
TOWN PLANNING ACT 1999
Principal Act

Act. No. 1999-39	<i>Commencement</i>	5.4.2001
	<i>s.2, 23 and 44.</i>	17.2.2000
	<i>Assent</i>	2.12.1999

Amending enactments	Relevant current provisions	Commencement date
2000-11	s. 5(2)(n) and 22(2)(kk)	30.11.2000
2003-19	s. 22A	1.8.2003
2004-08	s. 1(3) and 2	4.3.2004
2009-30	ss. 2, 5(2A) & (2B), 22(2A) & (2B) & 22B	6.8.2009
LN. 2011/237	Sch. 1	22.12.2011
Act. 2014-01	s. 38	27.2.2014
LN. 2015/078	ss. 2, 5(2A), (2B), (4), 6(5), 22(2A), 22B(1), (1A)	1.6.2015
2015/218	Sch. 1	3.12.2015

English sources

None cited

EU Legislation/International Agreements involved:

Directive 96/82/EC

Directive 2003/105/EC

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PART I*Preliminary***Title and Commencement.**

1.(1) This Act may be cited as the Town Planning Act 1999.

(2) This Act shall come into operation on such day as the Minister may, by notice in the Gazette, appoint and different days may be appointed for different provisions and different purposes.

(3) This Act applies to the land, sea and sea-bed of Gibraltar.

Interpretation.

2. In this Act and unless the context otherwise provides –

“advertisement” means any word, letter, model, sign, placard, board, notice, device or representation, whether illuminated or not, in the nature of, and employed wholly or in part for the purposes of, advertisement, announcement or direction, and includes any hoarding or similar structure used or adapted for use for the display of advertisements;

“approved planning scheme” means a planning scheme approved by the Chief Minister under section 10;

“building” includes any structure or erection and any part of a building as so defined, but does not include plant or machinery other than externally mounted air-conditioning cooling plant or ventilation ducts;

“Commission” means the Development and Planning Commission constituted under section 3;

“dangerous substance” means a substance or mixture–

(a) listed in column 1 of Part 1 of Schedule 6; or

(b) listed in column 1 of Part 2 of Schedule 6,

including in the form of a raw material, product, by-product, residue or intermediate;

“Directive” means Directive 2012/18/EU of the European Parliament and of the Council, on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC, as may be amended from time to time;

“land” means any corporeal hereditament including a building and where the context so admits shall include the sea and sea-bed;

“Minister” means the Minister with responsibility for Town Planning or such other Minister as the Chief Minister may designate from time to time;

“operator” shall be construed in accordance with section 95A(2) of the Public Health Act;

“planning scheme” means any plan or plans prepared under the direction of the Commission under section 5, and includes any written statement or explanation forming part thereof;

“the public concerned” means the public affected or likely to be affected by, or having an interest in, the taking of a decision on any of the matters covered by Article 15(1) of the Directive; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any applicable requirements under national law shall be deemed to have an interest;

“Tribunal” means the Development Appeals Tribunal appointed under section 24(2);

“zone” means any area of land shown on the plan of a planning scheme by distinctive colouring, hatching or edging for the purposes of indicating the use to which the land and buildings may be put.

PART II

Development and Planning Commission

Establishment of Commission.

3.(1) There shall be established a Commission, to be known as the Development and Planning Commission.

(2) The provisions contained in Schedule 1 shall have effect with respect to the functions, constitution and proceedings of the Commission*.

* LN 2001/028 Establishes the Development and Planning Commission.

Functions of Commission.

4. The Commission shall—
 - (a) with a view to the promotion of the health, safety, convenience, physical, economic and general welfare of the community, undertake the preparation of planning schemes for the physical development of such areas as the Government may direct, as well as for the type of buildings suitable for erection therein;
 - (b) carry out the functions conferred or imposed upon it by any statute for the time being in force, and such other functions as the Government may from time to time prescribe.

PART III*Planning Schemes***Contents of planning schemes and powers of Commission.**

- 5.(1) A planning scheme shall consist of a written statement, with a plan or plans, indicating—
 - (a) the principal physical and economic characteristics of each area to which it relates;
 - (b) the size, composition and distribution of the population of that area (whether resident or otherwise);
 - (c) the manner in which land may be used, and the stages by which any development of land may be carried out.
- (2) A planning scheme may make provision for—
 - (a) new streets, roads and alleys and the diversion, widening, alteration and stopping-up of existing streets, roads and alleys;
 - (b) the establishment of building lines and lay-bys;
 - (c) water supply, drainage and sewerage ;
 - (d) the demarcation of zones within which commerce or industries may be carried on, or which are reserved exclusively for residential or other purposes;

- (e) the imposition of conditions or restrictions in regard to the size of any plot of land upon which any building may be erected, the open space to be maintained about a building, the density of the built environment, and the height, size or character of any building to be allowed in any zone or specified area;
- (f) the demarcation of land for parks, recreation grounds, nature reserves, water catchments and other public purposes;
- (g) the provision of car parks and the reservation of sites for multi-storey car parks;
- (h) the transport system and traffic arrangements;
- (i) access to the water front by the general public;
- (j) marinas, port facilities, and such warehouses and areas adjoining thereto, as may be expected to affect such facilities;
- (k) the comprehensive development of any area;
- (l) the demarcation of areas for the preservation and restoration of buildings;
- (m) the demarcation of sites of archaeological or historical or similar interest (including ancient monuments and other buildings or sites protected by law); and
- (n) ensuring the prevention of major accidents and limiting the consequences of such accidents.

(2A) In the preparation of a planning scheme, the Commission shall, in addition to the matters specified in subsection (2), have regard to the need—

- (a) in the long term, to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular sensitivity or interest;
- (b) in the case of existing establishments, for additional technical measures in accordance with Article 5 of the Directive so as not to increase the risks to people and the environment; and
- (c) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through safety distances or other relevant measures.

(2B) In subsections (2A) and (4), “establishment” means the whole area under the control of the same person where dangerous substances are present in one or more installations, and for this purpose two or more areas under the control of the same person and separated only by a road shall be treated as one whole area.

(3) A planning scheme may define as an area of comprehensive development any area that, in the opinion of the Town Planner, works should be developed or redeveloped as a whole, for any one or more of the following purposes, that is to say—

- (a) for the purpose of dealing satisfactorily with conditions of bad lay-out or obsolete development;
- (b) for the purpose of providing for the relocation of population or industry or the replacement of open space in the course of the development or redevelopment of any other area; or
- (c) for any other purpose specified in the scheme.

(4) The Commission shall provide a reasonable opportunity for the public concerned to give its opinion on specific individual projects relating to Part IIA of the Public Health Act early on in the planning stage, relating to—

- (a) new establishments;
- (b) significant modifications to establishments, where such modifications are subject to obligations provided for under Part IIA of the Public Health Act;
- (c) new developments around establishments where the siting or developments may increase the risk or consequences of a major accident.

Exhibition of schemes.

6.(1) This section applies to any planning scheme, prepared by or under the direction of the Commission, which the Commission deems suitable for publication.

(2) A planning scheme to which this section applies shall be exhibited by the Commission for public inspection for a period of two months.

(3) Where a planning scheme to which this section applies is exhibited pursuant to subsection (2) above, the Commission shall advertise once a

week in a newspaper published in Gibraltar and in each issue of the Gazette the place and hours at which such scheme may be inspected.

(4) Where a planning scheme to which this section applies is exhibited pursuant to subsection (2) above, the Commission shall supply a copy thereof to any person on payment of such fee as the Commission may determine.

(5) A planning scheme referring to an establishment or development under subsection 5(4) shall include the following information—

- (a) the subject of the specific project;
- (b) where applicable, the fact that a project is subject to a national or transboundary environmental impact assessment;
- (c) details of the competent authority responsible for taking the decision, from which relevant information can be obtained and to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the times and places where, or means by which, the relevant information will be made available; and
- (f) details of the arrangements for public participation and consultation.

Consideration of objections.

7.(1) Any person may, within the two months a scheme is exhibited pursuant to section 6, send to the Commission a written statement of his objections to anything appearing in the scheme.

(2) A written statement under subsection (1) above shall set out—

- (a) the nature of, and reasons for, the objection;
- (b) whether the objection would be removed by an alteration of the planning scheme and, if so, the nature of the alteration proposed.

(3) Upon receipt of a written statement of objection under subsection (1) above, the Commission may give preliminary consideration to an objection

in the absence of the objector and may propose amendments to the planning scheme to meet the objection.

(4) If the Commission proposes an amendment to the planning scheme pursuant to subsection (3) above, it shall give notice in writing of the amendment proposed to the objector by registered post, and may invite the objector to withdraw his objection on the condition that such amendment is made as proposed.

(5) An objector may notify the Commission in writing within fourteen days after service of notice under subsection (4) above that his objection is withdrawn on the condition that the amendment is made as proposed, but if no such notification is received the objection shall continue in force.

(6) Where—

- (a) the Commission does not propose amendments under subsection (3) above;
- (b) an objector does not notify the Commission under subsection (5) above that his objection is withdrawn; or
- (c) an objection was withdrawn under subsection (5) above, but the Commission does not proceed with an amendment proposed under subsection (3) above,

the Commission shall consider the written statement of objection at a meeting of which the objector shall be given not less than fourteen days notice and the objector, or his authorised representative, may attend such meeting and, if he desires, shall be heard.

(7) In any case where an amendment made by the Commission to meet an objection appears to the Commission to affect any land, other than that of the objector, the Commission shall give notice of such amendment by service, advertisement or otherwise as it deems desirable and practicable to the owner of the land in question, and, where such land is held under a lease which has not less than five years to run, to the occupier of the land.

(8) Any owner or occupier who is given notice under subsection (7) above and who objects to the proposed amendment may, within 14 days of receiving such notice, send a statement in writing to the Commission and to the original objector setting out the nature of and reasons for his objection to the amendment.

(9) Any written objection made under subsection (8) above shall be considered at a meeting of the Commission of which all objectors shall be

given not less than fourteen days notice, and the objectors or their authorised representatives may attend such meeting and may be heard.

(10) The Commission may reject any objection in whole or in part or may make amendments to the planning scheme to meet such objection and shall forthwith notify all objectors of its decision.

(11) Any person aggrieved by a decision of the Commission on the hearing of an objection may, within 15 days of the notification of the Commission's decision, appeal to the Tribunal in writing who shall determine the same.

(12) The Commission shall, for a period of three weeks, exhibit publicly any amendment made pursuant to subsection (3) above and, during such period, the Commission shall advertise the fact once a week in a newspaper published in Gibraltar and in each issue of the Gazette.

(13) Where a planning scheme to which this section applies is exhibited pursuant to subsection (12) above, the Commission shall supply a copy thereof to any person on payment of such fee as the Commission may determine.

Amendment of schemes otherwise than upon objection.

8.(1) Without prejudice to section 7, the Commission may amend a planning scheme, at any time after exhibition of a planning scheme under section 6 and before approval by the Chief Minister under section 10.

(2) The Commission shall, for a period of three weeks, exhibit publicly any amendment made pursuant to subsection (1) above and, during such period, the Commission shall advertise once a week in a newspaper published in Gibraltar and in each issue of the Gazette the amendments to the scheme and the hours at which such amendment may be inspected.

(3) The Commission shall, on request, supply to any person a copy of an amendment to a planning scheme made under subsection (1) above, on payment of such fee as the Commission may determine.

(4) A person affected by an amendment to a planning scheme made under subsection (1) above, may object within three weeks of the exhibition of the scheme under subsection (2) above in the manner provided by section 7(1) and (2), and the provisions of section 7(3) to (9) shall thereupon apply.

(5) Any person aggrieved by the decision of the Commission on the hearing of an objection under subsection (4) above may, within fifteen days of the notification of the Commission's decision, appeal to the Tribunal in writing.

Submission of schemes to Chief Minister

9. After consideration of all objections, the Commission shall submit the planning scheme to the Chief Minister for approval, and shall submit therewith—

- (a) a schedule of the objections (if any) made under section 7 and not withdrawn;
- (b) a schedule of the amendments (if any) made by the Commission with a view to meeting such objections; and
- (c) a schedule of the amendments (if any) made by the Commission under section 8.

Powers of Chief Minister.

10.(1) Upon submission of a planning scheme, the Chief Minister may—

- (a) approve it;
- (b) refuse to approve it ; or
- (c) refer it to the Commission for further consideration and amendment.

(2) A planning scheme which is approved shall be printed and exhibited for public inspection at such place as the Commission may consider suitable, and the fact of such approval and exhibition shall be published in the Gazette.

(3) The Chief Minister may, by notice in the Gazette, correct any omission from, or error in, any approved planning scheme.

(4) The Commission shall, on request, supply to any person a copy of any approved planning scheme on payment of such fee as the Commission may determine.

Refusal of schemes.

11.(1) Where the Chief Minister refuses to approve a planning scheme, notice of such refusal shall be published in the Gazette.

(2) The publication of a notice under subsection (1) above shall not prejudice the right of the Commission to prepare and submit for approval further planning schemes under this Part.

Deposit of copies of approved schemes.

12. Upon a planning scheme receiving approval and any omissions and errors (if any) corrected under section 10(3), a copy thereof certified correct by the Chairman of the Commission, shall be deposited in the offices of the Minister and shall be available for inspection during working hours without payment of any fee.

Revocation, replacement and amendment of approved schemes.

13.(1) The Chief Minister may—

- (a) revoke in whole any approved planning scheme ; or
- (b) refer any approved planning scheme to the Commission for—
 - (i) replacement by a new planning scheme ; or
 - (ii) amendment.

(2) Notification of any revocation or reference under subsection (1) above shall be published in the Gazette and noted by the Town Planner on the copy of the approved planning scheme deposited under section 12.

(3) The following provisions of this section shall apply in cases where the Chief Minister has referred a planning scheme to the Commission pursuant to subsection (1)(b) above.

(4) The Commission shall prepare a replacement planning scheme or shall amend the referred planning scheme, as the case may be.

(5) A planning scheme prepared or amended under subsection (4) above, shall be, exhibited, considered, submitted, and may be approved and deposited in accordance with the foregoing provisions of this Part; and a reference to a planning scheme in sections 5 to 12 shall be construed as referring to a scheme replaced or amended under subsection (4) above.

(6) The Town Planner shall endorse accordingly the copy of the scheme deposited under section 12 which has been replaced or amended.

Revision of approved schemes.

14.(1) At least once in every 5 years after the date on which a planning scheme for any area is approved by the Chief Minister under section 10(1)(a) or, within such other period as the Commission may from time to time allow, the Town Planner shall submit to the Commission a report

together with proposals for any alterations or additions to the scheme that appear to him to be required.

(2) Nothing in this section shall prejudice the right of the Town Planner to submit proposals to the Commission for such alterations or additions to any approved planning scheme as appear to the Town Planner to be expedient.

(3) Where, under section 10, a planning scheme is approved with respect to a part of Gibraltar, the period of five years or any other period mentioned in subsection (1) above shall be construed to read from the date on which a planning scheme in respect of the whole of Gibraltar has been approved, without prejudice to subsection (2) above.

Approved schemes to serve as standards.

15. Approved planning schemes shall be used by the Commission and all public officers and bodies as standards for guidance in the exercise of any powers vested in them.

PART IV

Building Control

Meaning of “development” and requirement of planning permission.

16.(1) In this part except where the context otherwise requires—

“development” means the making of any material change in the use of any land, and shall include the carrying out of demolition, building, engineering, mining or other operations in, on, over or under land;

“building operations” means operations normally undertaken by a person carrying on business as a builder in the course of his business, and shall include rebuilding operations, structural alterations of or additions to buildings.

(2) The following operations or uses of land shall not be taken, for the purpose of this Part, to involve development of the land, that is to say—

- (a) the carrying out of any works required for the maintenance or improvement of a road, being works carried out on land within the boundaries of the road;
- (b) the carrying out of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes cables or other

apparatus, including the breaking open of any street or other land for that purpose;

- (c) the use of any buildings or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as a place of residence;
- (d) the use of any land for the purposes of agriculture or forestry (including afforestation) and the use, for any of those purposes, of any building occupied together with land so used;
- (e) in the case of buildings or other land which are used for a purpose of any class specified in regulations under this section, the use thereof for any other purpose of the same class.

(3) For the avoidance of doubt, it is hereby declared that for the purpose of this Part—

- (a) the use, as two or more separate dwelling houses, of any building previously used as a single dwelling house, involves a material change in the use of the building and of each part thereof which is so used;
- (b) the deposit of refuse or waste materials on land involves a material change in the use thereof, notwithstanding that the land is comprised in a site already used for that purpose, if either—
 - (i) the superficial area of the deposit is thereby extended; or
 - (ii) the height of the deposit is thereby extended and exceeds the level of the land adjoining the site:

Provided that the deposit of refuse or waste materials on land shall not be deemed to involve a material change in the use of the land if it arises only as a result of prescribed circumstances.

(4) Subject to the provisions of this section and to any exemptions which may be prescribed under section 44, any person who, except under the authority of a permit granted by the Commission, and in accordance with such conditions as may be imposed by the Commission in granting the permit, and with the provisions of any regulations made under section 44, carries out any development shall be guilty of an offence.

(5) Where, on the date of coming into force of this Act, (hereinafter referred to as “the appointed day”) any building or land was being used temporarily for a purpose other than the purpose for which it was normally

used, a permit from the Commission shall not be required for the resumption of the use of the building or land for the last-mentioned purpose.

(6) Where, on the appointed day, any building or land was normally used for one purpose and was also used on such occasions as may be approved by the Commission, whether at regular intervals or not, a permit from the Commission shall not be required for the use of the building or land for that other purpose on similar occasions.

Applications for permits.

17.(1) Every application for a permit under this Act shall—

- (a) be made to the Commission in such form as may be required by regulations;
- (b) be accompanied by such plans, drawings and specifications as may be prescribed;
- (c) provide such information as may be prescribed for the type of development to which the application relates; and
- (d) be considered taking into account any matters which the Commission thinks relevant.

(2) Every applicant for a permit under this Act shall—

- (a) furnish to the Commission such information and particulars relating to his application as may be specified in a notice served upon him in the prescribed manner; and
- (b) if so required by the Commission, attend before the Commission, in person or by representative, for the purpose of making such explanations relating to his application as the Commission may require.

(3) Notwithstanding anything contained in subsection (1) above, an application for a permit for change of use of any building or land which does not entail the erection, re-erection, demolition or alteration of any building shall not be required to be accompanied by any plans, drawings or specifications but shall be accompanied by a description of the change of use proposed:

Provided that on receipt of an application for change of use of a building the Commission may, if they consider it necessary so to do in deciding whether to permit the change of use, call for plans, drawings and specifications of the building.

Outline planning permission.

18.(1) Prior to applying for a permit under section 17, a person may make an application for outline planning permission to erect any building .

(2) Applications under subsection (1) above shall be made subject to the subsequent approval of the Commission of any matters relating to the siting, design or external appearance, landscaping, or the means of access to the building, in consequence of which, particulars and plans in regard to those matters shall not be required at the time of such outline application.

(3) A person applying for outline planning permission shall comply with the requirements of subsections (3) to (7) of section 19 as if he were applying for a permit.

(4) Outline planning permission may be granted subject as aforesaid (with or without other conditions) or refused:

Provided that where such permission is granted the authority of the Commission shall be required with respect to the matters reserved in the permission as well as under any rules made under section 44 or 45 of the Public Health Act before any work is commenced.

(5) Without prejudice to section 22(8), outline planning permission may be granted subject to conditions stipulating the time within which the development must be commenced if a permit is granted.

(6) Where permission has been granted on an outline application made under subsection (1) above, any subsequent application for a permit shall be made in accordance with section 17 and shall, in addition, contain such details as may be necessary to deal with the matters reserved in the permission.

(7) Any permission granted on an outline application shall, unless the Commission order otherwise at the time of granting permission, expire 3 years after such permission was granted:

Provided that the Commission may, on application, within 28 days of expiry, extend the period of validity of such permission.

Publication of notices of applications.

19.(1) Provision may be made by regulations for designating the classes of development to which this section applies.

(2) A person who has complied with the requirements of subsections (3) to (7) below in connection with his application for outline planning

permission under section 18 shall be exempted from complying with those subsections in connection with his subsequent application for a permit, unless the Commission shall otherwise direct.

(3) An application for planning permission for development of any class to which this section applies shall not be entertained by the Commission unless it is accompanied—

- (a) by a copy of a notice of the application, in such form as may be prescribed by regulations and by such evidence as may be so prescribed that the notice has been published in the Gazette and in a daily and weekly newspaper published in Gibraltar; and
- (b) by one or other of the following certificates, signed by or on behalf of the applicant, that is to say—
 - (i) a certificate stating that he has complied with subsection (4) below and when he did so; or
 - (ii) a certificate stating that he has been unable to comply with it because he does not have such rights of access or other rights in respect of the land as would enable him to do so, but that he has taken such reasonable steps as are open to him, specifying them, to acquire those rights and has been unable to acquire them.

(4) In order to comply with this section a person shall—

- (a) post a notice on the land, in such form as may be prescribed by regulations, stating the application for planning permission is to be made; and
- (b) leave the notice in position for not less 14 days in a period of not more than one month immediately preceding the making of the application to the Commission.

(5) The said notice must be posted by affixing it firmly to some object on the land, and must be sited and displayed in such a way as to be easily visible and legible by members of the public without going on the said land.

(6) The applicant shall not be treated as unable to comply with subsection (4) above if the notice is, without any fault or intention of his, removed obscured or defaced before the 14 days referred to in subsection (4)(b) above have elapsed, so long as he has taken reasonable steps for its protection and, if need be, replacement and, if he has cause to rely on this subsection, his certificate under subsection (3)(b) above shall state the relevant circumstances.

(7) The notice mentioned in subsection (3)(a) above or required by subsection (4) above shall state the address of the office of the secretary of the Commission where a copy of the application for planning permission, and of all plans and other documents submitted with it, are open to inspection by the public during working hours during such period as may be specified in the notice, not being a period of less than 21 days beginning with the date on which the notice is published or first posted, as the case may be.

(8) An application for planning permission for any class of development to which this section applies shall not be determined by the Commission before the end of the period of 21 days beginning with the date of the application.

(9) If any person issues a certificate which purports to comply with the requirements of subsection (3)(b) above and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine double that on level 3 of the standard scale.

Modification of applications on direction from the Commission.

20.(1) The Commission may, on giving preliminary consideration to an application for planning permission, give directions to the applicant to submit such modifications to the application as it thinks necessary or desirable before the application is entertained by the Commission.

(2) On giving a direction under subsection (1) above, the Commission may, depending on the nature and extent of the required modification, require the applicant to re-comply with the requirements of sections 19(2) to (6) with regard to the modified application.

(3) A failure by an applicant to modify his application as directed by the Commission shall be considered by the Commission as grounds for the refusal of a permit.

Notification of applications to owners and other persons.

21.(1) Without prejudice to section 19, the Commission shall not entertain any application for planning permission unless it is accompanied by one of the following certificates signed by or on behalf of the applicant—

- (a) a certificate stating that the applicant is an owner of the land to which the application relates;

- (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than the applicant) who, at the beginning of the period of twenty-one days ending with the date of the application, were owners of the land to which the application relates; and stating—
 - (i) the names of those persons;
 - (ii) the addresses at which notice of the application was given to them respectively; and
 - (iii) the date of service of each such notice.
- (c) a certificate stating—
 - (i) that the applicant is unable to issue a certificate in accordance with either paragraph (a) or (b) above;
 - (ii) that he has given the requisite notice of the application to the persons mentioned in paragraph (b) above as are specified in the certificate (setting out their names, the addresses at which notice of the application was given to them respectively, the date of the service of each such notice); and
 - (iii) that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so;
- (d) a certificate stating—
 - (i) that the applicant is unable to issue a certificate in accordance with paragraph (a) above;
 - (ii) that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses, of the persons mentioned in paragraph (b) above; and
 - (iii) that he has been unable to do so.

(2) Any such certificate as is mentioned in subsection (1)(c) or (d) above shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (being a date not earlier than the beginning of the period

mentioned in subsection 1(b) above) been published by or on behalf of the applicant in the Gazette and in a newspaper published in Gibraltar.

(3) Where an application for planning permission is accompanied by such a certificate as is mentioned in subsection 1(b), (c) or (d) above, the Commission shall not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or the date of publication of a notice as therein mentioned, whichever is the later.

(4) If any person issues any certificate which purports to comply with the requirements of this section and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he shall be guilty of an offence and liable on summary conviction to a fine at level 4 on the standard scale.

(5) Any certificate issued for the purposes of this section shall be in such form as may be prescribed by regulations.

(6) Any reference in this section to the requisite notice, where a form of notice is prescribed by regulations for the purpose of that provision, is a reference to a notice in that form.

(7) In this section “owner” in relation to any land, means a person who is for the time being the owner in respect of the fee simple thereof or is entitled to a tenancy thereof.

Grant and refusal of permits.

22.(1) Subject to the provisions of sections 19 and 20, the Commission, in dealing with an application for planning permission shall be guided by the provisions of the approved planning scheme then current and by any other material considerations.

(2) The Commission may, in its discretion, grant or refuse a permit applied for under this Act, or may grant a permit subject to such conditions as the Commission may specify in respect of any of the following matters—

- (a) the area and extent of any curtilage, including size, shape, width or depth;
- (b) the siting and arrangement of buildings;
- (c) the proportion of any specified area which may be covered by buildings, the proportion of any specified area within a built

environment that must remain an open space, the extent of open spaces at the front, sides and rear of the buildings, and the extent of internal courtyards;

- (d) the size, character, height, spacing and frontage lines of buildings;
- (e) objects which may be affixed to buildings, and projections which may be permitted in front of building lines or setbacks;
- (f) the splaying or setting-back or rounding-off of any angle of buildings in the interests of safety or amenity;
- (g) the provision of arcades for public use as pedestrian ways behind general building lines;
- (h) the purposes for and the manner in which buildings may be occupied;
- (i) the provision of car parking spaces or garages or both;
- (j) the period of validity of the permit;
- (k) the protection and enhancement of such structures or details of architectural or heritage worth, as the Commission considers appropriate;
- (kk) the prevention of major accidents and limiting the consequences of such accidents.
- (l) such other matters as the Commission may think fit.

Provided that no such condition shall be inconsistent with the provisions of any regulations made under section 44.

(2A) In acting under this section, the Commission shall, in addition to the matters specified in subsection (2), have regard to the need—

- (a) in the long term, to maintain appropriate safety distances between establishments and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular sensitivity or interest;
- (b) in the case of existing establishments, for additional technical measures in accordance with Article 5 of the Directive so as not to increase the risks to people and the environment; and

- (c) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through safety distances or other relevant measures.

(2B) In subsection (2A), “establishment” means the whole area under the control of the same person where dangerous substances are present in one or more installations, and for this purpose two or more areas under the control of the same person and separated only by a road shall be treated as one whole area.

(3) In determining any application for planning permission for development of a class to which section 19 applies, the Commission shall take into account any written representations for or against the grant of a permit relating to that application which are received by them before the end of the period of 21 days beginning with the date of the application or advertisement whichever is the later.

(4) The Commission shall not take into account any representations received after the end of the period mentioned in subsection (3) above unless the delay in receiving the same is shown not to have been the result of any neglect on the part of the person making the representations or of those acting on his behalf.

(5) Where an application for planning permission is accompanied by such a certificate as is mentioned in section 21(1)(b), (c) or (d) the Commission—

- (a) in determining the application, shall take into account any representations relating thereto which are made to them, before the end of the period mentioned in section 21(3), by any person who satisfies them that he is an owner of any land to which the application relates; and
- (b) shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with paragraph (a) above.

(6) The Commission shall not take into account any representations received by them which are not accompanied by a certificate by the person making the representations that he has furnished the applicant with a copy of the representations made and the date that these have been so furnished.

(7) The applicant may, within a period of 14 days from the date of notification under subsection (6) above, submit representations and evidence to the Commission to show why the representations should not be taken into account. The Commission shall not determine the application until the

expiry of the said period or receipt of either representations from the applicant or confirmation that none will be made.

(8) The Commission shall, if it refuses to grant a permit applied for under this Act, cause a notice of such refusal to be served on the applicant in the prescribed manner.

(9) Without prejudice to the provisions of section 16, any person to whom a permit has been granted under this Act and who contravenes, or causes or permits any other person to contravene, any condition imposed under subsection (1) above shall be guilty of an offence.

(10) Where a permit for the change of use of a building has been granted and the use is one which, if the permit were for a building which would require compliance with any other legislation, then in addition to compliance with any conditions imposed by the Commission, the applicant shall comply with such legislation.

(11) Subject to the provisions of this section every permit (other than outline planning permission) shall be valid only for such period from the date of its granting as the Commission shall specify at the time of granting the same and shall become void and of no effect if the development to which the same relates shall not have been commenced within such period.

(12) If the Commission shall not have specified any period under subsection (11) above, the permit shall become void and of no effect at the expiration of three years from the date of granting the same provided however that the Commission may, on application up to 28 days from expiry, extend such period (whether specified by the Commission or imposed by subsection (11) above) from time to time.

(13) For the purpose of this Part, development shall be taken to have commenced on the earliest date on which material operation comprised in the development commences to be carried out.

(14) In this section, "material operation" means—

- (a) any work of construction in the course of the erection of a building;
- (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
- (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b) above;

- (d) any operation in the course of laying out or constructing a road or part of a road;
- (e) any demolition works unless such demolition has been authorised under the provisions of any other enactment;
- (f) any material change in the use of any land.

(15) In this section and in section 24 the expression “permit” includes permission under section 18.

Large Combustion Plants.

22A. The Commission shall not grant permission under section 22 in respect of development involving the use of premises for the operation of a combustion plant unless satisfied that the structure in which it is contained is designed to prevent the discharge of sulphur dioxide, oxides of nitrogen and dust into the air exceeding the limits set out in the Large Combustion Plants Act 2003.

Notification of dangerous substances.

22B.(1) Within a reasonable period of time prior to the start of construction or operation of an establishment and subject to subsection (1A), the operator of the establishment shall send to the Minister or the Commission a notification containing the information specified in Schedule 8 of the Public Health Act.

(1A) Operators of lower-tier establishments shall provide at the request of the competent authority, sufficient information on the risks arising from the establishment necessary for land-use planning purposes.

(2) The operator shall notify forthwith the Minister or the Commission in the event of—

- (a) there being any significant increase in the quantity of dangerous substances notified under this section; and
- (b) there being any significant change in—
 - (i) the nature or physical form of the dangerous substances so notified;
 - (ii) the process of employing them; or

- (iii) any other information notified to the Minister or the Commission under this section in respect of the establishment.

Directions etc. as to method of dealing with applications.

23. Subject to the provisions of section 22, the Minister may make regulations specifying the manner in which applications for planning permission to develop land are to be dealt with by the Commission and in particular—

- (a) enabling him to give directions restricting the grant of a permit by the Commission, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified;
- (b) authorising the Commission in such cases and subject to such conditions as may be prescribed by the regulations or by directions given thereunder, to grant a permit for a development which does not accord with the provisions of the approved planning scheme then current;
- (c) requiring the Commission before granting or refusing a permit for any development, to consult with such authorities or persons as may be prescribed by the regulations or by directions given thereunder;
- (d) requiring the Commission to give to any applicant for planning permission, within such time as may be prescribed by regulations such notice as may be so prescribed as to the manner in which his application has been dealt with;
- (e) requiring the Commission to give to him and to such other persons as may be prescribed by or under regulations such information as may be so prescribed with respect to applications for planning permission made to the Commission including information as to the manner in which any such application has been dealt with;
- (f) enabling him to direct—
 - (i) that a particular proposed development is a development to which the requirements of Council Directive 85/337/EEC do or do not apply in whole or in part;

- (ii) that a particular proposed development or development of a given class is or is not a development in respect of which the consideration of environmental information is required before a permit can be granted;
- (g) for prescribing particular requirements and procedures for applications relating to different types of development.

Appeal against decision of Commission.

24.(1) For the purposes of this section “appellant” means an applicant for a permit who has appealed to the Tribunal under subsection (5) below.

(2) The Chief Minister shall appoint a Development Appeals Tribunal to hear and determine appeals under this Act.

(3) The provisions contained in Schedule 2 shall have effect with respect to the constitution and proceedings of the Tribunal.

(4) No member of the Commission shall sit as a member of the Tribunal on an appeal to that body from a decision of the Commission to which he was a party.

(5) Any applicant for a permit under this Act who is aggrieved by the refusal of the Commission to grant the permit, or by the insertion of any condition in the permit, may within 28 days of his being notified in writing of the refusal or of the issue of the permit containing the condition, as the case may be, appeal, by notice in writing under this section, to the Tribunal.

(6) A notice of appeal under subsection (5) above shall be served on the secretary of the Commission within 28 days of the date of notification of the decision to which it relates and shall contain the grounds of the appeal and the secretary shall forthwith send a copy of the notice to the Tribunal.

(7) The Tribunal shall not consider an appeal under this section unless the appellant produces evidence to the satisfaction of the Tribunal that he has served a copy of the notice of appeal to any person who made representations under section 22(3) on the application to which the appeal relates.

- (8) On an appeal the Tribunal may—
 - (a) confirm or vary the decision of the Commission in whole or in part;

- (b) where a permit has been refused by the Commission, direct that a permit shall be granted subject to such conditions, if any, as the Tribunal may specify; or
- (c) direct that any condition inserted in a permit by the Commission shall be deleted or modified or be replaced by such conditions as the Tribunal may specify.

(9) Before determining an appeal the Tribunal shall, if either the appellant or the Commission so desire, afford to each of them an opportunity of appearing before, and being heard by, the Tribunal.

(10) An appellant and the Commission may be represented on the hearing of an appeal by counsel or a solicitor or by any other person of their choice having relevant expertise.

(11) Subject to subsection (4) above, sections 21 and 22 (3) shall apply, with any necessary modifications, in relation to an appeal to the Tribunal as they apply in relation to an application for planning permission which falls to be determined by the Commission.

(12) The decision of the Tribunal on any appeal shall be final, and it shall be the duty of the Commission and the appellant to comply with any directions of the Tribunal given in respect of any such appeal.

Appeal in default of planning decision.

25.(1) This section applies where an application is made to the Commission for planning permission, or for any approval of the Commission required under this Part.

(2) Unless within such period as may be prescribed by regulations or within such extended period as may at any time be agreed upon in writing between the applicant and the Commission, the Commission gives notice to the applicant of their decision on the application, the provisions of section 24 shall apply in relation to the application as if the permit or approval to which it relates had been refused by the Commission and as if notification of their decision had been received by the applicant at the end of the period prescribed by the regulations or at the end of the said extended period, as the case may be.

Permission to retain buildings or works or continue use of land.

26.(1) An application for planning permission may relate to buildings or works constructed or carried out, or a use of land instituted, before the date of the application, where—

- (a) the buildings or works were constructed or carried out, or the use instituted, without a permit or in accordance with a permit granted for a limited period; or
- (b) the application is for permission to retain the buildings or works, or continue the use of the land, without complying with some condition subject to which a previous permit was granted.

(2) Any power to grant a permit to develop land shall include power to grant a permit for the retention of land or buildings or works constructed or carried out, or for the continuance of a use of land instituted, as mentioned in subsection (1) above.

(3) References in this Act to a permit to develop land or to carry out any development of land, and to applications for planning permission shall be construed accordingly.

(4) Subsection (2) above shall not affect the construction of section 19, 22 (2) or 22(4).

(5) Any permit granted in accordance with subsection (2) above may be granted so as to take effect from the date on which the buildings or works were constructed or carried out, or the use was instituted, or in the case of buildings or works constructed or a use instituted in accordance with a permit granted for a limited period so as to take effect from the end of that period, as the case may be.

Enforcement Orders.

27.(1) Without prejudice to the powers of the Commission pursuant to section 26, if any person has been convicted under section 16 of carrying out a development in contravention of any of the provisions of that section, it shall be lawful for the Commission, by order in writing served on that person in the prescribed manner, to direct him within such time as may be specified in the order—

- (a) to demolish any building so erected; or
- (b) to desist from and cease any development; or
- (c) to resume any such use of the building or land as would be lawful without a permit.

(2) If any person fails to comply with an order under subsection (1) above he shall be guilty of an offence.

Power of Commission to demolish building.

28.(1) Without prejudice to the powers of the Commission pursuant to section 26, if any person has been convicted under section 27 of failing to comply with an order to demolish a building or part thereof, it shall be lawful for the Commission to cause the building or part thereof, to be demolished.

(2) Any persons authorised by the Commission to carry out the demolition, together with their workmen, may enter the land on which such building is situated and do all such acts as may be necessary for the purpose of such demolition.

(3) Any person who hinders or obstructs any person so authorised or any of his workmen in doing any act necessary for the purpose of such demolition shall be guilty of an offence.

(4) Any expenses incurred in the demolishing by the Commission of any building or part thereof under this section shall be recoverable by suit brought in the name of the Attorney-General from the person who failed to comply with the order issued in respect thereof.

Inspection of premises.

29.(1) A building inspector authorised in writing by the Minister or the Commission may enter any land or premises where any development is being carried out or where the Commission has reason to believe that any building operation or any development has been carried out after the appointed day.

(2) A building Inspector may inspect the land or premises for the purpose of ascertaining whether the provisions of this Act or of any regulations, or any condition subject to which a permit has been granted, thereunder are being or have been complied with.

(3) A person who hinders or obstructs a building Inspector in the exercise of the powers conferred on him by this section shall be guilty of an offence.

Provisions as to effect of permit.

30.(1) Without prejudice to the provisions of this Part as to the duration or modification a permit, any grant a permit to develop land shall (except in so far as the permit otherwise provides) endure for the benefit of the land and of all persons for the time being interested therein.

(2) Where a permit is granted for the erection of a building, the grant of the permit may specify the purposes for which the building may be used and

if no purpose is so specified, the permit shall be construed as including permission to use the building for the purpose for which it is designed.

Registers of applications and decisions.

31.(1) The Commission shall keep, in such manner as may be prescribed by regulations, a register containing such information as may be so prescribed with respect to applications for planning permission made to the Commission including information as to the manner in which such applications have been dealt with.

(2) Regulations may make provisions for the register to be kept in two or more parts, each part containing such information relating to applications for planning permission, made to the Commission as may be prescribed, and may also make provision—

- (a) for a specified part of the register to contain copies of applications and of any plans or drawings submitted therewith; and
- (b) for the entry relating to any application, and every thing relating thereto, to be removed from that part of the register when the application (including any appeal arising out of it) has been finally disposed of, without prejudice to the inclusion of any different entry relating thereto in another part of the register.

(3) Every register shall be available for inspection by the public during working hours.

Termination of permit by reference to time limit: completion notices.

32.(1) Where a development has been commenced within the period limited pursuant to section 22(11) but that period has elapsed without the development having been completed then, if the Commission is satisfied that the development will not be completed within a reasonable period, they may serve a completion notice stating that the permit will cease to have effect at the expiration of a further period specified in the notice.

(2) The period so specified must not be less than 6 months after the notice takes effect.

- (3) A completion notice shall be served upon—
- (a) the owner of the land;
 - (b) the person who applied for planning permission;

- (c) the occupier of the land; and
- (d) any other person who in the opinion of the Commission will be affected by the notice.

(4) The Commission may withdraw a completion notice at any time before the expiration of the period mentioned in it as the period at the expiration of which the permit is to cease to have effect and if they do so shall immediately give notice of the withdrawal to every person who was served with the completion notice.

Effect of completion notice.

33.(1) If within such period as may be specified in the completion notice (which must be not less than 28 days from its service) any person on whom the notice is served so requires, the Commission shall refer the matter to the Tribunal for determination, and a completion notice shall not take effect unless and until confirmed by the Tribunal.

(2) In confirming a completion notice the Tribunal may substitute some longer period for that specified in the notice as the period or the expiration of which the permit is to cease to have effect.

(3) If a completion notice takes effect, the permit referred to in it shall become invalid on the expiration of the period specified in the notice (whether the original period specified under section 32(2) or a longer period substituted by the Tribunal under subsection (2) above).

(4) Subsection (3) above shall not affect any permit, so far as development carried out under it before the end of the period mentioned in that subsection is concerned.

Power to modify permit.

34.(1) If it appears to the Commission expedient to modify any permit for a development granted on an application made under this Part, the Commission may, by order, modify the permit to such extent as they consider expedient.

(2) In exercising its function under subsection (1) above the Commission shall be guided by the current planning scheme and to any other material considerations.

(3) The power conferred by this section may be exercised—

- (a) where the permit relates to the carrying out of building or other operations, at any time before those operations have been completed;
- (b) where the permit relates to a change of the use of any land, at any time before the change has taken place.

(4) The modification of a permit for the carrying out of building or other operations shall not affect so much of those operations as has been previously carried out.

Procedure on modification orders where objections received.

35.(1) Save as provided in section 36, if, within such period as may be specified in a modification order issued under section 34 (which must be not less than 28 days from its service) any person on whom the notice is served so requires, the Commission shall refer the matter to the Tribunal for determination, and a modification order shall not take effect unless and until confirmed by the Tribunal.

(2) Where a modification order is referred to the Tribunal for determination, the Commission shall notify the following persons of that fact, that is to say—

- (a) the owner of the land affected;
- (b) the person who applied for planning permission;
- (c) the occupier of the land affected; and
- (d) any other person who in their opinion will be affected by the order.

(3) The notice under subsection (2) above shall specify the right of any person upon whom it is served to appear before, and be heard by, the Tribunal.

(4) If the Tribunal confirms the issue of a modification order, the Commission shall advertise the fact in the Gazette and in a newspaper published in Gibraltar.

Procedure on modification orders where no objections received.

36.(1) When the Commission has issued a modification order under section 34 and no person on whom the notice was served has required the matter to be referred to the Tribunal for determination, the Commission shall

advertise in the Gazette and one newspaper published in Gibraltar the fact that the order has been made, and the advertisement must specify—

- (a) the period (not being less than 28 days from the date the advertisement first appears) within which persons affected by the order, not being persons on whom the notice was served, may give notice to the Commission that they desire an opportunity of appearing before, and being heard by, the Tribunal; and
- (b) the period (not being less than 14 days from the expiration of the period referred to in paragraph (a) above) at the expiration of which, if no such notice is given to the Commission, the order may take effect by virtue of this section.

(2) The Commission shall send a copy of any advertisement published under subsection (1) above to the Minister not more than 3 days after the publication.

(3) Where notice has been received by the Commission pursuant to subsection (1)(a) above, the Commission shall refer the matter to the Tribunal for determination, and a modification order issued under section 34 shall not take effect unless and until confirmed by the Tribunal.

PART V

Preservation of Amenities

Notices for preservation of amenities.

37.(1) If it appears to the Commission that the amenity of any area is prejudiced or impaired by the condition of any land, building, garden, vacant site or other premises, the Commission may serve on the owner and occupier thereof a notice requiring such steps to be taken for preserving the amenity as may be specified in such notice, within such time as may be specified in the notice; and without prejudice to the generality of such powers, any such notice may require the owner or occupier of such premises at his own expense—

- (a) to paint, distemper, whitewash or colourwash to a colour approved by the Commission the outside walls or roof of any building which is part of the premises and which in the opinion of the Commission is unsightly and in need of painting, distemping, white-washing or colourwashing;

- (b) to remove any temporary or unauthorised structure which in the opinion of the Commission is a disfigurement to the neighbourhood;
- (c) to screen or tidy the premises and their curtilage when in the opinion of the Commission they are in such an untidy condition as to be offensive to the eye;
- (d) to remove derelict motor or other vehicles or other unsightly debris (whether similar to the foregoing or not) from the premises;
- (e) to repair or replace any fixture or fitting attached to the facade of a building, including, but without prejudice to the generality of the foregoing, broken or damaged shutters, external woodwork, guttering and piping and broken or cracked windows, and all defective external finishes or building fabric.

(2) If the person on whom a notice has been served under subsection (1) above fails within the time specified in the notice to carry out the requirements of the notice the Commission may cause a complaint to be made before the magistrates' court and the court shall thereupon issue a summons requiring the person on whom the notice was served to appear before it.

(3) If the court is satisfied that any or all of the requirements of the notice are reasonable and that it is reasonable for the person on whom the notice was served to carry out such requirements, the court shall make an order directing such person to carry out the requirements of the notice or such of them as the court considers reasonable within a specified time.

(4) A person who fails to obey an order made under subsection (3) above unless he satisfies the court that he has used all diligence to carry out such order, shall be guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale and in the case of a continuing offence to a further fine at one tenth of level 1 on the standard scale for every day after the first day during which such failure occurs.

38. *Repealed*

Control of advertisements.

39.(1) The Minister may make regulations providing for restricting or regulating the display of advertisements so far as appears to the Commission to be expedient in the interests of amenity or public safety, and without restricting the generality of the foregoing, any such regulations may provide-

- (a) for regulating the dimensions, appearance, material and manner of construction, and position of advertisements that may be displayed, the sites on which such advertisements may be displayed, the materials to be used in the construction and display of the advertisement, and the manner in which they are to be affixed to land;
- (b) for requiring the consent of the Commission to be obtained for the display of advertisements, or of advertisements of any class specified in the regulations;
- (c) for enabling the Commission to require the removal of any advertisement that is being displayed in contravention of the regulations, or the discontinuance of the use for the display of advertisements of any site that is being used for that purpose in contravention of the regulations.

(2) Regulations made under this section may be made so as to apply to advertisements that are being displayed on the date on which the regulations come into force, or to the use for the display of advertisements on any site that was being used for that purpose on that date, and may provide for exempting therefrom—

- (a) the continued display of any such advertisement; and
- (b) the continued use for the display of advertisements on any such site,

during such period as may be prescribed in that behalf by the regulations, and different periods may be so prescribed for the purposes of different provisions of the regulations.

Stoppage orders.

40.(1) Where it appears to the Commission that work is proceeding on any land in contravention of section 16, or not in accordance with terms of a permit granted by the Commission, the Commission may issue a stoppage order for the work to cease forthwith.

(2) A person who fails to comply with a stoppage order shall be guilty of an offence and shall be liable on summary conviction to a fine at level 2 on the standard scale and to a continuing fine at one tenth of level 2 on the standard scale a day for every day that work continues in contravention of the order.

Appeal against stoppage order.

41.(1) Any person who is aggrieved by a stoppage order may within 28 days from the date of the issue of the stoppage order appeal to the Tribunal against its issue.

(2) On hearing the appeal—

(a) where the Tribunal is satisfied that the work to which the stoppage order relates was in contravention of section 16 or was not in accordance with the terms of a permit granted by the Commission, it shall dismiss the appeal; and

(b) where the Tribunal is not so satisfied, it shall allow the appeal and set aside the stoppage order.

(3) Pending the determination of the appeal, the stoppage order shall remain in full force and effect.

(4) Notwithstanding subsection (3) above, the Tribunal may if it thinks fit, on the application of the appellant, suspend the stoppage order pending the determination of the appeal.

PART VI

Miscellaneous

Signature and authentication of documents.

42.(1) Every permit, notice, order or other document authorised or required by this Act to be issued by the Commission or by the Tribunal shall be signed by the chairman of the relevant body or by his delegate appointed in writing for the purpose and a copy of such permit, notice order or document purporting to be certified under the hand of the chairman or of such delegate to be a true copy shall be admissible in any proceedings without further proof thereof as prima facie evidence of the issue of such permit, notice order or document and of the contents thereof.

(2) The appointment from time to time of a delegate pursuant hereto to subsection (1) above and his removal shall be notified in the Gazette prior to or not later than 14 days after such appointment or removal is effected.

Penalty.

43. A person who commits an offence under this Act or any regulations made thereunder for which no penalty is provided shall be liable on summary conviction to imprisonment for three months and a fine fixed at twice the level 3 on the standard scale, and in the case of a continuing offence to a daily fine fixed at level 1 on the standard scale.

Regulations.

44.(1) The Minister may make regulations—

- (a) for the purpose of facilitating the work of the Commission;
- (b) exempting from the application of this Act any class or description of development subject to such conditions, if any, as may be specified in the regulations;
- (c) providing, either generally or in relation to any class or description of development for any of the matters specified in section 17(1);
- (d) prescribing any matter authorised or required by this Act to be prescribed;
- (e) for regulating appeals under section 24, 25 or 41;
- (f) defining the grounds on which third parties may object to applications for planning permission;
- (g) prescribing the information which must be supplied by an applicant for planning permission and such regulations may impose different requirements for different types of development;
- (h) generally for carrying out any of the purposes or provisions of this Act or any matters incidental or consequential thereto as may appear to the Minister to be necessary or proper for giving full effect to this Act and to the obligations of the Government under Community law.

(2) Regulations made under subsection (1) above shall be laid on the table of the Parliament at the meeting commencing next after they have been made.

(3) Where the Commission is authorised under any subsidiary legislation to dispense with or relax the requirements of such legislation it shall be lawful for the Commission so to do on such terms and conditions as it deems proper.

Amendment of Schedules.

45.(1) The Minister may by order published in the Gazette amend or vary the Schedules.

(2) Every order made under this section shall be laid before Parliament at the meeting thereof next ensuing after such order has been made.

Saving.

46. The provisions of this Act shall be in addition to and not in derogation of the provisions of the Public Health Act and any other law for the time being in force relating to buildings or building operations.

Transitional Provisions.

47.(1) In this section the “old Act” means the Town Planning Act repealed by section 48.

(2) The substitution of this Act for the old Act shall not affect the continuity of the law.

(3) The repeal of the old Act shall not affect-

- (a) any outline planning permission granted under section 17A of the old Act; or
- (b) any permit granted under section 18 of the old Act;

to which those sections applied immediately before the commencement of this Act and accordingly such permission and permit have effect and shall be deemed always to have had effect as provided in those sections.

(4) The repeal of the old Act shall not affect an appeal-

- (a) against the decision of the Commission under section 19 of the old Act; or
- (b) against a stoppage order under section 27 of the old Act;

which is pending determination at the commencement of this Act. The determination of such an appeal shall be effected as provided in the old Act.

(5) If a person who at the commencement of this Act held outline planning permission granted under section 17A of the old Act and not expired by the effluxion of the time period in subsection 18(5) of the old Act, applies for a permit in accordance with the provisions of this Act, the Commission may, in its discretion, direct that the provisions of sections 19 to 21 shall not apply to such an application.

(6) An application for a permit made under section 17 of the old Act which at the commencement of this Act was pending a decision by the Commission shall be governed by the provisions of this Act except that the Commission may, in its discretion, direct that the provisions of sections 19 to 21 shall not apply to such an application.

(7) An appeal lodged after the commencement of this Act in relation to a permit refused under the old Act, shall be governed by the provisions of this Act.

Repeal.

48. The Town Planning Act is repealed.

SCHEDULE 1

Section 3(2)

DEVELOPMENT AND PLANNING COMMISSION**Membership of Commission.**

1.(1) The Commission shall consist of the following voting members—

- (a) the Town Planner, who shall be the chairman;
- (b) the Deputy Chief Minister;
- (c) five persons nominated by the Chief Minister;
- (d) one person nominated by the Ministry of Defence;
- (e) one person nominated by the Gibraltar Heritage Trust;
- (f) one person nominated by the Gibraltar Ornithological and Natural History Society; and
- (g) one person nominated by the Environmental Safety Group

(2) Alternate members may, from time to time, be appointed to substitute for any of the members of the Commission and they shall have the same rights and powers as appointed members.

(3) Where an appointment is made under subparagraphs (1) and (2) above, or any person ceases to hold any such appointment, notice of the fact shall be published in the Gazette.

(4) An appointed member or alternate member, unless he dies, resigns, or is removed from office under subparagraph (6) below, shall hold office for a term of three years from the date of his appointment and thereafter until his successor comes into office.

(5) An appointed or an alternate member may be re-appointed.

(6) The Chief Minister may remove from office on the grounds of inability, neglect of duty, insolvency or misconduct any appointed or alternate member of the Commission.

Chairman and Procedure.

2.(1) The Town Planner as chairman of the Commission shall preside at all meetings of the Commission.

(2) At any meeting of the Commission four voting members shall form a quorum.

(3) Subject to the provisions of this Act, the Commission may regulate its own procedure.

(4) When, in the opinion of the chairman, the business before the Commission makes it desirable to do so, an invitation may be issued to any person to a meeting of the Commission or to such part of a meeting as is concerned with such business notwithstanding that such person is not a member of the Commission.

(5) Any person so invited shall be entitled to take part as if he were a member in the proceedings of the Commission relating to the matter in respect of which he was invited except that he shall not have a right to vote.

(6) The decision of the majority of the members present and voting at any meeting shall be the decision of the Commission on any matter before it, and on an equality of votes the Chairman shall have an additional casting vote.

Committees.

3.(1) The Commission may appoint committees (which need not include members of the Commission) and delegate to any such committee, any function conferred on the Commission.

(2) Subject to any directions of the Commission, a committee appointed under this paragraph may regulate its own procedure and fix a quorum for its meetings.

(3) Paragraph 2(4) shall apply to a committee as it applies to the Commission *mutatis mutandis*.

Executive Officer.

4. The Deputy Town Planner or such other person as the Minister may from time to time appoint shall be the Executive Officer of the Commission.

SCHEDULE 2

Section 24

DEVELOPMENT APPEALS TRIBUNAL**Members of the Tribunal.**

1.(1) The Tribunal shall consist of five persons appointed by the Chief Minister, one of whom shall be a barrister or solicitor admitted to practice in Gibraltar*.

(2) A member of the Tribunal shall hold office for a period of one year or for such other period of time as may be specified in the notice of appointment.

(3) A member of the Tribunal shall not continue in office after he attains the age of seventy years.

(4) The validity of any proceedings of the Tribunal shall not be affected by a defect in the appointment of any of its members, or by a failure to observe the requirements of subparagraph (4) above.

(5) The Accountant General shall pay members of the Tribunal, who are not public officers, by way of reimbursement of expenses such amounts as he may determine appropriate.

Secretary to the Tribunal.

2.(1) A secretary to the Tribunal shall be appointed by the Minister by notice in the Gazette and shall hold office for a period of one year or for such other period of time as may be specified in the notice of appointment*.

(2) A person appointed secretary to the Tribunal shall act under the direction of members of the Tribunal.

(3) The Accountant General shall pay the secretary, if not a public officer, such remuneration in respect of his services as he may determine appropriate.

(4) The members of the Tribunal may, with the consent of the Minister, dismiss the secretary.

* LN 2004/009 Establishes the composition of the Development Appeals Tribunal. *See document* [2003/040]

* LN [2003/040] Nominates the Secretary.

(5) A secretary shall not continue in office after he has attained the age of seventy years unless the Minister thinks it desirable in the public interest to extend his term of office; but the term shall not be extended beyond the age of seventy five years.

Duties of members of the Tribunal.

3.(1) No member of the Tribunal shall act as such in relation to any matter in which he has a personal interest.

(2) No member of the Tribunal shall disclose any information received in the course of his duties except in such cases as may be required by law.

(3) A member of the Tribunal responsible for any act or omission contrary to the provisions of subparagraph (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Quorum.

4. Three members of the Tribunal shall form a quorum.

Procedure.

5.(1) The members comprising a Tribunal shall decide which one of them shall preside at the hearing of proceedings before them.

(2) Proceedings before any Tribunal may be continued by any one or more of the members of the Tribunal if all parties give their consent.

(3) Unless the Tribunal otherwise fixes a date for a hearing, any party to proceedings which are to be heard by the Tribunal shall serve notice on the secretary that he wishes a date for the hearing to be fixed.

(4) On receipt of a notice under subparagraph (3) above the secretary shall send notice to each party to the proceedings of the place, date and time of the hearing.

(5) Unless the parties otherwise agree or the Tribunal otherwise directs, the date of the hearing specified in a notice under subparagraph (4) above shall not be earlier than 28 days after the date on which the notice is sent to the parties.

(6) If it is shown to the satisfaction of the Tribunal that owing to any reasonable cause a person has been prevented from attending the hearing of an appeal on the day fixed for that purpose, the Tribunal may adjourn the hearing of his appeal for such reasonable time as it thinks necessary, or admit the appeal to be made by any agent, clerk or servant on his behalf.

Hearings.

6.(1) Hearings before the Tribunal shall be conducted in such manner as the members of the Tribunal consider most suitable for the clarification and determination of the issues before the Tribunal and generally to the just handling of the proceedings.

(2) Evidence before the Tribunal may be given orally or, if the Tribunal so directs, by affidavit or a statement made or recorded in a document, but at any stage of the hearing, the Tribunal may, on the application of any party or of its own motion, require the personal attendance as a witness of-

- (a) the maker of an affidavit; or
- (b) the maker of a statement; or
- (c) in the case of an oral statement recorded in a document, the person by whom the statement was so recorded:

Provided that the Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Tribunal decisions.

7.(1) A decision of the Tribunal shall be made by the votes of the majority of the members comprising that Tribunal and in the event of an equality of votes the member presiding at the hearing shall be entitled to a second or casting vote.

(2) The decision may be given orally by the presiding member of the Tribunal at the end of the hearing or may be reserved and in either event shall be recorded in a document signed and dated by the presiding member of the Tribunal.

(3) The secretary shall send to each party a notice setting out the decision recorded under subparagraph (2) above.

(4) Except where the decision is given at the end of a hearing, it shall be treated as having been made on the date when the notice is sent to the parties under subparagraph (3) above.

Power to request further particulars.

8. The Tribunal may, at any time before the determination of an appeal, give notice to the appellant or any other party to the proceedings requiring

him within a time specified in the notice to deliver to it such particulars as it may require for the purposes of determining the appeal.

Power to summon witnesses.

9. The Tribunal may summon any person to appear before it and give evidence.

Irregularity.

10. Any irregularity resulting from any failure to comply with any provision of this Schedule or with any direction given by the Tribunal before the Tribunal has reached its final determination shall not of itself render the proceedings void.

Form of notices.

11. Every notice required by this Schedule shall be in writing unless the members of the Tribunal authorise it to be given orally.

Service of notices etc..

12. Any notice or document required or authorised by this Schedule to be sent, delivered to or served on any person shall be duly sent, delivered or served by hand, by post or by facsimile transmission.