



THE  
CEYLON GOVERNMENT  
GAZETTE

EXTRAORDINARY.

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PART II.—LEGAL.

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DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

L. D.—O 70/38

**An Ordinance to provide for the better preservation of the Antiquities of Ceylon.**

TABLE OF SECTIONS.

1. Short title and date of operation.

PART I.—PROPERTY IN ANTIQUITIES.

2. Property in antiquities.
3. Payment by the Crown of market value of certain antiquities.
4. Agreement as to apportionment of antiquities, without payment by the Crown.
5. Dispute as to market value or apportionment of antiquities.

PART II.—DISCOVERY OF ANTIQUITIES.

*Excavations.*

6. No excavation except upon licence from Archaeological Commissioner.
7. Application for licence to excavate.

8. Grant or refusal of licence to excavate.
9. Terms of licence.
10. Duty of licensee in respect of discoveries.
11. Withdrawal of licence without compensation.
12. Appeal against refusal or withdrawal of licence to excavate.
13. Immunity of Crown from claims for loss or damage.

*Discovery of Antiquities otherwise than under a Licence to excavate.*

14. Discovery of antiquities otherwise than under licence to excavate.

*Offences relating to Discovery of Antiquities.*

15. Offences relating to discovery of antiquities.

PART III.—ANCIENT MONUMENTS

16. Declaration of a monument dating to period prior to 1850 as an ancient monument.
17. Declaration of specified trees as ancient monuments.
18. Notification of protected monuments.
19. Previous notice of intention to declare an ancient monument to be a protected monument.
20. Agreements in regard to protected monuments
21. No restoration, &c., of protected monument, except upon permit.
22. Refusal or revocation of permit under section 21.
23. Power of Archæological Commissioner to restore, repair, &c., protected monuments.
24. Prohibition or restriction of building, mining, &c., in vicinity of certain monuments.
25. Claim for compensation by owner of land affected by regulations under section 24.
26. Establishment of Compensation Board.
27. Decision of the Board after inquiry.
28. Powers of the Board.
29. Appeal to District Court from decision of the Board and procedure thereon.
30. Hearing of appeal by the Court and its powers.
31. Penalty for destruction, desecration, &c., of ancient monuments.
32. Further offences.

PART IV.—ARCHÆOLOGICAL RESERVES.

33. Archæological Reserves.
34. Encroachments, &c., on archæological reserves.
35. Ejectment of person convicted under section 34.

PART V.—EXPORT OF ANTIQUITIES.

36. Prohibition of export of antiquities except upon licence.
37. Applications for licence to export antiquities.
38. Appeal against refusal of licence.
39. Acquisition by museum of antiquity sought to be exported.

PART VI.—POWERS AND DUTIES OF ARCHÆOLOGICAL COMMISSIONER.

40. Powers of Archæological Commissioner.
41. Duties of Archæological Commissioner.
42. Power of inspection, &c., of antiquities.
43. Authorisation of Government Agents and other officer to exercise powers of Archæological Commissioner.

PART VII.—MISCELLANEOUS.

44. Penalty for breach of Ordinance or regulation, where no other penalty provided.
45. Determination of disputes under sections 5 and 39.
46. Informer's share of fines imposed under the Ordinance.
47. Regulations.

PART VIII.—INTERPRETATION AND REPEALS.

48. Interpretation.
49. The Lost Property Regulation not to apply to antiquities.
50. Repeals and amendments of other Ordinances. Schedule.

**An Ordinance to provide for the better preservation  
of the Antiquities of Ceylon.**

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

1 This Ordinance may be cited as the Antiquities Ordinance, No.                      of 1939, and shall come into operation on such date as the Governor may appoint by Proclamation published in the *Gazette*. Short title  
and date of  
operation.

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 : Property in  
antiquities.

Provided that such person shall be deemed to be interested 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 the absolute property of the Crown.

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

3 On the discovery of any antiquity (other than an ancient monument), the Archæological Commissioner, on behalf of the Crown, shall be entitled to the custody and possession of such antiquity, unless in any case the Archæological Commissioner does not consider it necessary that such antiquity shall be retained by the Crown ; and, where any such antiquity is retained by the Archæological Commissioner on behalf of the Crown, there shall be paid by the Crown— Payment by  
the Crown  
of market  
value of  
certain  
antiquities

- (a) one-half of the market value of the antiquity to the finder thereof and one-half of such value to the owner of the land in which the antiquity was found, or
- (b) where the same person is both the finder of the antiquity and the owner of such land, the whole of the market value of the antiquity to such person, or
- (c) where the antiquity is found on Crown land by any person (other than the Archæological Commissioner or any person acting under his authority in the discharge of any duty or function under this Ordinance), one-half of the market value of the antiquity to the finder thereof :

Provided that on the retention by the Crown of any antiquity no such payment as aforesaid shall be made to the finder thereof where the finder has failed to report the discovery of that antiquity in accordance with the provisions of section 10 or section 14, as the case may be.

4 (1) Notwithstanding the provisions of section 3, it shall be lawful for the Archæological Commissioner, with the approval of the Executive Committee, to enter into an agreement in writing with any person who would under the provisions of section 3 be entitled to the market value of any antiquity or any part of such value, whereby such person shall receive from the Crown, in lieu of such value or part thereof, a share of such antiquity, to be apportioned in such manner as may be provided in the agreement. Agreement  
as to  
apportionment  
of antiquities,  
without  
payment by  
the Crown

(2) Every agreement under subsection (1) shall be free from stamp duty and shall have force and effect notwithstanding anything in section 3 :

Provided always that where the finder of any antiquity does not report the discovery thereof in accordance with the provisions of section 10 or section 14, as the case may be, he shall not be entitled to receive any share of such antiquity under any such agreement.

5 Where there is any dispute between the Archæological Commissioner and any person as to the market value of any antiquity or as to the apportionment of any antiquity in terms of an agreement under section 4, such dispute shall be determined in the manner provided in section 45, and such determination shall be final and conclusive. Dispute as  
to market  
value or  
apportionment  
of antiquities.

## PART II.—DISCOVERY OF ANTIQUITIES.

*Excavations.*

No excavation except upon licence from Archæological Commissioner.

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 licence issued by the Archæological Commissioner :

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

Application for licence to excavate

7 Every application for a licence to excavate shall—

- (a) be made to the Archæological Commissioner in the prescribed form, and
- (b) contain a full and accurate description of the land on which it is proposed to carry out the excavation, the nature and extent of the proposed excavation, and such other particulars as may be prescribed.

Grant or refusal of licence to excavate.

8 The Archæological Commissioner may in his discretion grant or refuse any application for a licence to excavate :

Provided that no such licence shall be granted unless the Archæological Commissioner is satisfied, after such inquiry as he may deem it necessary to make—

- (a) that the owner of the land where the proposed excavation is to be made has consented to the excavation, and
- (b) that the proposed excavation will not cause any damage or inconvenience to persons residing in the vicinity of such land, or to any place used for religious purposes, or to any cemetery, school, water source, irrigation work or public road, or that if any such damage is likely to be caused adequate provision has been made by the applicant for the payment of compensation therefor, and
- (c) that the applicant is able to furnish security for the due observance by him of the provisions of this Ordinance or any regulation, and of any conditions subject to which the licence may be issued.

Terms of licence.

9 Every licence to excavate shall be issued in the prescribed form, subject to the payment of the prescribed fee and shall remain in force, subject to the provisions of section 11, during the period specified in the licence.

Any such licence may contain, in addition to the prescribed conditions, such stipulations as the Archæological Commissioner may deem necessary regarding—

- (a) the supervision of the proposed excavation by any person approved by the Archæological Commissioner for the purpose ;
- (b) the payment of remuneration to any such person not being a public servant, or the payment of the prescribed fee in respect of any service rendered by such person being a public servant ; and
- (c) the security to be furnished by the licensee for the due observance of the provisions of this Ordinance and of the terms and conditions subject to which the licence is issued.

Duty of licensee in respect of discoveries.

10 Every person to whom a licence to excavate is granted shall keep a record in the prescribed form of all antiquities discovered in the course of the excavation and shall, within the prescribed period from the date on which any antiquity is discovered, report the discovery thereof to the Archæological Commissioner and furnish to him the prescribed particulars in respect of that antiquity.

Withdrawal of licence without compensation.

11 Any licence to excavate may, at any time before the expiry of the period specified in the licence, be withdrawn by the Archæological Commissioner and the licensee shall not be entitled to claim compensation for any loss or damage suffered or alleged to have been suffered by him by reason of such withdrawal.

12 (1) Any person aggrieved by the refusal of the Archæological Commissioner to issue a licence to excavate or the withdrawal by the Archæological Commissioner of any such licence may appeal against such refusal or withdrawal to the Minister.

Appeal  
against  
refusal or  
withdrawal  
of licence  
to excavate.

(2) The decision of the Minister on any appeal preferred under subsection (1) shall be final and conclusive.

13 The Crown shall incur no liability by reason of any loss sustained by any person or any damage caused to any person in the course of any excavation carried on under the authority of a licence granted under this Ordinance.

Immunity  
of Crown  
from claims  
for loss or  
damage.

*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 licence to excavate—

Discovery of  
antiquities  
otherwise than  
under licence  
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 therefor from such officer, and

(b) shall, within seven days of the discovery, report the discovery, together with the prescribed particulars relating thereto, to the Government Agent of the province or the Assistant Government Agent of the district in which the discovery was made.

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

*Offences relating to discovery of antiquities.*

15 (1) Every person who—

Offences  
relating to  
discovery of  
antiquities.

(a) excavates in contravention of the provisions of section 6; or

(b) commits a breach of any condition of any licence 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 Archæological Commissioner 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 Archæological Commissioner.

(2) If any person who has been ordered to deliver any antiquity to the Archæological Commissioner under subsection (1) does not deliver such antiquity within the specified

time the Magistrate may order the Fiscal or a peace officer to take immediate possession of such antiquity and deliver it to the Archæological Commissioner.

## PART III.—ANCIENT MONUMENTS.

Declaration of a monument dating to period prior to 1850 as an ancient monument.

16 (1) The Executive Committee may, by order in writing under the hand of the Minister, declare that any specified monument which dates or is believed to date from a period prior to the first day of January, 1850, shall, notwithstanding that such monument does not or is not believed to date to a period prior to the second day of March, 1815, be deemed to be an ancient monument for the purposes 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 Executive Committee that any tree, whether growing in Crown land or any other land, is of such historical or archæological 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 Executive Committee may, by order in writing under the hand of the Minister, declare that such tree shall be deemed to be an ancient monument for the purposes 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 Where it appears to the Executive Committee, with the approval of the Governor, 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, it may, subject to the provisions of section 19, by order published in the *Gazette* under the hand of the Minister, 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 purposes of this Ordinance.

Previous notices of intention to declare an ancient monument to be a protected monument.

19 (1) No order under section 18 shall be made unless the Executive Committee has given notice in the *Gazette* in accordance with the provisions of this section, of its intention to make such order.

(2) Every notice under subsection (1) shall specify a date on or before which objections to the proposed order will be received by the Archæological Commissioner.

(3) Every objection preferred in consequence of a notice under subsection (2) shall be made in writing and shall contain a statement of the grounds upon which the objection is made.

(4) The Archæological Commissioner shall transmit all objections received by him together with his report thereon to the Executive Committee.

(5) The Executive Committee shall consider all objections transmitted under subsection (4) and may for the purpose of investigating any such objection make or cause to be made such inquiry as to it may seem necessary.

Agreements in regard to protected monuments.

20 (1) The owner of any land on which a protected monument is situated and the Archæological Commissioner may enter into a written agreement providing for the due conservation of such monument and its protection from danger of destruction or removal and from damage by neglect or injudicious treatment.

(2) Every agreement entered into under subsection (1) shall be free of stamp duty.

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 Archæological Commissioner, or in accordance with an agreement entered into under section 20, commence or carry out any work of restoration, repair, alteration or addition in connexion with any protected monument.

(2) Every permit under subsection (1) shall be issued in the prescribed form subject to the prescribed conditions and may contain such additional conditions as the Archæological Commissioner may deem fit to insert therein regarding—

- (a) the supervision of the proposed work by the Archæological Commissioner or by any person approved by him for the purpose ; and
- (b) the payment of remuneration to any such person, not being a public servant, or the payment of the prescribed fee in respect of any service rendered by such person, being a public servant.

**22** (1) The Archæological Commissioner may in his discretion—

- (a) refuse to issue a permit under section 21 in any case in which he is of opinion that the applicant for such permit is unable to carry out and complete satisfactorily the work to authorise which such permit is applied for, or that such work is unnecessary ;
- (b) after notice in writing to the holder of any such permit revoke such permit, if he is of opinion that the work is not being carried out satisfactorily or in accordance with the conditions and restrictions subject to which such permit was issued.

Refusal or revocation of permit under section 21.

(2) Any person aggrieved by the refusal or revocation of any permit by the Archæological Commissioner may appeal against such refusal or revocation to the Minister whose decision on any such appeal shall be final and conclusive.

**23** (1) Where a permit under section 21 has not been issued in respect of any protected monument, or where any such permit has been revoked, the Archæological Commissioner may, with the approval of the Executive Committee, carry out or cause to be carried out under and in accordance with his directions such work of restoration, repair, alteration or addition in connection with that monument as to him may seem expedient.

Power of Archæological Commissioner to restore, repair, &c., protected monuments

(2) It shall be the duty of the owner of any monument, in connection with which any work is authorised to be carried out under subsection (1), to permit the Archæological Commissioner or any person acting under the directions of the Archæological Commissioner to enter the land in which that monument is situated and to do all such acts as may be necessary for the purpose of carrying out such work ; and such owner shall not be entitled to claim compensation for any loss or damage suffered or alleged to have been suffered by him by reason of the execution of such work or any part of such work.

**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.

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

(2) Every regulation made under subsection (1) shall have effect notwithstanding anything in any other written law ; but nothing in any such regulation shall permit or be deemed to permit the erection of any building or the carrying on of any operations mentioned in subsection (1) in contravention of any provision of such other law.

**25** (1) The owner of any land affected by any prohibition or restriction in any regulation made under section 24 who suffers any loss or damage by reason of any such prohibition or restriction, may forward to the Archæological Commissioner within the prescribed period a claim for compensation in respect of such loss or damage.

Claim for compensation by owner of land affected by regulations under section 24.

(2) Every claim made under subsection (1) shall specify—

- (a) the amount of compensation claimed ;
- (b) the grounds on which the claim is based ;
- (c) the person chosen by the claimant as a member of the Compensation Board to be established under section 26 in respect of that claim ; and
- (d) such other particulars as may be prescribed.

(3) The Archæological Commissioner shall transmit every claim received by him under subsection (1) to the Minister and shall specify the person chosen by him as a member of the Compensation Board to be established under section 26 in respect of that claim.

(4) No person who fails to make a claim under subsection (1) within the period prescribed for the purposes of that subsection shall be entitled to any compensation for any loss or damage for which a claim under that subsection might have been made, and no action in respect of any such loss or damage shall be entertained by any court or tribunal.

(5) Any compensation determined by a Compensation Board under section 27 or, where an appeal is preferred to a District Court, by a District Court under section 30, shall be paid to the claimant out of funds provided by the State Council for the payment of compensation to claimants under this section.

Establishment  
of  
Compensation  
Board.

26 (1) The Minister shall, on the receipt of any claim under section 25, establish a Compensation Board (hereinafter referred to as "the Board") and shall refer the claim to such Board.

(2) The Board shall consist of a Chairman, who shall be nominated by the Minister, and the two persons chosen by the claimant and the Archæological Commissioner under section 25.

Decision of  
the Board  
after inquiry

27 (1) The Board shall inquire into the claim referred to it under section 26 and give its decision as to the amount of compensation, if any, which shall be paid to the claimant.

(2) Where the Board is not unanimous in its decision, the decision of the majority of the members shall be the decision of the Board.

(3) Where a majority of the members of the Board are unable to agree on the decision, the decision of the Chairman shall be the decision of the Board.

Powers of  
the Board.

28 (1) For the purpose of holding any inquiry under section 27 the Board shall have and may exercise the same powers as a civil court in relation to—

- (a) the enforcing of the attendance of any person and his examination on oath;
- (b) the enforcing of the production of documents; and
- (c) the issuing of commissions for the examination on interrogatories or otherwise of any person,

[Vol. II.,  
p. 428.]

and the provisions of the Civil Procedure Code (Chapter 86) shall, for the purpose of the exercise of such powers, apply to proceedings by or before the Board as if such Board were a court and such proceedings were an action instituted in a court under that Code.

(2) The claimant and the Archæological Commissioner shall be entitled to appear before the Board either in person or by pleader and place before it such evidence whether oral or documentary as may help the Board to determine the amount of compensation, if any, to be awarded.

(3) At an inquiry under this section the Chairman of the Board shall keep or cause to be kept a full record of the proceedings, and shall either at the conclusion of the inquiry or on a date to be later notified to the parties pronounce the decision of the Board which must be in writing signed by the Chairman.

(4) At any time after the decision of the Board has been pronounced, either of the parties to the inquiry or any person establishing to the satisfaction of the Minister that he is a person interested in the subject-matter of the inquiry shall be entitled, upon prepayment of the copying and other charges payable under section 3 of the Proof of Public Documents Ordinance (Chapter 12), to obtain a copy of the proceedings before the Board certified under the hand of the public officer entrusted with the duty of keeping the records of the Board:

Provided that such public officer shall not be required to issue a certified copy during the pendency of an appeal to the District Court.

[Vol. I.,  
p. 178.]

Appeal to  
District  
Court from  
decision of  
the Board  
and procedure  
thereon.

29 (1) The claimant or the Archæological Commissioner may in the manner hereinafter provided appeal from any decision of the Board to the District Court of the district in which the land in respect of which compensation has been claimed is situate (hereinafter referred to as "the Court").

(2) Every appeal under subsection (1) shall be by written petition signed by the appellant or his proctor and shall be lodged with the Secretary of the Court not later than thirty days from the date of the decision of the Board.

(3) The petition of appeal shall state—

- (a) the full name and address of the respondent,
- (b) the grounds of appeal, and
- (c) the relief prayed for.

(4) The appellant or his proctor shall together with the petition of appeal deliver a typed or printed copy of the petition of appeal certified under the hand of the appellant or his proctor.



(5) On the lodgment of the petition of appeal together with a certified copy thereof, the Court shall inform the public officer entrusted with the duty of keeping the records of the Board that an appeal has been lodged and require him to forward to the Court within a specified time the record of the proceedings in respect of which the appeal has been lodged with the written decision of the Board.

(6) Upon the receipt of the record of the proceedings and the written decision of the Board the Court shall cause to be served on the respondent the certified copy of the petition of appeal together with a notice stating the date and time fixed for the hearing of the appeal.

30 (1) The Court shall have full power to hear and determine an appeal under section 29, and the provisions of sections 769, 770, 771, 772 and 774 of the Civil Procedure Code (Chapter 86) shall *mutatis mutandis* apply to the hearing by the Court of appeals from the Board :

Provided that in every case the judgment of the Court shall be signed and dated by the District Judge.

(2) At the hearing of the appeal the parties shall not be entitled to rely on any evidence that has not been placed before the Board :

Provided that the Court may call for any evidence which in the judgment of the Court is necessary for the decision of the appeal.

(3) The Court may confirm the decision of the Board or reduce or increase the amount of compensation awarded by the Board and make such other order as to costs or otherwise as the Court shall deem just.

(4) The decision of the Court shall be final and no appeal from or application for revision of any decision of the Court shall lie to the Supreme Court.

(5) No stamp duties shall be required in any proceedings in the Court under sections 29 and 30.

(6) The Court may upon prepayment of the charges payable under section 205 of the Civil Procedure Code (Chapter 86) authorise the Secretary to furnish, to any party to an appeal a certified copy of the record of the proceedings of the Board in respect of which the appeal has been lodged, at any time after the record has been received in the Court and before its decision is pronounced.

(7) The Court shall after the decision of an appeal return the record of the proceedings of the Board to the public officer entrusted with the duty of keeping the records of the Board.

31 Any person who—

- (a) wilfully 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 be liable on conviction after summary trial before a Magistrate to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding one year or to both such fine and imprisonment.

32 Every person who commits a breach of—

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

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

#### PART IV.—ARCHÆOLOGICAL RESERVES.

33 (1) The Archæological Commissioner may by notification published in the *Gazette* declare any specified area of Crown land to be an archæological reserve for the purposes of this Ordinance :

Provided that no area of land shall be so declared unless it has been mapped-out under the Land Development Ordinance (Chapter 320) for the purpose mentioned in paragraph (k) of section 8 of that Ordinance.

(2) Any area of Crown land reserved for archæological purposes before the date on which this Ordinance comes into operation, whether by notification in the *Gazette* or otherwise,

Hearing of appeal by the Court and its powers.

[Vol. II., p. 428.]

[Vol. II., p. 428.]

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

Further offences.

Archæological Reserves.

[Vol. VI., p. 609.]

shall be deemed to be an archæological reserve declared under the provisions of this section, notwithstanding that it has not been mapped-out under the said Land Development Ordinance.

Encroachments,  
&c., on  
archæological  
reserves.

34 Every person (other than the Archæological Commissioner, or a person acting under and in accordance with his directions) who—

- (a) clears or breaks up for cultivation or cultivates any part of an archæological reserve, or
- (b) erects any building or structure upon any such reserve, or
- (c) fells or otherwise destroys any tree standing on any such reserve, or
- (d) otherwise encroaches on any such reserve,

shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment, and the Magistrate may, in addition to passing any such sentence, make order that such person shall be forthwith ejected from such reserve :

Provided that no person shall be convicted under this section unless the land in respect of which the offence is committed has been declared to be the property of the Crown under the Land Settlement Ordinance (Chapter 319) or under any Ordinance repealed by that Ordinance, or has been acquired by the Crown under the Land Acquisition Ordinance (Chapter 203), or has been resumed by the Crown under the Lands Resumption Ordinance (Chapter 313).

[Vol. VI.,  
p. 585.]

[Vol. V.,  
p. 507.]

[Vol. VI.,  
p. 558.]

Ejection  
of person  
convicted  
under  
section 34.

35 (1) Where no appeal has been preferred against the conviction of any person of an offence under section 34, or, where an appeal has been preferred, after the final judgment or order of the Supreme Court affirming the conviction, the Magistrate may on the application of the Archæological Commissioner make order directing the Fiscal or a peace officer to eject the person convicted from the archæological reserve and to deliver possession thereof to the Archæological Commissioner or his representative.

(2) The Fiscal or peace officer shall comply with the directions of the Magistrate under subsection (1) and shall make due return to the Magistrate's Court of the manner in which he executed the order.

(3) In complying with the directions issued under subsection (1) the Fiscal or peace officer or any officer authorised by either of them may use such force as may be necessary to enter the archæological reserve, to eject the person convicted and to deliver possession of the archæological reserve to the Archæological Commissioner or his representative.

#### PART V.—EXPORT OF ANTIQUITIES.

Prohibition  
of export of  
antiquities  
except upon  
licence.  
[Vol. IV.,  
p. 491.]

36 (1) No person shall, except upon a licence in the prescribed form issued by the Archæological Commissioner, export any antiquity from Ceylon.

(2) For the purposes of the application of the provisions of the Customs Ordinance (Chapter 185), antiquities shall be deemed to be articles the exportation of which is restricted by Ordinance or legal order.

Applications  
for licence  
to export  
antiquities.

37 (1) Every application for a licence under section 36 shall be made to the Archæological Commissioner 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 Archæological Commissioner is of opinion that any antiquity sought to be exported should be acquired for the Colombo or other museum in Ceylon or that for any other reason it is not desirable that such antiquity should be exported, he may refuse to issue a licence under section 36 in respect of that antiquity.

Appeal  
against  
refusal  
of licence.

38 (1) Any person aggrieved by the refusal of the Archæological Commissioner under section 37 to issue any licence may appeal against such refusal to the Minister.

(2) The decision of the Minister on any appeal preferred under subsection (1) shall be final and conclusive.

Acquisition  
by museum  
of antiquity  
sought to be  
exported.

39 (1) Where a licence to export any antiquity has been refused on the ground that such antiquity should be acquired for the Colombo or other museum in Ceylon, and there is a dispute between the authority empowered to purchase objects for the use of such museum and the owner of the antiquity as to the price to be paid therefor, such price shall be

determined in the manner provided in section 45, and such determination shall be final and conclusive. On payment of the price so determined the antiquity shall become the absolute property of the museum.

(2) Where the price determined under subsection (1) is not paid to the owner of the antiquity within two months from the date on which the price was so determined, the museum shall be deemed to have lost all right to the acquisition of the antiquity at such price, and the Archæological Commissioner shall issue a licence to export the antiquity subject to any other conditions which may be applicable to the issue of such licence being complied with.

PART VI.—POWERS AND DUTIES OF ARCHÆOLOGICAL COMMISSIONER.

40 The Archæological Commissioner is hereby empowered—

Powers of Archæological Commissioner.

- (a) to prepare a list of ancient monuments ;
- (b) to conserve, maintain, repair and restore all ancient monuments on Crown land and such protected monuments as may from time to time be specified by the Executive Committee ;
- (c) to carry out excavations with the approval of the Executive Committee.

41 The Archæological Commissioner shall perform and discharge all such duties and functions as are assigned to him by this Ordinance or any regulation.

Duties of Archæological Commissioner.

42 The Archæological Commissioner or any officer authorised by him in writing for the purpose may at all reasonable times inspect any antiquity in the possession of any person ; and it shall be the duty of every such person to permit such inspection and further to give to the Archæological Commissioner or such officer all reasonable facilities to study such antiquity and to make drawings, photographs or reproductions thereof by the making of casts or by any other means :

Power of inspection, &c., of antiquities.

Provided that no such drawings, photographs or reproductions shall be sold without the consent of the person in possession of the antiquity.

43 The Archæological Commissioner may generally or specially authorise the exercise, performance or discharge of any of his powers, duties or functions under this Ordinance—

Authorisation of Government Agents and other officers to exercise powers of Archæological Commissioner.

- (a) by the Government Agent of any province or the Assistant Government Agent of any district, within that province or district ; or
- (b) by any officer of the Department of Archæology, either throughout Ceylon or in any specified area.

PART VII.—MISCELLANEOUS.

44 Every person who commits a breach of any provision of this Ordinance or of any regulation shall be guilty of an offence and shall, where no penalty is specially provided by this Ordinance for such offence be liable on conviction to a fine not exceeding one hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

Penalty for breach of Ordinance or regulation, where no other penalty provided.

45 Every dispute under section 5 or section 39 shall be referred to arbitrators, one to be chosen by each of the interested parties ; and the arbitrators shall, before proceeding to decide the matter of the dispute, select an umpire whose decision, in the event of a disagreement between the arbitrators, shall be final :

Determination of disputes under sections 5 and 39.

Provided that where—

- (a) the interested parties do not appoint an arbitrator, or
- (b) the arbitrators do not select an umpire,

the Minister may after such time as he may deem reasonable appoint an arbitrator or an umpire as the case may be.

46 In any case in which any person is sentenced to pay a fine under this Ordinance, the court may direct that any part, not exceeding one-half, of such fine or of so much as shall actually be recovered shall be paid to any person through whose information the conviction has been obtained.

Informer's share of fines imposed under the Ordinance.

47 (1) The Executive Committee may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.

Regulations

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Executive Committee may make regulations for or in respect of all or any of the following matters :—

- (a) the manner in which security shall be furnished by any person to whom a licence under section 6 is issued, and the procedure for enforcing such security ;
- (b) the conditions and restrictions (including the payment of a fee) subject to which any licence or permit under this Ordinance may be issued ;
- (c) the disposal of antiquities delivered to the Archæological Commissioner under section 15 ;
- (d) the matters which shall be considered in assessing the compensation to be paid to claimants under section 25, and any matters which shall not be taken into consideration in assessing such compensation ;
- (e) the procedure to be followed before the Board in inquiries held under section 27 ;
- (f) the time within which appeals under section 12 or section 22 or section 38 shall be preferred, and generally all matters incidental to or connected with the hearing and disposal of such appeals ;
- (g) the conditions and restrictions (including the payment of fees) subject to which members of the public may have access to any ancient monument on Crown land or any protected monument ;
- (h) any matters for which regulations may be made under section 24 ; and
- (i) all matters stated or required by this Ordinance to be prescribed.

(3) Every regulation made by the Executive Committee shall be brought before the State Council by a motion that such regulation shall be approved and if so approved shall be submitted to the Governor for ratification. No regulation made by the Executive Committee shall have effect until it has been approved by the State Council and ratified by the Governor. Notification of such approval and ratification shall be published in the *Gazette*.

(4) A regulation made by the Executive Committee when approved by the State Council and ratified by the Governor shall, upon the notification of such approval and ratification in the *Gazette*, be as valid and effectual as if it were herein enacted.

#### PART VIII.—INTERPRETATION AND REPEALS.

**48** In this Ordinance, unless the context otherwise requires—

“ ancient monument ” means any monument lying or being or being found in Ceylon which dates or may reasonably be believed to date from a period prior to the second 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 Ceylon, which date or may reasonably be believed to date from a period prior to the second 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 ;

“ Archæological Commissioner ” means the person appointed by the Governor to be or to act as Archæological Commissioner and includes any person authorised by the Archæological Commissioner under section 43 in respect of any power, duty or function of the Archæological Commissioner 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 ;

“ Executive Committee ” means the Executive Committee of Education ;

“ Minister ” means the Minister for Education and includes a person appointed by the Governor to act in place of the Minister ;

“ 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 ; 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 recognised by any written or other law in force in Ceylon ;

“ 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 Executive Committee under this Ordinance.

49 Nothing contained in the Lost Property Regulation (*Chapter 63*) shall in any manner apply to any antiquity.

The Lost Property Regulation not to apply to antiquities.  
[Vol. II., p. 120.]

50 (1) The Antiquities Ordinance (*Chapter 144*) is hereby repealed.

Repeals and amendments of other Ordinances.  
[Vol. III., p. 705.]

(2) The Ordinances specified in the first column of the Schedule hereto are hereby amended in the manner specified in the second column of that Schedule.

#### SCHEDULE.

I.	II.
<p>The Treasure Trove Ordinance (<i>Chapter 145</i>) [Vol. III., p. 711]</p>	<p>In section 10— (1) the word “ antiquities,” shall be omitted ; (2) for the words “ cannot be found;” there shall be substituted the following :— ‘ cannot be found, but shall not include any “ antiquity ” as defined in the Antiquities Ordinance, No. of 1939 ;’</p>
<p>The Buddhist Temporalities Ordinance (<i>Chapter 222</i>) [Vol. V., p. 655]</p>	<p>In paragraph (a) of section 43 (1), for the word “ monuments ” there shall be substituted the following :— ‘ monuments, (not being “ antiquities ” within the meaning of the Antiquities Ordinance, No. of 1939), ’.</p>

#### Objects and Reasons.

The object of this Bill is to repeal the Antiquities Ordinance (*Chapter 144*) and to substitute in its place a new Ordinance which will make better provision for the preservation of the antiquities of Ceylon.

[Vol. III. p. 705.]

The most important changes introduced by the new law relate to what are termed “ ancient monuments ”, that is to say, antiquities which are immovable property, such as temples, monuments, and buildings. Under our law it is possible for an ancient monument which is of archaeological

or historical interest, or which is sacred or of religious importance, to be in private ownership. No control can at present be exercised in respect of such monuments and the owner of any such monument may allow it to fall into ruins or may destroy its archæological importance by incongruous or clumsily executed restorations or additions.

2. Part III. of this Bill deals in detail with ancient monuments and provides (Clause 18) that particular ancient monuments of religious, historical or archæological importance, which are situated on privately owned land, may be declared to be "protected monuments".

Once an ancient monument has been declared a "protected monument", no work of restoration or repair of that monument and no alteration or addition thereto will be allowed except upon a permit from the Archæological Commissioner, who is also empowered to revoke a permit in certain cases. An appeal will lie to the Minister for Education against the refusal or revocation of such a permit by the Archæological Commissioner. (Clauses 21 and 22).

The Archæological Commissioner is himself empowered by Clause 23 to undertake, with the approval of the Executive Committee and at the expense of Government, any work of restoration, repair, alteration or addition in connection with any protected monument. A further feature in the scheme set out in the Bill for the protection of ancient monuments is contained in Clause 24, whereby power is taken to prohibit or restrict, on lands, situated in the vicinity of protected monuments or of ancient monuments on Crown land, operations of a nature which might damage or injure such monuments—*e.g.*, building, blasting, mining, quarrying. Clause 47 (2) (g) provides for regulations controlling the right of members of the public to have access to any such monuments.

It is considered to be necessary in the public interest that the private right of ownership in a protected monument should be restricted to the extent indicated in the scheme outlined above, but, at the same time, certain safeguards are provided which are an essential part of that scheme. Clause 19 provides that no ancient monument on privately owned land can be declared a protected monument unless previous notice of the intention so to declare it is given in the *Gazette* and an opportunity afforded to any person interested to place his objections before the Executive Committee. Further, where any regulation is made under Clause 24 interfering with the right of any person to carry on any building, blasting, mining or quarrying operations, and where that person claims to have suffered any loss or damage thereby, procedure is provided for the payment of compensation, assessed by a special Compensation Board, with an appeal to the District Court against the order of the Board (Clauses 25 to 30).

3. Ancient monuments are defined to mean those which date to a period prior to the second day of March, 1815, which is the date of the Kandyan Convention. There are cases, however, of temples, buildings, &c., which, though they do not date back prior to 1815, at the same time seem to be deserving in the public interest of the protection afforded by the law to ancient monuments. Clause 16 of the Bill deals with such a case and provides for the making of an order which will extend to any monument dating to a period prior to 1850 the protection afforded to an ancient monument. It has also been considered advisable to make special provision in Clause 17 for the case of trees whose historical or religious importance make it desirable that they should be brought within the scope of the new law and afforded protection as if they were ancient monuments. Any monument or any tree in respect of which an order under Clause 16 or Clause 17, as the case may be, has been made may then be given special protection by its being declared a protected monument under Clause 18.

Clause 31 sets out certain offences in connexion with ancient monuments and deals specifically with the case of desecration of a monument which is held sacred by any class of persons.

4. Part IV. of the Bill deals with the notification of Archæological Reserves and makes provision for the protection of such reserves from encroachment.

5. No important change in the present law relating to the discovery of antiquities, (whether accidentally or in the course of excavations) or to the export of antiquities is made, and Parts II. and V. of the Bill largely reproduce provisions found in the Antiquities Ordinance (*Chapter 144*)

A change in the law is however made regarding the rights of a person who discovers an antiquity which is movable property. All such antiquities are declared to be the property of the Crown, and the present law is that the finder of the antiquity and the owner of the land on which it is found are each entitled to a one-third share of the antiquity, the other one-third share being given to the Crown. In order to induce a finder more readily to surrender possession of an antiquity to the authorities, Clause 3 provides that the full market value shall, where the Crown decides to retain any antiquity, be paid in equal shares to the finder and the owner of the land.

6. Clause 50 effects certain consequential repeals and amendments of other Ordinances.

Colombo, May 25, 1939.

C. W. W. KANNANGARA,  
Minister for Education.