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# Protection of War Graves Act

Passed 10.01.2007  
RT I 2007, 4, 21  
Entry into force 20.01.2007

Amended by the following acts

Passed	Published	Entry into force
30.09.2009	RT I 2009, 49, 331	01.01.2010
23.02.2011	RT I, 21.03.2011, 4	01.06.2011
19.02.2014	RT I, 13.03.2014, 2	23.03.2014, in part 01.01.2015, 01.01.2017 and 01.01.2019
19.06.2014	RT I, 29.06.2014, 109	01.07.2014, pursuant to subsection 4 of § 107 <sup>3</sup> of the Government of the Republic Act the official titles of the ministers have been replaced from the redaction in force since 1 July 2014.
06.06.2018	RT I, 29.06.2018, 1	01.07.2018
20.02.2019	RT I, 19.03.2019, 13	01.05.2019
15.02.2023	RT I, 07.03.2023, 7	01.04.2023

**In observance and acknowledgement** of the obligation of the Republic of Estonia to guarantee the protection, respect and dignified treatment of the remains of persons who have died in acts of war conducted in the territory of Estonia;

**finding** that the burying of persons who have died in acts of war to unsuitable places is in discord with the European culture and the tradition of honouring the memory and remains of the deceased;

**on the basis of** Article 34 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) adopted on 8 June 1977, according to which the Estonian state is obliged to guarantee the respect of the remains and gravesites of persons who died due to acts of war in the territory of Estonia, and the marking thereof, and in pursuance of which the Estonian state is entitled to rebury the remains on the basis of the public interest, the Riigikogu passes this Act.

## Chapter 1 GENERAL PROVISIONS

### § 1. Scope of application of Act

(1) This Act determines the legal protection and maintenance of war graves located in Estonia, public access to war graves and the procedure for the marking of war graves, as well as the bases of and procedure for reburial of the remains in the war graves located in Estonia to cemeteries with the aim of the protection provided for in this Act.

(2) This Act applies to the remains and war graves of the Estonian soldiers who were killed in the Estonian War of Independence and the remains and war graves of the persons who were killed in the armed fight for the independence of Estonia, including armed resistance movement (forest brotherhood). This Act applies to the remains and war graves of the persons who belonged to the armed forces of other foreign states and the citizens of other states in so far as not otherwise prescribed in a treaty.

(3) Legal regulation relating to war graves of the Estonian citizen which are located in foreign states and the maintenance of the graves is guaranteed by treaties.

## § 2. Definitions

In this Act, the definitions are used in the following meaning:

- 1) “**war victim**” is:
  - a person who was killed in an armed fight or died of the wounds received or illnesses conceived in the fight within one year after participation in the fight;
  - a person who died in the armed resistance to occupation regime or died due to the health damage resulting from participation in armed resistance movement within one year after the participation in armed resistance movement;
  - a person who was killed or died in military service or a similar service during acts of war or died due to the health damage received in the specified service during acts of war within one year after the health damage emerged;
  - a person who died in immediate acts of war or due to an injury received during immediate acts of war within one year after receiving the injury;
  - a person who died in an internment camp or due to health damage received in an internment camp within one year after the release therefrom;
  - a person who died as a prisoner of war or due to health damage received while held as a prisoner of war within one year after termination of the imprisonment;
- 2) “**war grave**” is a burial site of the remains of the persons specified in clause 1 of this section;
- 3) “**cemetery**” is a site prescribed and planned for the burial of human remains, corpses or cremated bodies and provided with the necessary structures;
- 4) “**military cemetery**” is a cemetery prescribed for the burial of war victims and military servicemen, which is in the state ownership and the administration of which is in the area of government of the Estonian Ministry of Defence. The procedure for administration of military cemeteries shall be established by the Government of the Republic.

## § 2<sup>1</sup>. Competence and administrative cooperation

- (1) The Ministry of Defence organizes the performance of actions provided in this Act and the exercise of administrative supervision over implementation of the actions.
  - (2) The Ministry of Defence may designate another agency (hereinafter designated agency) or authorize a legal person or a natural person (hereinafter authorized person) to perform the actions provided in this Act.
  - (3) Upon authorizing of an authorized person, an administrative contract or a contract under civil law is entered into with the person.
  - (4) In the case of authorization to issue a protection obligation notice provided in subsection 1 of § 5 of this Act, an administrative contract is entered into with the authorized person.
  - (5) Upon termination of the administrative contract entered into for the performance of the actions provided in this Act, or in case there is another reason that prevents the authorized person from continuing to perform the administrative task, the Ministry of Defence takes over the execution of the administrative task.
- [RT I, 07.03.2023, 7 - entry into force 01.04.2023]

# Chapter 2 WAR GRAVES PROTECTION

## § 3. Right of preservation of war grave

- (1) A war grave shall be marked and the legal protection thereof shall continue pursuant to the procedure provided for in this Chapter for an unspecified term or until a term provided for in a treaty.
- (2) The owner of the immovable on which a war grave is located is required to ensure the preservation of the war grave and the marking thereof. All roads and pathways leading to the war grave must be open for public use from sunrise until sunset and the possessor of the immovable shall not hinder public access to the protected war grave during the specified time.
- (3) The owner of the immovable is required to allow the execution of the works necessary for the performance of the obligations prescribed by this Act on his or her immovable..
- (4) In order to protect war graves located outside the cemeteries, the protected zone shall be established in the range of up to twenty-five metres from the exterior or boundary of a war grave.

## § 4. Keeping account of war graves

- (1) The Ministry of Defence or a body assigned, or a person authorised by the ministry keeps account of the war graves located in Estonia and foreign states. The minister in charge of the policy sector establishes, by a regulation, special rules for maintaining the list of war graves in which the data to be entered in the list, special

rules for deleting a war grave from the list and special rules for the release of information concerning war graves are prescribed.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(2) The owner of the immovable is required to inform the Estonian Ministry of Defence of a war grave found on his or her land as well as of a grave with regard to which there is a good reason to suspect that it is a war grave immediately after finding the war grave.

(3) Everyone who possesses information concerning war graves is required to forward such information to the Estonian Ministry of Defence free of charge within one year as of the entry into force of this Act or immediately after finding the war grave or the receipt of the corresponding new information.

#### **§ 5. War grave protection and protection obligation notice**

(1) The Ministry of Defence or a body assigned, or a person authorised by the ministry decides on the entry of a war grave in the list of war graves. The Ministry of Defence or a body assigned, or a person authorised by the ministry issues a protection obligation notice to the person on whose immovable the war grave is located. Before entry of a war grave in the list of war graves, the War Graves Committee gives an opinion, based on this Act, as to whether or not the remains in the war grave are to be reburied. In case the remains in the war grave are to be reburied, based on the provisions of this Act, the war grave is not entered in the list of war graves and a protection obligation notice is not issued in this respect. After the reburial of the remains, the Ministry of Defence or a body assigned, or a person authorised by the ministry decides on the entry of the new burial site in the list of war graves and issues a protection obligation notice.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(2) A protection obligation notice is an informative document that is issued to the owner of an immovable which contains a war grave or is located within such area, or to an administrator of state assets concerning whom an entry has been made in the land register, or to a person or agency duly authorised by the administrator of state assets (hereinafter possessor), and the restrictions contained therein shall be entered in the land cadastre.

(3) A protection obligation notice shall contain:

- 1) information concerning the war grave and the time of entry thereof in the list of war graves;
- 2) a list of restrictions necessary for ensuring the protection of the war grave.

(4) A protection obligation notice is issued by the Ministry of Defence or a body assigned, or a person authorised by the ministry within thirty days as of the entry of the war grave in the list of war graves.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(5) A protection obligation notice shall be delivered against a signature or sent by post by a registered letter-post item.

#### **§ 6. Marking and maintenance of war graves**

(1) War graves shall be marked in a manner ensuring the honouring and dignified treatment of the remains of war victims so that the location of the war grave could be noticeable at the site in the nature. The names of the persons buried in the grave shall be entered on the marking of the war grave where possible.

(2) The Ministry of Defence or a body assigned, or a person authorised by the ministry organises the marking and maintenance of war graves. The cemetery administrator or a body assigned, or a person authorised by the minister in charge of the policy sector, take care of the war graves, perform renovation or restoration work and maintain the war graves located in public cemeteries and military cemeteries.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(3) A war grave maintained by a private person is a grave which is maintained by the immediate family of the person who is buried in the war grave, or by the landowner. The Estonian Ministry of Defence has the right to assume the obligation to maintain a war grave maintained by a private person with the consent of the current maintainer.

#### **§ 7. Acquisition of immovable in public interest**

[RT I, 29.06.2018, 1 – entry into force 01.07.2018]

(1) If the guaranteeing of the right of preservation of a war grave provided in § 3 of this Act severely complicates the use of the plot of land for the intended purpose by the owner, the immovable on which the war grave is located may be acquired in the public interests at the request of the owner pursuant to the procedure provided in the Acquisition of Immovables in Public Interest Act.

(2) A local authority cannot request the acquisition of the plot of land in public interests by the state on the basis of subsection 1 of this section.

[RT I, 29.06.2018, 1 – entry into force 01.07.2018]

## **Chapter 3**

# **REMAINS SUBJECT TO REBURIAL, DECIDING AND ORGANISATION OF REBURIAL**

### **§ 8. Remains subject to reburial and deciding of reburial**

(1) On the basis of this Act, the remains are subject to reburial in case a war grave is located in an unsuitable place. The places which preclude dignified treatment of a war grave are unsuitable places for a war grave. The Ministry of Defence or a body assigned, or a person authorised by the ministry decide which remains are to be reburied, requesting for the opinion of the War Graves Committee as to the suitability of the place for a war grave.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(2) [Repealed - RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(3) The entry of a war grave in the list of war graves shall not hinder the reburial of the remains in the war grave on the basis of this Act.

(4) [Repealed - RT I, 07.03.2023, 7 - entry into force 01.04.2023]

### **§ 9. Identification**

(1) The Ministry of Defence or a body assigned, or a person authorised by the ministry may decide to organise exhumation and identification of the remains of unidentified deceased persons in case there is a good reason to suspect that the gravesite is a war grave but the establishment of the existence of the remains therein, ascertaining of the number of them or identification of the remains is impossible in any other manner.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(2) If it is established that the gravesite is a war grave, the possible reburial of the remains shall be decided in accordance with § 8 of this Act. The Estonian Ministry of Defence or a person authorised by the ministry shall inform, where possible, the relatives of the identified war victim or the relevant agencies of foreign states. The remains of a war victim shall be given, if requested, to the relatives for reburial.

(3) The persons who are in the possession of documents or objects which facilitate the identification of the remains are required to give these to the disposal of the Estonian Ministry of Defence for the identification of war victims. The documents and objects shall be returned to the owner.

(4) In case there has been a good reason to suspect that a grave is a war grave but it becomes evident that it is not a war grave, the reburial of the remains and the relocation, adjustment and demolition of the grave monument or mark, and the withdrawal of the status of a monument is decided on the basis of this Act pursuant to the same rules as in the case of war graves. In case it becomes evident that there are no remains in the suspected war grave, the Ministry of Defence or a body assigned, or a person authorised by the ministry decides on the adjustment of the grave monument or mark or other grave construction as a memorial, the relocation thereof to a museum or another appropriate place, or partial or full dismantling thereof. In such case § 13 of this Act is applied in respect of restrictions related to the monument and § 14 of this Act is applied to the withdrawal of the status of a monument.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

### **§ 10. Organisation of reburial**

(1) The reburial of the remains specified in § 8 of this Act is organised by the Ministry of Defence or a body assigned, or a person authorised by the ministry. The requirements for reburial are established by a regulation of the minister in charge of the policy sector.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(2) The remains subject to reburial on the basis of this Act shall be reburied in a suitable cemetery.

(3) The grave monument or another grave mark, such as grave plate and cross, are relocated to the new burial site of the remains from the current location of the remains to be reburied. In case the size of a monument renders it unsuitable for relocation to the new burial site of the remains, and in case relocation of the monument to the new burial site is impossible for another reason, the Ministry of Defence or a body assigned, or a person authorised by the ministry decides on the adjustment of the grave monument or the placing of the essential elements of the grave monument to the new burial site or the establishment of a new grave monument to the new burial site and the dismantling of the grave monument in the current location, requesting for the opinion of the War Graves Committee as to the suitability of the new burial site or the suitability of the essential elements of the grave monument to the new burial site.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(4) Upon reburial the burial customs of the religion or culture of the person who is reburied are observed, where possible. The dignified treatment of the remains is ensured during reburial. The Ministry of Defence or a body assigned, or a person authorised by the ministry marks the grave, including the installation of the grave monument or a memorial plaque. In case of doubt about the suitability of a grave marker in a public space, the opinion of the War Graves Commission is requested.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(5) A building permit or the consent of the local government is not required for the removal of a grave monument or another grave mark from the previous location and for the installation thereof to a new burial site of the remains. The permit or consent specified in this section is required in the cases provided by law if a grave monument, mark or other grave construction is to be installed elsewhere than to a new burial site of the remains.

(6) The owner of the registered immovable on which the remains are located shall be notified of the works necessary for reburial for at least seven days in advance. This is not necessary in the case of the reburial of the remains which are located on the state land.

(7) The permission of the local Health Board is not required for reburial if the reburial does not pose a danger in terms of public health due to the age of the remains. The permission of the local Health Board is not required, due to the age of the remains, for the reburial of the remains of persons who died during the First and the Second World War and the Estonian War of Independence.

[RT I 2009, 49, 331 – entry into force 01.01.2010]

(8) The person who performed the reburial works shall prepare a report on the works performed.

#### **§ 11. Extent of immovable property ownership and rights and obligations of owner of immovable**

(1) The owner of an immovable shall not have the right to prohibit the reburial of the remains in a war grave located on his or her registered immovable and the consequent relocation of a grave monument or mark belonging to the grave.

(2) The owner of an immovable on whose registered immovable is a war grave is required to enable free access to the grave for the reburial of the remains, relocation of the grave monument or mark and identification of the remains.

(3) The Estonian Ministry of Defence shall ensure that the situation as near as possible to the state of matters before the performance of the works, except for the marks and constructions which belonged to the grave, is restored on the registered immovable within three months after the performance of the works specified in subsection 1 of this section. Upon failure to perform such obligation, the owner of the registered immovable shall have the right to demand compensation for damage caused by the damaging of the green area or registered immovable in any other way pursuant to the State Liability Act.

(4) If the owner of a grave monument or mark or another construction relating to the grave has incurred expenses for the building of the grave monument or mark or another construction relating to the grave and damage is caused to him or her due to relocation, adjustment or dismantling of the grave monument or mark or another construction relating to the grave, the damage caused shall be compensated for by the state on the basis of the State Liability Act.

#### **§ 12. War Graves Committee**

(1) The Ministry of Defence or a body assigned, or a person authorised by the ministry forms the War Graves Committee and approves the rules of procedure thereof. The War Graves Committee consists of at least five members.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(2) [Repealed - RT I, 07.03.2023, 7 - entry into force 01.04.2023]

## **Chapter 4**

# **SPECIFICATIONS RELATED TO GRAVES DESIGNATED AS MONUMENTS**

## **§ 13. Restrictions related to monument**

(1) If a war grave is designated as a monument or is located within a heritage conservation area, the provisions pertaining to a monument and heritage conservation area apply to the war grave with the specifications arising from this Act.

(2) If the remains which are buried in the graves or a heritage conservation area designated as a monument are subject to reburial on the basis of § 8 or subsection 4 of § 9 of this Act, the designation thereof as a monument or the location thereof within a heritage conservation area shall not hinder the reburial of the remains.

(3) If the remains which are buried in the graves or a heritage conservation area designated as a monument are subject to reburial on the basis of § 8 or subsection 4 of § 9 of this Act, the restrictions arising from the Heritage Conservation Act and the statutes of the corresponding heritage conservation area shall apply to the work necessary for the reburial with the following specifications:

1) the permission of the National Heritage Board is not required for the performance of the works related to the reburial and relocation of a grave monument or grave mark;

2) the National Heritage Board and the local government within the territory of which the works are to be performed shall be notified of the works related to the reburial and relocation of a grave monument or mark for at least seven days in advance;

3) The National Heritage Board of Estonia and the local government within the territory of which the works are performed shall be notified of the termination of the works related to the reburial and relocation of a grave monument or mark within seven days as of the termination of the work.

## **§ 14. Revocation of designation of grave or gravesite as monument**

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(1) The designation of a grave or gravesite as a monument is revoked on the basis of this Act after the remains located in a grave or gravesite have been reburied on the basis of this Act.

(2) The report concerning termination of the works related to the reburial and relocation of a grave monument or grave marker at the monument site, submitted by the person who performed reburial works, is the basis of the revocation specified in subsection 1 of this section.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(3) [Repealed - RT I, 19.03.2019, 13 - entry into force 01.05.2019]

(4) After the receipt of the directive of the minister in charge of the policy sector concerning the revocation of the designation as a monument, the National Heritage Board shall make a notation concerning the revocation of the designation as a monument in the national registry of cultural monuments and shall notify the local government of the location of the monument, the owner and the possessor of the immovable on which the monument was located and the state cadastre thereof. The protection obligation notice issued to the owner of the immovable with regard to the monument shall become invalid as of the date of issue of the directive of the minister in charge of the policy sector.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014, pursuant to subsection 4 of § 107<sup>3</sup> of the Government of the Republic Act the official title „the Minister of Defence“ is replaced by the words „the minister in charge of the policy sector“ from the redaction in force since 1 July 2014]

## **Chapter 5 IMPLEMENTATION OF ACT**

## **§ 15. Formation of War Graves Committee**

(1) The Ministry of Defence or a body assigned, or a person authorised by the ministry forms the War Graves Committee within thirty days after the entry into force of this Act.

[RT I, 07.03.2023, 7 - entry into force 01.04.2023]

(2) The War Graves Committee shall organise the assessment of the suitability of the location of the war graves known by the date of entry into force of this Act and the assessment of the need for the identification provided for in § 9 of this Act and shall make a proposal for the reburial of the remains and the relocation, adjustment and dismantling of grave monuments and marks or the establishment of new constructions within one year as of the entry into force of this Act.

#### **§ 16. Known war graves**

(1) The owner of an immovable is required to inform the Estonian Ministry of Defence of a war grave located on his or her land and known to him or her at the time of the entry into force of this Act within three months as of the entry into force of this Act. The owner of an immovable shall not have the specified obligation if the war grave is designated as a monument.

(2) If the remains in a war grave are subject to reburial, the temporary protection may be applied to the war grave until reburial.

#### **§ 17. Compensation obligation related to existing grave construction**

If the owner of a registered immovable under a grave monument or mark or another construction relating to the grave, existing at the time of the entry into force of this Act, has incurred expenses for the building of the grave monument or mark or another construction relating to the grave and damage is caused to him or her due to the relocation, adjustment or dismantling of the grave monument or mark or another construction relating to the grave, the damage caused shall be compensated for by the state on the basis of the State Liability Act.

#### **§ 18. Entry into force of Act**

This Act shall enter into force on the date following the date of publication in the *Riigi Teataja*.