

C09/2015



**Command Paper on
a draft Bill for an Act to revise the law governing
planning and development and for connected purposes**

**Presented to Parliament by
the Deputy Chief Minister**

**by Command of Her Majesty
2 July 2015**

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to

commandpapers@gibraltar.gov.gi or delivered to

Command Papers Consultation c/o Kevin Warwick, Ministry of Education,
Justice and International Exchange of Information, Suite 771, Europort,
Gibraltar, no later than the 30 September 2015.

Any comments received later than the 30 September 2015 may not be taken into account for the purposes of the relevant consultation.

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,000 of XX July, 2015

B. XX/15

TOWN PLANNING BILL 2015

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BILL

FOR

AN ACT to revise the law governing planning and development and for connected purposes.

ENACTED by the Legislature of Gibraltar.

PART I

Preliminary

Title, commencement and application.

1.(1) This Act may be cited as the Town Planning Act 2015.

(2) This Act comes 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 seabed 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;

“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, including the attachment of any machine or object;

“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 of the Public Health Act; or
- (b) listed in column 1 of Part 2 of Schedule 6 of the Public Health Act,

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

“date of validation” means the date of validation of the planning application given by the Town Planner in accordance with section 24;

“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;

“Directive 2011/92/EU” means the Directive of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, amending and subsequently repealing Council Directive 85/337/EEC, as may be amended from time to time;

“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;

“exhibit” and “exhibited” includes by electronic means;

“full planning permission” means permission to carry out development granted by the Commission in accordance with section 30(1)(b) following an application under section 18;

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

“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;

“outline planning permission” means permission in principle to carry out development granted by the Commission in accordance with section 30(1)(a) following an application under section 19;

“planning permission” means outline planning permission or full planning permission;

“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;

“prescribed” means prescribed by the Minister by regulations;

“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;

“Town Planner” means the person appointed by Government as the Town Planner responsible for planning matters and in his absence, includes any person appointed by him;

“Tribunal” means the Development Appeals Tribunal appointed under section 39(1).

PART II

Development and Planning Commission

Establishment of Commission.

3.(1) There shall continue to 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.

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 waterfront 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);
- (n) ensuring the prevention of major accidents and limiting the consequences of such accidents; and
- (o) any other matters the Commission thinks fit.

(3) 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.

(4) 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 layout 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.

(5) In this section, “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.

Exhibition of planning 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 shall be exhibited by the Commission for public inspection for a period of 2 months in such manner as it considers appropriate.

(3) The Commission shall advertise where the planning scheme can be inspected once a week in two newspapers published in Gibraltar and in each issue of the Gazette.

(4) The Commission shall supply a copy thereof to any person on payment of such fee as the Commission may determine.

Consideration of objections.

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

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

- (a) the nature of, and reasons for, the objection; and
- (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), 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), it shall give notice in writing of the amendment proposed to the objector 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 14 days after service of notice under subsection (4) 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);
- (b) an objector does not notify the Commission under subsection (5) that his objection is withdrawn; or
- (c) an objection was withdrawn under subsection (5), but the Commission does not proceed with an amendment proposed under subsection (3),

the Commission shall consider the written statement of objection at a meeting of which the objector shall be given not less than 14 days notice.

(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) 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) shall be considered at a meeting of the Commission of which all objectors shall be given not less than 14 days notice.

(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 any amendment made pursuant to subsection (3) and, during such period, the Commission shall advertise the fact once a week in two newspapers 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), the Commission shall supply a copy thereof to any person on payment of such fee as the Commission may determine.

(14) Where an objector is given notice of a meeting under subsection (6) or (9), the objector or his authorised representative may attend the meeting for the purpose of presenting his objections.

Amendment of planning 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 at least three weeks, exhibit any amendment made pursuant to subsection (1) and, during such period, shall advertise once a week in two newspapers published in Gibraltar and in each issue of the Gazette where it can 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), may up to 14 days after the end of the exhibition period

object to the amendment 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) may, within 15 days of the notification of the Commission's decision, appeal to the Tribunal in writing who shall determine the same.

Submission of planning 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 and of any objections made under that section.

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 published in electronic form and 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 planning 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) 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 planning schemes.

12. Upon a planning scheme receiving approval and any omissions and errors (if any) corrected under section 10(3), a copy certified correct by the Chairman of the Commission shall be deposited at the offices of the Town Planner and shall be available for inspection during working hours without payment of any fee. A copy may also be made available in electronic means.

Revocation, replacement and amendment of approved planning 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) shall be published electronically and 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).

(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).

(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 planning 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) 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).

Approved planning 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

Control of development

Meaning of development

Meaning of “development”.

16.(1) Subject to the provisions of this section, in this Part except where the context otherwise requires–

“development” means–

- (a) the carrying out of demolition, building, engineering, mining or other operations in, on, over or under land; or
- (b) the making of any material change in the use of any buildings or land.

(2) For the purposes of subsection (1)–

- (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.

- (c) the following operations are taken to be development–
 - (i) the enclosure of any balcony or veranda;
 - (ii) the removal, replacement or installation of shutters;
 - (iii) the removal, replacement or other alteration of any window;
 - (iv) the replacement of existing roof coverings,

(3) For the purposes of subsection (2)(c), where the development involves replacement under subparagraph (ii), (iii) or (iv), and that replacement does not materially affect the external appearance of the building, then it would not constitute development.

(4) 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 maintenance, improvement or other alteration to any building which–
 - (i) affects only the interior of the building; or
 - (ii) does not materially affect the external appearance of the building

and are not works altering a building by providing additional space underground;

- (b) 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;
- (c) 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;
- (d) 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;

- (e) 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;
- (f) in the case of buildings or other land which are used for a purpose of any class specified in regulations, the use thereof for any other purpose of the same class.

(5) For the purposes of subsection (4)(a), patios, courtyards and other similar spaces are considered to form part of the external appearance of building and do not constitute the interior of a building.

Time when development commenced.

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

(2) In subsection (1), “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);
- (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; or
- (f) any material change in the use of any land.

Requirement for planning permission

Full planning permission required for development.

18.(1) Full planning permission is required for the carrying out of any development.

(2) An application for full planning permission shall be made to the Commission and regulations may make provision as to—

- (a) the form and manner in which an application for full planning permission is to be made;
- (b) particulars of such matters as are to be included in such an application;
- (c) the plans, drawings and other documents required to accompany such an application; and
- (d) any other matter concerning procedure on such an application.

Outline planning permission.

19.(1) A person may apply for outline planning permission under this section before applying for full planning permission.

(2) An application for outline planning permission shall be made to the Commission and regulations may make provision as to—

- (a) the form and manner in which an application for outline planning permission is to be made;
- (b) particulars of such matters as are to be included in such an application;
- (c) the plans, drawings and other documents required to accompany such an application; and
- (d) any other matter concerning procedure on such an application.

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

20.(1) An application for full 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 full planning permission or in accordance with full planning permission 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 full planning permission was previously granted.

(2) Any power to grant full planning permission shall include power to grant permission 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).

(3) References in this Act to full planning permission and to applications for full planning permission shall be construed accordingly.

(4) Any full planning permission granted in accordance with subsection (2) 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 full planning permission granted for a limited period so as to take effect from the end of that period, as the case may be.

Further information, etc.

21.(1) The Commission may require an applicant for planning permission to—

- (a) furnish to the Commission such information and particulars relating to his application as may be specified in a notice served upon him; 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.

(2) The Minister may make regulations to provide for an applicant for planning permission of a type or category of development as may be prescribed to be required to attend before the Commission for the purpose of making a presentation to the Commission in relation to his application.

Publicity of applications

Notification of applications to owners and other persons.

22.(1) Without prejudice to section 23, an application for planning permission shall be accompanied by one of the following certificates signed by or on behalf of the applicant—

- (a) a certificate stating that the applicant is the sole 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 21 days ending with the date of when the application is submitted, 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; or

(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 two newspapers 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 working days beginning with the date appearing from the certificate to be–

(a) the latest of the dates of service of the notices mentioned in the certificate; or

(b) the date of publication of a notice as mentioned in the certificate,

whichever is the later.

(4) Any certificate issued for the purposes of this section shall be in such form as the Commission may prescribe and any reference in this section to the requisite notice, is a reference to a notice in that form.

(5) 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, has a legal interest in the land in question or is entitled to a tenancy thereof.

Publication of notices for classes of developments designated by regulations.

23.(1) This section applies to the classes of development designated by regulations made under this Act.

(2) An applicant for planning permission for development of any class to which this section applies must submit a copy of the notices published under subsection (7) and one or other of the following certificates in such form as the Commission may prescribe, signed by or on behalf of the applicant–

(a) a certificate stating that he has complied with subsection (3) and when he did so; or

(b) 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.

(3) The applicant must–

(a) post a site notice on the land, in such form as may be prescribed by the Commission, stating that he intends to submit an application for planning permission ; and

(b) leave the site notice in position for not less than 14 days.

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

(5) Provided an applicant has taken reasonable steps for its protection and, if need be, replacement, he must not be treated as failing to comply with

subsection (3) if the site notice is, without any fault or intention of his, removed, obscured or defaced before the 14 day period referred to in subsection (3)(b).

(6) The site notice must contain the date it was first posted on site and must state that—

- (a) an application for planning permission will be submitted at the offices of the secretary to the Commission no later than one month, from the date of the site notice;
- (b) members of the public may inspect a copy of the planning application at the offices of the secretary to the Commission and may make representations during a period of 21 working days from the date of validation; and
- (c) the address of the offices of the secretary to the Commission.

(7) Following the posting of the site notice as required under subsection (3)(b) and no later than 1 month from the date of the site notice the applicant must—

- (a) publish a notice of the application for planning permission, in such form as may be prescribed by the Commission in the Gazette and in 2 newspapers circulating in Gibraltar; and
- (b) state in the notice that—
 - (i) an application for planning permission will be submitted to the offices of the secretary to the Commission no later than 1 month from the date the site notice was posted;
 - (ii) members of the public may inspect a copy of the application for planning permission at the offices of the secretary to the Commission and may make representations during a period of 21 working days from the date the application has been validated; and
 - (iii) the address of the offices of the secretary to the Commission.

(8) A person who has complied with the requirements of this section in connection with his application for outline planning permission shall be exempted from complying with the requirements of this section in connection with his subsequent application for full planning permission, unless the Commission shall otherwise direct.

Submission of application for planning permission to Town Planner and validation.

24.(1) An application for planning permission shall be validated by the Town Planner once he is satisfied that the applicant has submitted–

- (a) a certificate in accordance with section 22;
- (b) if the application is one to which section 23 applies a certificate in accordance with section 23(2) and copies of the notices published in accordance with section 23(7); and
- (c) all plans and supporting documents required to be submitted with the application for planning permission.

(2) Members of the public shall have 21 working days from the date of validation to inspect a copy of the application and make representations.

(3) Any person who issues a certificate which purports to comply with the requirements of sections 22 and 23 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, shall be guilty of an offence and liable on summary conviction to a fine at level 4 of the standard scale.

(4) In every case where an offence contrary to subsection (3) has been committed, the Commission may, in its absolute discretion, reject the underlying application for planning permission.

Additional notification of application.

25. Without prejudice to sections 22 and 23, the Commission may additionally require an applicant for planning permission to publicise the application in such form and manner as it may specify, including notifying specified persons in the vicinity of the land to which the application relates.

Notification of applications by Commission.

26. Upon receipt of an application for planning permission, the Commission may publish the following information in electronic form–

- (a) a copy of the application for planning permission and of all plans and documents submitted with it;
- (b) how representations about the application may be made; and
- (c) the date by which any representations relating to the application may be made.

Representations to be taken into account for planning applications.

27.(1) In determining any application for planning permission under section 23, the Commission shall take into account any written representations for or against the grant of permission relating to that application which are received by them before the expiry of the 21 day period from the date of validation.

(2) Where an application for planning permission is accompanied by a certificate under section 22(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 22(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 subparagraph (a) above.

(3) The Commission shall take into account any representations received by them by virtue of any publication made under sections 25 and 26 before the end of the period specified in the relevant publication.

(4) The following provisions apply to subsections (1) and (2)–

- (a) the Commission shall not take into account any representations received by them which are not accompanied by a statement 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.

- (b) the applicant may, within a period of 14 days from the date of notification under paragraph (a), submit representations and evidence to the Commission to show why the representations should not be taken into account.
- (c) the Commission shall not determine the application until the expiry of the period mentioned in paragraph (b) or receipt of either representations from the applicant or confirmation that none will be made.

Modification of applications

Modification of applications on direction from the Commission.

28.(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 22 and 23 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 planning permission.

Changes to applications by applicant before planning permission is granted.

29.(1) An application for planning permission may, with the permission of the Commission, be modified by the applicant before planning permission is granted.

(2) The Commission may require the applicant to comply with the requirements of sections 22 and 23 with regard to the modified application.

Determination of applications

Determination of applications: general considerations.

30.(1) Where an application is made to the Commission for planning permission it may—

- (a) if the application is in relation to outline planning permission, grant outline planning permission either unconditionally or subject to such conditions as it thinks fit;
- (b) if the application is in relation to full planning permission, grant full planning permission either unconditionally or subject to such conditions as it thinks fit; or
- (c) refuse planning permission.

(2) In dealing with an application for planning permission, the Commission shall have regard to—

- (a) the provisions of the approved planning scheme;
- (b) the need 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;
- (c) the need 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;
- (d) to protect areas of particular natural sensitivity or interest in the vicinity of establishments, where appropriate through safety distances or other relevant measures; and
- (e) any other material considerations.

(3) Subsection (1) is subject to the provisions of this Part and any regulations made under sections 33 and 69.

Refusal of planning permission.

31.(1) Without prejudice to the generality of section 30, the Commission may refuse to grant planning permission where it is of the view that the requirements of this Act have not been complied with by the applicant in any material particular.

(2) Where the Commission refuses to grant planning permission it shall cause a notice of such refusal to be served on the applicant in the prescribed manner.

Large Combustion Plants.

32. The Commission shall not grant planning permission 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 and meets the necessary requirements of Part IIA of the Public Health Act.

Regulations as to method of dealing with applications.

33. Subject to the provisions of this Part, the Minister may make regulations specifying the manner in which applications for planning permission are to be dealt with by the Commission and in particular—

- (a) enabling him to give directions restricting the grant of planning permission 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 or category, 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 planning permission 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 to grant planning permission 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 such notice as may be so prescribed as to the manner in which his application has been dealt with;
- (e) requiring the Commission to publish notice of its decisions, including the reasons for such decisions, in relation to any category or type of application for planning permission, in such form and manner as may be prescribed;
- (f) requiring the Commission to give to him and to such other persons as may be prescribed 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;
- (g) enabling him to direct—
 - (i) that a particular proposed development is a development to which the requirements of Directive 2011/92/EU 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 planning permission can be granted;
- (h) for prescribing particular requirements and procedures for applications relating to different types of development;
- (i) for complying with European Union obligations.

Duration and effect of planning permission

Duration of planning permission.

34.(1) Full planning permission shall be valid only for—

- (a) a period of 3 years from the date on which permission is granted; or

- (b) such other period as the Commission may specify from that date,

and shall become void and of no effect if the development to which the permission relates is not commenced within such period.

(2) Outline planning permission shall expire–

- (a) 3 years from the date on which permission is granted; or
- (b) after such period as the Commission shall otherwise direct at the time of the granting of the permission.

(3) The periods mentioned in subsections (1) and (2) may be extended by the Commission on application before the date of expiry or within 28 days beginning with the date of expiry of the planning permission.

Effect of planning permission.

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

(2) Where planning permission is granted for the erection of a building, the grant of permission may specify the purposes for which the building may be used and if no purpose is so specified, the permission shall be construed as including permission to use the building for the purpose for which it is designed.

Power to modify planning permission

Power of Commission to modify planning permission.

36.(1) The Commission may by notice modify planning permission after it has been granted under this Part.

(2) In respect of full planning permission, the power conferred by subsection (1) may be exercised–

- (a) if the permission relates to the carrying out of building or other operations, at any time before those operations have been completed;

(b) if the permission relates to a change of use of any land, at any time before the change has taken place.

(3) The modification of full planning permission for the carrying out of building or other operations shall not affect so much of those operations as have previously been carried out.

(4) The power conferred by subsection (1) includes power–

(a) to impose new conditions;

(b) to remove or alter existing conditions.

(5) Subsection (1) is subject to the provisions of this Part and any regulations made under sections 33 and 69.

Modification of planning permission: content of notice and appeals.

37.(1) A notice issued under section 36(1) shall be served on–

(a) the owner of the land affected;

(b) the occupier of the land affected; and

(c) the person who applied for planning permission.

(2) A copy of the notice shall also be published in two newspapers published in Gibraltar and may be available in electronic form.

(3) The notice shall specify–

(a) the right of any person affected by the notice to appeal to the Development Appeals Tribunal;

(b) the period within which an appeal may be made, which must not be less than 28 days from date of service of the notice; and

(c) the period (not being less than 14 days from the expiration of the period referred to in paragraph (b) 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.

(4) Any person affected by a modification notice may by notice in writing appeal to the Tribunal within the period specified in the modification notice specifying the grounds of appeal.

(5) Where an appeal is made under subsection (4), the notice shall not take effect unless and until confirmed by the Tribunal.

(6) 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.

(7) In determining an appeal under this section, the Tribunal may confirm the modification notice either without modification or with such modifications as it considers necessary.

Power to make minor amendments to planning permission.

38.(1) An application to make a minor amendment to planning permission may be made to the Commission, in such form and manner as may be prescribed by the Commission.

- (2) The power conferred by subsection (1) may only be exercised—
- (a) in cases where the development has commenced, before the development has been completed; or
 - (b) in cases where the development has not commenced, before planning permission has expired;

and on payment of a prescribed fee to the Commission.

(3) If the person applying for a minor amendment under subsection (1) is not the original applicant, he must provide evidence to the Commission that he has the benefit of the grant of planning permission.

(4) It is at the Commission's discretion whether a person applying for a minor amendment under subsection (1) is required to serve notice of the application and to whom.

(5) If the Commission does require notification of the application under subsection (4), the notice must specify—

- (a) the minor amendment being applied for; and

- (b) the right to make representations in writing to the Commission within 14 days from the date of the notice.

(6) For the purposes of this section a “minor amendment” is one whose scale and nature does not have a material effect on the overall scheme of the development and results in a development which is not, in the opinion of the Commission, substantially different from the one which has been approved

(7) Subsection (1) is subject to the provisions of this Part and any regulations made under sections 33 and 69.

Appeals

Development Appeals Tribunal.

39.(1) There shall continue to be a Development Appeals Tribunal (the “Tribunal”) appointed by the Chief Minister to hear and determine appeals under this Act.

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

(3) 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.

Right to appeal against decision or failure to take decision.

40.(1) If the Commission—

- (a) refuse an application for planning permission; or
- (b) grant an application subject to conditions,

the applicant may by notice appeal to the Tribunal.

(2) Any applicant for planning permission may also appeal to the Tribunal if the Commission have not given notice to the applicant of their decision on the application within such period as may be prescribed.

(3) Any appeal under this section shall be made by notice in writing served on the secretary of the Tribunal within 28 days—

- (a) of the date of notification of the decision; or
- (b) in the case of an appeal under subsection (2), beginning with the date of expiry of the period prescribed as mentioned in subsection (2),

and shall contain the grounds of the appeal and the secretary of the Tribunal shall forthwith send a copy of the notice to the Commission.

(4) 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 on the application to which the appeal relates.

Determination of appeals.

41.(1) On an appeal the Tribunal may—

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

(2) 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.

(3) 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.

(4) The provisions of sections 22, 23, 24, 30, 32 and any regulations made under sections 33 and 69 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.

(5) 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.

PART V
Enforcement

Breach of planning control.

42. For the purposes of this Part,

- (a) carrying out development without full planning permission;
- (b) failing to comply with any condition subject to which planning permission has been granted; or
- (c) carrying out development in contravention of any regulations made under this Act,

constitutes a breach of planning control.

Enforcement Notices.

43.(1) If it appears to the Commission that there has been a breach of planning control, it may issue a notice in writing (“an enforcement notice”).

(2) An enforcement notice shall be served on any person who is in breach of planning control and shall specify—

- (a) the matters which appear to the Commission to constitute a breach of planning control; and
- (b) the steps the Commission require to be taken or the activity which the Commission requires to cease.

(3) Without prejudice to the generality of subsection (2)(b), such steps may include—

- (a) the alteration or demolition of any building or works erected;

- (b) the discontinuance of any development; or
- (c) the resumption of any use of the building or land as would be lawful without full planning permission.

(4) If any person fails to comply with an enforcement notice within 14 days of the notice having been served on him, or within such other time as the notice may provide, he shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable on summary conviction to a fine at level 5 on the standard scale and to a daily fine at level 3 on the standard scale for each day the terms of the notice are not complied with.

(6) The service of an enforcement notice does not affect any other power exercisable in respect of a breach of planning control.

Variation and withdrawal of an enforcement notice.

44.(1) The Commission may–

- (a) withdraw an enforcement notice; or
- (b) waive or relax any requirement of such a notice and, in particular, the period within which the requirements of the notice must be complied with.

(2) The Commission shall, immediately after exercising the powers conferred by subsection (1), give notice of the exercise to every person who has been served a copy of the enforcement notice.

(3) The withdrawal of an enforcement notice does not affect the power of the Commission to issue a further enforcement notice.

Appeal against an enforcement notice.

45.(1) A person who is aggrieved by an enforcement notice may appeal against the notice within 28 days of the service of the enforcement notice.

(2) A notice of an appeal under this section shall be served on the secretary to the Tribunal and shall specify the grounds on which the person is appealing against the enforcement notice.

(3) On hearing the appeal, the Tribunal may–

- (a) confirm the decision of the Commission to serve the enforcement notice;
- (b) confirm the decision of the Commission to serve the enforcement notice but direct the Commission to vary a requirement of the notice or the period specified in the notice as the period in which the requirement specified in the notice must be complied with; or
- (c) direct the Commission to withdraw the enforcement notice.

(4) Subsections (2), (3) and (5) of section 41 shall apply to an appeal to the Tribunal under this section as they apply to an appeal to the Tribunal under section 41.

(5) Where an appeal is brought under this section, the enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

Execution and cost of works required by an enforcement notice.

46.(1) If any steps required by an enforcement notice to be taken have not been taken within the period specified in the notice, the Commission may–

- (a) enter the land and take those steps; and
- (b) recover any expenses incurred by them in doing so from the person on whom the enforcement notice was served.

(2) Any person who hinders or obstructs any person so authorised or any of his workmen in doing any act necessary for the purpose of this section shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

(3) Any expenses incurred by the Commission under this section may, without prejudice to any other remedy, be registered as a legal charge over the property or recovered summarily as a civil debt.

Stoppage orders.

47.(1) Where it appears to the Commission that there has been a breach of planning control, it may issue a stoppage order for the work or unauthorised use of the land 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 5 on the standard scale and to a daily fine at level 3 on the standard scale for every day that work continues in contravention of the order.

Appeal against stoppage order.

48.(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 constitutes a breach of planning control 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.

Offences.

49.(1) Any person who carries out, or causes or permits any other person to carry out, any development—

- (a) without full planning permission;
- (b) in contravention of any condition imposed by the Commission;
or

(c) in contravention of any regulations made under this Act,
shall be guilty of an offence.

(2) This section is subject to section 18 of the Housing Act 2007, in respect of public housing as defined in that Act.

(3) Any 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 a fine at level 5 on the standard scale and in the case of a continuing offence to a daily fine fixed at level 3 on the standard scale.

Miscellaneous

Completion notices.

50.(1) Where a development has been commenced within the period provided by section 34(1) 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, it may serve a completion notice stating that full planning permission 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 full 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 full planning permission 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.

51.(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 at the expiration of which full planning permission is to cease to have effect.

(3) If a completion notice takes effect, full planning permission referred to in it shall become invalid on the expiration of the period specified in the notice (whether the original period specified under section 50(2) or a longer period substituted by the Tribunal under subsection (2)).

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

Inspection of premises.

52.(1) Any person 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.

(2) Any person authorised in writing by the Minister or the Commission 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 planning permission has been granted, thereunder are being or have been complied with.

(3) Any person who hinders or obstructs a person authorised under subsection (1) or (2) in the exercise of the powers conferred on him by this section shall be guilty of an offence and liable on summary conviction to a fine at level 3 on the standard scale.

Register of applications and decisions.

53.(1) The Commission shall keep, in such manner as may be prescribed, 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) The register shall be available for inspection by the public during working hours.

PART VI

Government Developments

Application of Part.

54.(1) This Part applies to any development to be undertaken—

- (a) by or on behalf of the Government; or
- (b) any company or other entity wholly owned and controlled by the Government.

(2) In this part “development” has the same meaning as in section 16.

Government to consult with Commission.

55.(1) Subject to section 61, the Government shall consult with the Commission, in accordance with the procedure set out in this Part, before carrying out any development.

Information to be provided to Commission.

56. The Government shall submit to the Commission–

- (a) a form, provided by the Commission for this purpose, containing details of the proposed development;
- (b) a plan identifying the land to which the proposed development relates, and any other plans and drawings as are necessary to describe the development; and
- (c) any other information as the Commission may require.

Public consultation.

57.(1) Where the proposed development is of a class designated by regulations under section 23, the Government shall publicise the proposed development by notice–

- (a) posted on the land to which the development relates; and
- (b) by electronic means.

(2) The notice under subsection (1) must be publicised for not less than 14 days and shall specify–

- (a) the date on which the notice was first posted on the land to which the development relates;
- (b) the address or location of the proposed development;
- (c) a description of the proposed development;
- (d) where and when the details of the development may be inspected; and

- (e) how representations may be made about the development and the date by which such representations must be made.

(3) The final date by which representations must be made shall be 21 working days from the date the notice was posted on the land or published by electronic means, whichever is the later.

Representations on the proposed development.

58.(1) A person may make representations in relation to the proposed development by writing to the Commission within the period specified under section 57(3).

(2) A person who makes representations under subsection (1) shall be given an opportunity of being heard at a meeting held by the Commission.

Response from Commission.

59.(1) The Commission shall, within 6 weeks of receipt of the documents and information referred to in section 56, provide a response to the Government on the proposed development.

(2) The Commission shall, in responding to the Government under subsection (1), take into account any representations made to it in accordance with section 58.

Government to take into account the Commission's response.

60.(1) The Government shall take into account the Commission's response under section 59 in determining how to proceed with the proposed development.

Urgent cases.

61. Sections 55 to 60 do not apply to such developments which the Minister, after consultation with the Commission, certifies in writing are urgent and necessary in the public interest.

PART VII

Special Controls

Notices for preservation of amenities.

62.(1) If it appears to the Commission that the amenity of any area is prejudiced or impaired by the condition or appearance 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, distempering, 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, missing 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 shall be liable on summary conviction to a fine at level 3 on the standard scale and in the case of a continuing offence to a daily fine at level 1 of the standard scale after the first day during which such failure occurs.

Control of painting of buildings.

63. The Minister may make regulations providing for restricting or regulating the painting of the external facade of any buildings and, without prejudice to the generality of the foregoing, any such regulations may make provision as to—

- (a) the form and manner in which an application under this section is to be made;
- (b) particulars of such matters as are to be included in such an application;
- (c) fees (if applicable) and penalty for non-compliance with this section; and
- (d) any other matter concerning procedure and non-compliance with this section.

Control of advertisements.

64.(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.

(3) The Minister may make regulations for providing a right of appeal to the Tribunal from a decision by the Commission to refuse consent or to grant consent subject to conditions—

- (a) to be made in such form and manner; and
- (b) to be determined in accordance with such procedure;

as may be so prescribed.

Notification of dangerous substances.

65.(1) Within a reasonable period of time prior to the start of construction or operation of an establishment and subject to subsection 2, 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.

(2) Operators of lower-tier establishments shall provide at the request of the Minister or the Commission sufficient information on the risks arising from the establishment necessary for land-use planning purposes.

(3) 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.

(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.

(5) A specific individual project referring to an establishment or development under subsection (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.

PART VIII

Miscellaneous

Electronic communications.

66.(1) Subject to subsections (2) and (6), an application, statement, notice, certificate or other document that is required or permitted to be made or given under this Act may be made or given by electronic communication in the form approved by the Commission.

(2) The application, statement, notice, certificate or other document must be–

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(3) In relation to the use of electronic communications for any purpose which in accordance with this section is capable of being carried out electronically, any references in this Act to a map, plan, drawing or any other document includes a reference to such document, or a copy of it, in electronic form.

(4) In this section, “electronic communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa)–

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form.

(5) This section does not apply to sections 43, 47 and 50.

Signature and authentication of documents.

67. Every planning permission, 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 and a copy of such planning permission, notice order or document purporting to be certified by the chairman, or by 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 planning permission, notice order or document and of the contents thereof.

Summary proceedings.

68. Notwithstanding section 65 of the Magistrates’ Court Act, or any other provision in any Act prescribing the period within which summary proceedings may be commenced, proceedings for an offence or a complaint under this Act may be commenced at any time within 12 months from the date that the commission of the offence, or the matter complained of, was discovered.

Regulations.

69.(1) The Minister may make regulations–

- (a) for the purpose of facilitating the work of the Commission;

- (b) prescribing any requirements to which an application for planning permission, and the grant thereof, shall be subject to;
 - (c) for the charging of fees;
 - (d) prescribing the form, size or content of any notice required under this Act;
 - (e) prescribing any matter authorised or required by this Act to be prescribed;
 - (f) for regulating appeals under sections 40, 45, 48 and 63;
 - (g) defining the grounds on which third parties may object to applications for planning permission;
 - (h) prescribing the information and documents which the Commission may require an applicant for planning permission to provide including the provision of any plans, drawings or other documents in electronic form and such regulations may impose different requirements for different types and categories of development;
 - (i) for the purpose of authorising or facilitating the use of electronic communications or electronic storage for anything required to be done, or which may be done, under this Act;
 - (j) providing for the electronic format to be taken by any electronic communication or electronic storage;
 - (k) imposing conditions to which the use of electronic communications may be subject to;
 - (l) 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 European Union law.
- (2) Regulations made under subsection (1) above shall be laid on the table of 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.

70.(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.

71. 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.

Repeal.

72. The Town Planning Act 1999 and any subsidiary legislation made under it is repealed.

Consequential amendments.

73. Consequential amendments are contained in Schedule 3.

Transitional provisions.

74.(1) Any outline planning permission or permit granted under the Town Planning Act 1999 (the “1999 Act”) or any appeal in respect thereof shall continue and have effect as if this Act had not come into force.

(2) Any application pending a decision of the Commission for—

- (a) outline planning permission under section 18 of the 1999 Act;
or
- (b) a permit under section 17 of the 1999 Act;

which was made more than 30 days prior to the coming into force of this Act, shall continue and have effect as if this Act had not come into force.

(3) Any application pending a decision of the Commission which was made within the period of 30 days prior to the coming into force of this Act for–

- (a) outline planning permission under section 18 of the 1999 Act, shall continue and have effect as if the application had been made under this Act for outline planning permission; and
- (b) a permit under section 17 of the 1999 Act, shall continue and have effect as if the application had been made under this Act for full planning permission,

but the applicant will not be required to comply with sections 22 and 23 if they have already complied with sections 19 and 21 of the 1999 Act.

(4) Any appointment made to the Commission or the Development Appeals Tribunal under the 1999 Act shall continue and have effect as if such appointment had been made under this Act for such term as the appointment under the 1999 Act was made.

(5) The planning scheme approved under section 10 of the 1999 Act shall continue and have effect as if it had been made and approved under this Act.

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 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 the appointed member they are substituting.

(3) Where an appointment is made under subparagraphs (1) and (2), 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), 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) Subject to subparagraph (2), the Town Planner as chairman of the Commission shall preside at all meetings of the Commission.

(2) In the absence of the Town Planner, such other person as designated by the Town Planner, after consultation with the Minister, may act as chairman of the Commission.

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

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

(5) 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.

(6) 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.

(7) 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, to such extent as the Minister may approve, 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.

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.

Public meetings.

5.(1) Subject to subparagraph (2), any meeting of the Commission relating to an application for planning permission shall be held in public.

(2) A meeting of the Commission shall only be held in private if, in the opinion of a majority of the Commission, it is necessary in the public interest of Gibraltar.

(3) For the purposes of subparagraph (2), “public interest” includes–

- (a) in the interests of the security of Gibraltar;
- (b) the protection of the security of any premises or property; or
- (c) safeguarding confidential information.

SCHEDULE 2

Section 39

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 and a further three persons who may be called upon to substitute for any one of the five persons.

(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) The validity of any proceedings of the Tribunal shall not be affected by a defect in the appointment of any of its members.

(4) 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.

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 Chief Minister shall, from the members comprising the Tribunal, 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;
- (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.

(3) Notwithstanding subparagraph (2), 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 document recording the decision of the Tribunal shall state clearly and precisely the full reasons for the decision.

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

(5) 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 electronic communication.

Electronic communications.

13. Where a person has given notice of appeal to the Tribunal by electronic communication, a notice or document required or authorised to be given under this Schedule may be given electronically.

SCHEDULE 3

Section 73

CONSEQUENTIAL AMENDMENTS

Public Health Act.

1. The Public Health Act is amended in sections 192V(b) and 273(4) by substituting “Town Planning Act 2015” for “Town Planning Act”.

Gibraltar Heritage Trust Act 1989.

2. The Gibraltar Heritage Trust Act 1989 is amended in section 41(1) by substituting “Town Planning Act 2015” for “Town Planning Act”.

Nature Protection Act 1991.

3. The Nature Protection Act 1991 is amended–

- (a) in sections 17J(4)(b) and 17N(4)(b) by substituting “by full planning permission granted under the Town Planning Act 2015” for “by a planning permit granted on an application under the Town Planning Act”; and
- (b) in section 17BB(2) by substituting–
 - (i) “Town Planning Act 2015” for “Town Planning Act”; and
 - (ii) “planning permission” for “permits”.

Transport Act 1998.

4. The Transport Act 1998 is amended–

- (a) in section 16(1)(c) by substituting “planning permission” for “planning permit”; and
- (b) in section 16(2) by substituting –
 - (i) “full planning permission” for “planning permit”; and

- (ii) “Town Planning Act 2015” for “Town Planning Act”.

Communications Act 2006.

5. The Communications Act 2006 is amended in section 53(5) by substituting “Town Planning Act 2015” for “Town Planning Act”.

Housing Act 2007.

6. The Housing Act 2007 is amended–

- (a) in section 18(1) by substituting–
 - (i) “full planning permission” for “a permit”; and
 - (ii) “Town Planning Act 2015” for “Town Planning Act”; and
- (b) in section 21(1) by substituting “Town Planning Act 2015” for “Town Planning Act”.

Construction (Government Projects) Act 2009.

7. The Construction (Government Projects) Act 2009 is amended in section 7 by substituting “Town Planning Act 2015” for “Town Planning Act”.

Marine Strategy Regulations 2011.

8. The Marine Strategy Regulations 2011 are amended in regulation 18(2) by substituting “Town Planning Act 2015” for “Town Planning Act”.

Building Rules 2007.

9. The Building Rules 2007 are amended in rule F3(2) in the definition of “new building” by substituting–

- (a) “full planning permission under the Town Planning Act 2015” for “a permit under section 17 of the Town Planning Act 1999” in paragraphs (a) and (b); and
- (b) “such planning permission” for “such permit”.

Environmental Protection (Trees) Act 2014.

10. The Environmental Protection (Trees) Act 2014 is amended-

- (a) in section 2 in the definition of “Commission” and “Tribunal” by substituting “Town Planning Act 2015” for “Town Planning Act 1999”;
- (b) in section 16(1)(a)(v) by substituting “Town Planning Act 2015” for “Town Planning Act 1999”;
- (c) in section 24 and its corresponding heading by substituting “Town Planning Act 2015” for “Town Planning Act 1999”;
- (d) in section 25 by substituting “Town Planning Act 2015” for “Town Planning Act 1999”.

Housing (Miscellaneous Provisions) Regulations 2009.

11. The Housing (Miscellaneous Provisions) Regulations 2009 are amended in Schedule 2 by substituting in Form No.’s 5, 6 and 7-

- (a) “Town Planning Act 2015” for “Town Planning Act 1999” in the body of the form; and
- (b) “Section 16 of the Town Planning Act 1999 defines “development” as the making of any material change in the use of any land, and includes the carrying out of demolition, building, engineering, mining or other operation in, on, over or under land.” for “Section 16 of the Town Planning Act 2015 defines “development” as (a) the carrying out of demolition, building, engineering, mining or other operations in, on, over or under land or (b) the making of any material change in the use of any buildings or land.” in note (1).

Income Tax (Deduction of Approved Expenditure on Premises in Tax Deductible Property Zone) Rules 2010.

12. The Income Tax (Deduction of Approved Expenditure on Premises in Tax Deductible Property Zone) Rules 2010 are amended-

- (a) in rule 2 by substituting the definition of Town Planner with “Town Planner” means the person appointed by Government

as the Town Planner responsible for planning matters and in his absence, includes any person appointed by him.”; and

- (b) in rule 6(3)(e) by substituting “Town Planning Act 2015” for “Town Planning Act 1999”.

Factories (Boreholes (Sites and Operations) Health and Safety) Regulations 1997.

13. The Factories (Boreholes (Sites and Operations) Health and Safety) Regulations 1997 are amended in Schedule 2 paragraphs 1(e)(i), 2(b)(i), 3(b)(i) and 4(b)(i) by deleting “(within the meaning of the Town Planning Act)”.

Environment (Energy Performance of Buildings) Regulations 2012.

14. The Environment (Energy Performance of Buildings) Regulations 2012 are amended in regulation 2 in the definition of “new building” by substituting “full planning permission under the Town Planning Act 2015” for “a permit under section 17 of the Town Planning Act 1999” in paragraphs (a) and (b).

Environment (Assessment and Management of Flood Risks) Regulations 2010.

15. The Environment (Assessment and Management of Flood Risks) Regulations 2010 are amended in regulation 19(2)(c)(ii) by substituting “sections 2, 5(3), 30(2) and 65 under the Town Planning Act 2015” for “sections 2, 5(2A), (2B), 22 (2A), (2B) and 22B of the Town Planning Act 1999”.

Construction (Government Projects) Act 2009.

15. The Construction (Government Projects) Act 2009 is amended in section 7 by substituting “Town Planning Act 2015” for “Town Planning Act”.

Pollution Prevention and Control Regulations 2013.

16. The Pollution Prevention and Control Regulations 2013 are amended in regulation 18(1)(b) by substituting “Town Planning Act 2015” for “Town Planning Act”.

Public Health (Official Register of Addresses) Regulations 2015.

17. The Public Health (Official Register of Addresses) Regulations 2015 are amended in regulation 6(4) by substituting “Town Planning Act 2015” for “Town Planning Act 1999”.

Solar Energy (Deductions) Rules 2015.

18. The Solar Energy (Deductions) Rules 2015 are amended in rule 6 (2)(a) and (5) by substituting “Town Planning Act 2015” for “Town Planning Act 1999”.

EXPLANATORY MEMORANDUM

The purpose of this Bill is to revise, modernise and strengthen the law on Town Planning.

Parts II and III largely re-enact the provisions of the Town Planning Act 1999 with some minor amendments.

Most of the changes are contained in Part IV which modifies and strengthens the controls over development. Under this Part, planning permission is divided into two types of permission:

- outline planning permission which is defined as an in-principle decision to grant permission; and
- full planning permission which gives permission to develop the land in accordance with the terms of the permission and the provisions in the Bill.

Publicity of applications has also been amended to provide a clear step by step procedure to applicants intending to apply for planning permission. This was absent in the present Town Planning Act.

Part V deals with Enforcement and creates the offences of carrying out development without full planning permission, failing to comply with any condition subject to which planning permission has been granted and carrying out development in contravention of any regulations made under the Bill.

Enforcement provisions are contained in clauses 43 and 47 whereby the Commission may issue an Enforcement Notice or a Stoppage Order. Failure to comply with an Enforcement Notice or Stoppage Order may result in the Commission taking steps required by the notice or order and any costs incurred shall be recovered from the person on whom the notice or order was served.

Part VI deals with Government Projects which are subject to planning process under the provisions laid out therein.

Part VII pertains to Special Controls and deals with the preservation of amenities, control of painting of buildings and advertisements. Part VIII deals with miscellaneous provisions.