either description for a term not less than two years and not exceeding five years or to both such fine and imprisonment.

PART IV

ARCHAEOLOGICAL RESERVES

Archaeological Reserves

33. (1) The Director General of Archaeology may-

- (a) with the approval of the Land Commissioner,
or
- (b) if approval is refused by the Land Commissioner, with the approval of the Minister to whom the subject of Crown lands is for the time being assigned, declare, by notification published in the Gazette, any specified area of that land to be an archaeological reserve for the purposes of this Ordinance.

PART V

EXPORT OF ANTIQUITIES

Prohibition of export of antiquities except upon license

36. (1) No person shall, except upon a license in the prescribed form issued by the Director General, export any antiquity from Sri Lanka.

- (2) For the purposes of the application of the provisions of the Customs Ordinance, antiquities shall be deemed to be articles the exportation of which is restricted by enactment or legal order.

Applications for license to export antiquities

37. (1) Every application for a license under section 36 shall be made to the Director General of Archaeology in the prescribed form shall set out a list of the antiquities sought to be exported and shall contain such other particulars as may be prescribed.

(2) If the Director General of Archaeology is of opinion that any antiquity sought to be exported should be acquired for the Colombo or other museum in Sri Lanka or that for any other reason it is not desirable that such antiquity should be exported, he may refuse to issue a license under section 36 in respect of that antiquity.

PART VA

ADVISORY COMMITTEE

Establishment of Advisory Committee

39. (1) The Minister may, by Order published in the Gazette, establish an Archaeological Advisory Committee (hereinafter referred to as “the Advisory Committee”).

(2) It shall be the function of such Advisory Committee to advise the Director General of Archaeology-

- (a) on any or all of the matters the Minister considers necessary for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance; at
- (b) where advice is sought by him on matters connected to the performance of his duties under this Ordinance.

Powers of Director General of Archaeology

40. The Director General of Archaeology is hereby empowered-

(a) to formulate a national archaeological policy and to co-ordinate and implement such policy after it is approved by the Government;

(b) to inventories the archaeological heritage of Sri Lanka;

(c) to protect and maintain such archaeological heritage;

(d) to conduct research into every aspect of the archaeological heritage of Sri Lanka and specially, into the prehistoric, protohistoric, early historic, middle historic and late historic periods and into general or specific theory, method and practice;

(e) to enhance public awareness of the archaeological heritage of Sri Lanka through appropriate displays of antiquities, publications and by other means;

(f) to levy an entrance fee where it is considered necessary at selected sites or visitor centers;

(g) to conduct archaeological impact assessment of areas that may be affected by development, industrial or other projects proposed by the Government or any person and implement any mitigatory measures that may be required.

Authorisation of Government Agents and other officers to exercise powers of Director General of Archaeology

43. (1) The Director general of Archaeology may, generally or specially authorize the exercise, performance or discharge of any of his powers, duties or functions under this Ordinance-

(a) by the Government Agent or the District Secretary of a district or Divisional Secretary of any division within that district, or division respectively;

(b) by any officer of the Archaeological Department; or

(c) by any person possessed of special expertise and resources in or for, the exploration, excavation, conservation, restoration or maintenance of monuments and antiquities, in such areas and on such terms and conditions as may be specified in such authorization:

Provided that the Director General of Archaeology may at any time revoke or withdraw such authorization if in his view the purpose and objectives thereof are not being satisfactorily served.

(2) The authorization shall be in writing specifying, among other things, the objectives of the authorization, the system of supervision by the Director General of Archaeology or his nominees, the recording of procedures employed, the reporting of progress, and the writing of reports.

Impact assessment of proposed development projects

43A.(1) Whenever any development or industrial scheme or project is proposed by the Government or other institution or person entailing the use, encroachment or submergence of any land falling within the inventory prepared under section 40(b), or any land as may be prescribed, such scheme or project shall not be approved or permitted until after a report is submitted by the Director general of Archaeology, as to the effects the implementation of such scheme, or projects may have upon such land or any antiquities within it.

(2) The Director general of Archaeology shall cause an impact assessment survey to be undertaken at the expense of the sponsors of such project or scheme to assess the consequences thereof upon the antiquarian, historical or archaeological aspects or value of the land in question or on any antiquities upon it and shall, within such period of time as may be agreed on (in any event not less than six weeks from deposit of the cost of such survey with the Director General of Archaeology), submit to the Minister, his written report recommending, objecting to, or recommending subject to such conditions or alterations as may be specified in the report, the proposed project, or scheme, together with an estimate of any such additional costs as may be necessary for the taking of any measures to protect, preserve, execute, document and publish, and if necessary relocate, any antiquities upon such land at the expense of the project's sponsors.

(3) The sponsors of every such scheme or project as is referred to in this section shall provide for and set apart, a sum not exceeding one percent of its total cost for the purposes and objectives referred to in this section.

(4) The provisions of this section shall have effect notwithstanding anything to the contrary in any other law.

PART VIII

INTERPRETATION

Interpretation

48. In this Ordinance, unless the context otherwise requires-

“ancient monument” means any monument lying or being or being found in Sri Lanka which dates or may reasonably be believed to date from a period prior to the 2nd day of March, 1815, and includes-

- (a) any other monument which has been declared to be an ancient monument by an Order published in the Gazette under section 16, and
- (b) any tree in respect of which an Order under section 17 has been published in the Gazette;

“antiquity” means-

- (a) any ancient monument or,
- (b) any of the following objects lying or being or being found in Sri Lanka, which date or may reasonably be believed to date from a period prior to the 2nd day of March, 1815:-
statues, sculptured or dressed stone and marbles of all descriptions, engravings, carvings, inscriptions, paintings, writings and the material whereon the same appear, all specimens of ceramic, glyptic metallurgic and textile art, coins, gems, seals, jewels, jewellery, arms, tools, ornaments and all other objects of art which are movable property;

“Archaeological heritage” means that part of the material heritage of mankind in respect of which which archaeological methods provide primary information and includes all vestiges of human existence and places relating to all manifestation of human activity, abandoned structures and remains of all kinds (including subterranean and underwater sites), together with all the portable cultural material associated with them.

“Director General of Archaeology” means the person appointed to be or to act as Director General of Archaeology and includes any person authorized by the Director General of Archaeology under section 43 in respect of any power, duty or function of the Director General of Archaeology under this Ordinance.

“Crown land” means any land which under any law is deemed or presumed to be the property of the Crown or to which the Crown is lawfully entitled together with all rights, interests and privileges attached or appertaining thereto; and includes any land belonging to the Crown vested in any local authority;

“monument” means any temple, church, building, monument or other structure or erection, or any tomb, tumulus or other place of interment, or any other immovable property of a like nature or any part or remains of the same or any other site where the material remains of historic or prehistoric human settlement or activity may be found; and includes the site of any monument and such portion of land adjoining such site as may be required for fencing or covering in or otherwise preserving any monument.

“owner” with reference to any property, movable or immovable, means the person whose title to that property is recognized by any written or other law in force in Sri Lanka.

“peace officer” means a police officer and includes any headman appointed by a Government Agent to perform police duties.

“prescribed” means prescribed by regulation.

“regulation” means a regulation made by the Minister under this Ordinance.

“territorial sea” means the area declared to be the territorial waters of Sri Lanka by Proclamation made under the Maritime Zones Law, No. 22 of 1976.

General amendment of the provisions of the principal enactment

Wherever, in any provisions of the principal enactment, the words “Archaeological Commissioner” occurs, here shall be substituted the words “Director General of Archaeology”.

CULTURAL PROPERTY ACT

No. 73 OF 1988

Certified on 17th December, 1988

An act to provide for the control of the export of cultural property to provide for a scheme of licensing to deal in cultural property; and to provide for matters connected therewith or incidental thereto.

Be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :-

Short Title

1. This Act may be cited as the Cultural Property Act, No. 73 of 1988

PART I

Export of Cultural Property

Prohibition of export of cultural property except upon licence

2. (1) No Person shall, except upon a license in the prescribed form issued by the Controller of Exports (hereinafter referred to as the "Controller") and upon the payment of a prescribed fee export or attempt to export any cultural property from Sri Lanka.

Application for license to export cultural property

3. (1) Every application for a license under section 2 shall be made to the Controller in the prescribed form and shall be accompanied by a statement from the Director General of Archaeology stating that he has no objection to the issue of such license to the applicant.

(2) The Controller may refuse to issue a license where -

- (a) the Director General of Archaeology in the statement issued by him objects to the issue of such license; or
- (b) he is of opinion that any cultural property sought to be exported is a property which is required for museum in Sri Lanka.

Penalty for export of cultural property without permission

5. If any person, himself or by another person on his behalf exports or attempts to export any cultural property in contravention of section 2, he shall, without prejudice to any forfeiture or penalty to which he may be liable under the provisions of the Customs Ordinance, be guilty of an offence and shall, upon conviction after summary trial before magistrate, be liable to a fine not exceeding five thousand rupees or to imprisonment of either description for a period not exceeding three years or to both such fine and imprisonment.

PART II

ESTABLISHMENT OF THE CULTURAL PROPERTY BOARD

Establishment of the Cultural Property Board

7. There shall be established a Board called the Cultural Property Board (hereinafter referred to as " the Board").

Constitution of the Board

8. (1) The Board shall consist of -

- (a) the Secretary to the Ministry of the Minister in charge of the subject of Cultural Affairs, who shall be the Chairman;
- (b) the Director of Museums ;

- (c) the Director of National Archives;
- (d) Chairman, Central Environmental Authority;
- (e) two members who shall have specialized knowledge and experience in matters relating to cultural property appointed by the Minister.

PART III

REGISTRATION OF CULTURAL PROPERTY

Minister to Specify the categories of cultural property to be registered

11. The Minister in consultation with the Board and with the approval of the Cabinet may from time to time by Notification published in the Gazette specify the categories of cultural property that shall be registered under this Act, having due regard to the following considerations:-

- (a) the necessity for conserving such category of cultural property;
- (b) the need to preserve such objects within Sri Lanka for the better appreciation of her cultural heritage;
- (c) such other factors as will or are likely to contribute to the safeguarding of the cultural heritage of Sri Lanka.

Registration of cultural property in private possession

12. No person shall own or have in his custody or possession any cultural property specified in the Notification referred to in section 11 unless such cultural property is registered by the registering officer and such officer has issued a certificate of registration in respect of such property.

Grant of certificate of registration

15. (1) Every person required to obtain a certificate of registration under section 12 shall make an application for such certificate, to the registering officer of the administrative district within which he resides on an application form prescribed for the purpose.

- (2) On receipt of an application under subsection (1) the registering officer may, after holding such inquiry as he deems fit, grant a certificate of registration containing such particulars as may be prescribed.

Transfer of ownership of any registered cultural property to be intimated to the registering officer

16. Where any person transfers the ownership or custody or possession of any cultural property registered under section 12 such person shall intimate within fourteen days from the date of such transfer, the fact of such transfer to the registering officer of the administrative district within which such person resides.

Penalty

17. Any person who-

- (a) owns or has the custody or possession of any cultural property, fails to make an application under section 15, or
- (b) transfers the ownership or custody or possession of any cultural property and fails to notify such transfer to the registering officer, under section 16,

shall be guilty of an offence and shall, upon conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment

PART IV

LICENSE TO DEAL IN CULTURAL PROPERTY

License to Deal in cultural property

18. No person shall, by himself or by any other person on his behalf, carry on the business of selling or offering to sell any cultural property, except under the authority of a license issued under section 19.

Grant of license

19. (1) The Director General of Archaeology may issue a license to any person to carry on the business of selling or offering to sell any cultural property after taking into consideration-

- (a) the experience of the applicant with respect to trade in cultural property ;
- (b) the town, village or area where the business is to be carried on ; and
- (c) such other matters as may be prescribe

PART V

POWERS AND DUTIES OF DIRECTOR GENERAL OF ARCHAEOLOGY

Powers of Director General of Archaeology

22. The Director General of Archaeology is hereby empowered-

- (a) to prepare a list of the categories of cultural property required to be registered under section 12;
- (b) to conserve, maintain, repair and restore cultural property that requires registration;
- (c) to control and administer the registration, sale and protection of cultural property that require registration;
- (d) to perches valuable cultural property with such funds as may be granted for the purpose by Parliament

Interpretation

29. In this Act, unless the context otherwise requires-

" antiquity" includes any of the following objects lying or being founding Sri Lanka, and has been in existence for more than one hundred years-

Statues sculptured or dressed stone and marbles of all descriptions, engravings, carvings, inscriptions, paintings, writings and the material where on the same appear, all specimens of ceramic, glyptic metallurgic and textile art, coins, gems, seals, jewels, jewellery, arms, tools, ornaments, furniture, household utensils and all other objects of art which are movable property;

“Director General of Archaeology” means the person appointed to be or to act as Director general of Archaeology and includes any person authorized in respect of any power, duty or function of the Director General of Archaeology under this act ;

“cultural property” includes cultural property which on religious or secular grounds is specifically designated by the Minister with the approval of the Cabinet, as being of importance for archaeology, prehistory, history, literature, art or science, and which belongs to one of the following categories :-

- (i) rare collections and specimens of fauna, flora, minerals and anatomy ;
- (ii) property relating-
 - (a) to history, including the history of science and technology, military and social history ; or
 - (b) to the life of national leaders, thinkers, scientists and artists ; or
 - (c) to events of national importance ;
- (iii) products of archaeological excavations or of archaeological discoveries ;
- (iv) elements of artistic or historic monuments or archaeological sites which have been dismembered ;
- (v) antiquities more than one hundred years old, such as inscription, coins, currency notes and engraved seals ;
- (vi) objects of ethnological interest ;
- (vii) pictures, paintings and drawings produced entirely by hand ;
- (viii) original marks of statutory art and sculpture ;

- (ix) original engravings, prints and lithographs ;
- (x) rare manuscripts, old books, documents, drawings, maps, plans and publications of special interest ;
- (xi) postage revenue and similar stamps ;
- (xii) archives ;
- (xiii) articles of furniture more than one hundred years old ; and
- (xiv) old musical instruments.