

C10/2015



**Command Paper on
a draft Act to make provision make provision for the
conservation, enhancement and enjoyment of
Gibraltar's heritage, antiquities and objects of
archaeological interest, establish the Heritage and
Antiquities Advisory Council, the management of the
Gibraltar Museum and the Gibraltar National Archives,
and for the continued existence of the Gibraltar
Heritage Trust and the Gibraltar Garrison Library
Trust**

**Presented to Parliament by
the Minister for Heritage**

**by Command of Her Majesty
13 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 3 August 2015.

Any comments received later than the 3 August 2015 may not be taken
into account for the purposes of the relevant consultation.

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,000 of XXth XXXX, 2015

HERITAGE AND ANTIQUITIES BILL 2015

ARRANGEMENT OF CLAUSES.

Clause

**PART 1
PRELIMINARY**

1. Title.
2. Commencement.
3. Interpretation.
4. Application of the Act.
5. Title to antiquities or objects of interest.

**PART 2
HERITAGE AND ANTIQUITIES ADVISORY COUNCIL**

6. The Heritage and Antiquities Advisory Council
7. Functions of the Council.
8. Council to take account of certain matters.
9. Advisory committees.
10. Annual Reports.

**PART 3
PROTECTION OF MONUMENTS AND BUILDINGS**

11. Interpretation of this Part.
12. Scheduled monuments or buildings.
13. Monuments or buildings on the seabed.
14. Damage to scheduled monuments or buildings.
15. Control of works affecting scheduled monuments or buildings.
16. Modification of scheduled monument or building consent.
17. Urgent preservation.
18. Placing of tablets.

**PART 4
CONSERVATION AREAS**

19. Scheduled conservation areas.
20. Control of demolition in scheduled conservation areas.
21. Urgent works to preserve unoccupied buildings in scheduled conservation areas.
22. Modification of scheduled conservation area consent.

**PART 5
ARCHAEOLOGICAL AREAS AND FINDINGS**

23. Interpretation of this Part.
24. Scheduled archaeological areas.
25. Operations in scheduled archaeological areas.
26. Qualifications for archaeological operations.
27. Control of archaeological operations.
28. Modification of scheduled archaeological area consent.
29. Reports of archaeological findings.

**PART 6
THE ARCHAEOLOGICAL OFFICER**

30. Archaeological Officer
31. General functions.

**PART 7
THE GIBRALTAR MUSEUM**

32. Curator.
33. General functions of the Museum vest in the Curator.
34. General powers.
35. Vesting of property of the Museum.
36. Property to be held for the benefit of the public.
37. Disposal of antiquities or objects of interest.

**PART 8
GIBRALTAR NATIONAL ARCHIVES**

38. Interpretation
39. Archivist.
40. General responsibility.
41. Selection and preservation of public records and archives.

- 42. Place of deposit of public records and archives.
- 43. Access to public records.
- 44. Destruction of public records.
- 45. Legal validity of public records and authenticated copies.

**PART 9
THE GIBRALTAR HERITAGE TRUST**

- 46. Gibraltar Heritage Trust.
- 47. Objects and powers of the Trust.
- 48. Board of the Trust.
- 49. General functions of the Board.
- 50. Additional powers of the Board.
- 51. Staff.
- 52. Financial provisions.
- 53. Accounts.
- 54. Exemption from taxes, etc.
- 55. No personal liability to attach to the Board.
- 56. Instruments.

**PART 10
GIBRALTAR GARRISON LIBRARY TRUST**

- 57. The Gibraltar Garrison Library Trust.
- 58. Trust to be body corporate.
- 59. Board of Trustees.
- 60. Meetings and proceedings of the Trust.
- 61. Property of the Trust.
- 62. Objects and purposes of the Trust.
- 63. Powers of the Trust.
- 64. Boards, Committees and Procedures.
- 65. Financial duty of the Trust.
- 66. Accounting and auditing.
- 67. Financial Year.
- 68. Vesting of Property.
- 69. No personal liability to attach to Trustees.
- 70. No personal liability to attach to members of Garrison Library
- 71. Regulations.

**PART 11
MISCELLANEOUS PROVISIONS**

- 72. Register of scheduled monuments etc..
- 73. Treatment and preservation of finds.
- 74. Restrictions on removal of antiquity or object of interests from Gibraltar.
- 75. Restrictions on use of equipment.
- 76. Regulations.
- 77. Repeal of Gibraltar Heritage Trust Act 1989.
- 78. Repeal of Gibraltar Garrison Library Trust Act 2011.
- 79. Savings and Transitional Provisions

Schedule 1
Constitution and Procedure of the Heritage and Antiquities Advisory Council.

Schedule 2
Scheduled Monuments.

Schedule 3
Scheduled Conservation Areas.

Schedule 4
Scheduled Archaeological Areas.

Schedule 5
Constitution and procedures of the Gibraltar Heritage Trust.

Schedule 6
Gibraltar Garrison Library Trust

B. XX/15

BILL

FOR

AN ACT to make provision for the conservation, enhancement and enjoyment of Gibraltar's heritage, antiquities and objects of archaeological interest, for the preservation of monuments, buildings, conservation areas and archaeological areas, to establish the Heritage and Antiquities Advisory Council, to provide for the management of the Gibraltar Museum and the Gibraltar National Archives, to provide for the continued existence of the Gibraltar Heritage Trust, the Gibraltar Garrison Library Trust and for connected matters.

ENACTED by the Legislature of Gibraltar.

PART 1
PRELIMINARY

Title.

1. This Act may be cited as the Heritage and Antiquities Act 2015.

Commencement.

2.(1) This Act comes into operation on such day as the Minister may appoint by notice in the Gazette.

(2) Different dates may be appointed under subsection (1) for different provisions and different purposes.

Interpretation.

3. In this Act, unless the context otherwise requires—

“antiquity or object of interest” means—

- (a) any object, whether movable or part of immovable property, which is a work of architecture, sculpture,

graphic art, painting or any form of art or craftsmanship;

- (b) any object of historical, geographical, geological, scientific or technical value or interest, which has been created by human effort, and which has been, or is generally thought to have been, in existence for more than 50 years;
- (c) any object which by reason of its archaeological interest or of its association with any historical event, has a value substantially greater than its intrinsic (including artistic) value and includes ancient human, animal or plant remains; or
- (d) any object declared by the Council to be an antiquity or object of interest for the purposes of this Act.

“Archaeological Officer” means the archaeologist appointed under section 30;

“Archivist” means the archivist appointed under section 36;

“community sentence” shall have the meaning ascribed to it in section 2(1) of the Criminal Procedure and Evidence Act 2011;

“conservation and archaeological areas” shall mean areas which have been listed as either a scheduled conservation area under section 19(1) or as an archaeological area under section 20(1);

“Council” means the Heritage and Antiquities Advisory Council established under section 6;

“Curator” means the curator of the Museum appointed under section 32;

“Minister” means the Minister with responsibility for heritage;

“monument or building” has the meaning assigned to it in section 11(1);

“monument or building site” has the meaning assigned to it in section 11(2);

“Museum” means the Gibraltar Museum;

“public area” excludes any land, premises or dwelling which is owned or occupied by any natural or legal person or any land, premises or dwelling in which a natural or legal person may have a legal interest;

“seabed” means the seabed within the seaward limits of territorial waters;

“scheduled archaeological area consent” means a consent granted under section 25(4);

“scheduled conservation area consent” means a consent granted under section 20(3)(a);

“scheduled monument or building consent” means a consent granted under section 15(3)(a);

“territorial waters” means British Gibraltar Territorial Waters which is the area of sea, the seabed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar.

Application of the Act.

4.(1) This Act shall apply to—

- (a) antiquities or objects of interest;
- (b) monuments or buildings; and
- (c) conservation and archaeological areas,

in Gibraltar, whether on land or in territorial waters.

Title to antiquities or objects of interest.

5.(1) Title to every—

- (a) antiquity or object of interest; or

- (b) monument or building,

which has not been discovered before this Act comes into operation, discovered on a public or privately owned area or within territorial waters shall vest in the Crown in right of the Government.

(2) The Minister may by regulations provide for the payment of compensation where a person has a legal right over an antiquity, object of interest, monument or building referred to in subsection (1) which is compulsorily acquired by virtue of that subsection.

(3) Regulations made under subsection (2) may include provision where compensation will not be paid and for title to pass to the appropriate legal owner.

(4) Regulations under subsection (2) must be made before subsection (1) is relied upon in connection with a discovery in a privately owned area.

PART 2 HERITAGE AND ANTIQUITIES ADVISORY COUNCIL

The Heritage and Antiquities Advisory Council.

6.(1) There is established a council to be known as the Heritage and Antiquities Advisory Council.

(2) The provisions of Schedule 1 have effect with respect to the constitution and proceedings of the Council.

Functions of the Council.

7.(1) The functions of the Council are—

- (a) to make its views known to the Government on how to promote and secure the conservation, protection and enhancement of Gibraltar's heritage, antiquities or objects of interest, monuments or buildings, and conservation and archaeological areas;
- (b) to foster understanding and facilitate the enjoyment of Gibraltar's heritage, antiquities or objects of interest,

monuments or buildings, and conservation and archaeological areas;

- (c) to ensure that anything which is done in relation to antiquities or objects of interest, monuments or buildings or conservation and archaeological areas is done by a suitably qualified person in a manner which is sustainable and which enhances them; and
- (d) to identify present and future issues which require or may require addressing in relation to heritage, antiquities or objects of interest, monuments or buildings and conservation and archaeological areas.

(2) The Council shall advise the Government–

- (a) on the development and implementation of policies and priorities for the identification, protection, conservation and enhancement of Gibraltar’s heritage, antiquities or objects of interests, monuments or buildings and conservation and archaeological areas;
- (b) on the promotion of education and knowledge of and on the provision of facilities for the enjoyment of Gibraltar’s heritage, antiquities or objects of interest, monuments or buildings and conservation and archaeological areas;
- (c) on the provision of publicity and information services about Gibraltar’s heritage, antiquities or objects of interest, monuments or buildings and conservation and archaeological areas;
- (d) on heritage, antiquities or objects of interest, monuments or buildings, conservation and archaeological areas matters generally; and
- (e) on any matter related to heritage, antiquities or objects of interest, monuments or buildings, conservation and archaeological areas which the Minister may refer to the Council.

Council to take account of certain matters.

8. It shall be the duty of the Council, in carrying out its functions under section 7(1) and (2), to take account, as may be appropriate, of—

- (a) actual or possible ecological and other environmental changes affecting Gibraltar's heritage, antiquities or objects of interest, monuments or buildings and conservation and archaeological areas;
- (b) the need for social, cultural and economic development in Gibraltar;
- (c) the interests of the community in general.

Advisory committees.

9.(1) The Minister may, after consultation with the Council, appoint ad-hoc advisory committees which shall have the function of giving advice to the Council on such specific matters as may be specified in the instrument of appointment, concerning heritage, antiquities or objects of interest, monuments or buildings and conservation and archaeological areas.

(2) The Minister shall appoint a chairman for any advisory committee appointed under subsection (1) and members of such a committee shall be appointed from among persons, who are not members of the Council, having appropriate and industry recognised qualifications and experience in relation to the specific areas relevant to the advice required by the Council.

(3) The chairman and members of such advisory committee shall be appointed upon such terms and for such periods as the Minister may determine.

(4) The appointment of any member to an advisory committee appointed under subsection (1) shall become effective by publication in the Gazette.

(5) The Minister may give directions to any advisory committee as to its procedure.

Annual Reports.

10.(1) The Council shall prepare and submit to the Minister, an annual report on the performance of its functions during the twelve months preceding the date of the report.

(2) The Minister shall lay a copy of every such report before Parliament as soon as practicable after receipt of the report.

PART 3 PROTECTION OF MONUMENTS AND BUILDINGS

Interpretation of this Part.

11.(1) For the purposes of this Part “monument or building” means—

- (a) any artificial or partly artificial building, structure, wall, erection, vessel or work;
- (b) any stone or other natural product, whether or not forming part of the ground, which has been artificially carved, sculptured or worked upon or which appears to have been purposely put or arranged in position;
- (c) any part of any prehistoric or ancient tomb, grave or burial ground or any ritual or habitation site; or
- (d) any ordnance or other piece of armament whether or not fixed or forming part of any structure or wall which is a battlement;

which is of historical, geographical, geological, scientific or technical value or interest, whether situated above or below the surface of ground.

(2) For the purposes of this Part, and subject to subsection (3), “monument or building site” means—

- (a) any cave or excavation;
- (b) any site where a monument or building or a group of monuments or buildings are located or the site of the remains of any monument; and
- (c) any site comprising, or comprising the remains of any movable structure or part thereof which neither constitutes nor forms

part of any work which is a monument or building within subsection (1) above situated on land or on the seabed.

(3) References in this Part to a “monument or building site” shall not only consist of the land or seabed in or on which it is situated but also any land or seabed comprising or adjoining it which the Minister, after consultation with the Council, determines to be essential for the support and preservation of the monument or building.

Scheduled monuments or buildings.

12.(1) For the purposes of this Act, and subject to subsection (2), monuments or buildings or monument or building sites listed in Schedule 2 shall be “scheduled monuments or buildings”.

(2) Schedule 2 may be divided into as many parts as may be deemed necessary for the listing of the different categories of monuments or buildings or monument or building sites.

(3) Subject to subsection (4), the Minister may, by Order published in the Gazette, amend Schedule 2 by—

- (a) including any monument or building or monument or building site, the conservation and protection of which is of importance by reason of the historical, architectural, traditional, cultural, artistic, scientific or archaeological interest attaching thereto;
- (b) removing any scheduled monument or building; or
- (c) by amending the entry relating to any scheduled monument or building to vary the name or description or any other particulars of the monument or building or monument or building site.

(4) Before making an Order under subsection (3), the Minister shall consult with—

- (a) the Council; and
- (b) any other person or body as appears to him to have special knowledge of monuments or buildings or monument or building site.

(5) In considering whether to recommend the inclusion of a monument or building or monument or building site in Schedule 2, the Council shall take into account not only the importance of the monument or building or monument or building site itself in accordance with subsection (3)(a) but also—

- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of monuments or buildings of which it forms part; and
- (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the monument or building or monument or building site consisting of a man-made object or structure fixed to the monument or building or forming part of the land and comprised within the curtilage of the monument.

Monuments or buildings on the seabed.

13.(1) A monument or building situated in, on or under the seabed (referred to in this section as a “monument or building on the seabed”) may be included in Schedule 2 and the provisions of this Part shall extend accordingly to any such monument or building provided it is a scheduled monument or building.

(2) The entry in Schedule 2 relating to any monument or building on the seabed shall describe the monument or building (as the case may be) as being “on the seabed”.

(3) In relation to any monument or building on the seabed, references in this Part to land in or on which a monument or building is situated and to any land comprising or adjoining the monument or building, or the monument or building, shall include references to any part of the seabed for any such purpose relating to the monument or building.

Damage to scheduled monuments or buildings.

14.(1) Any person who intentionally or recklessly does or permits the doing of any of the following acts in relation to a scheduled monument or building shall be guilty of an offence—

- (a) demolish, destroy or remove the scheduled monument or building, wholly or in part;
- (b) disfigure, deface, alter or in any manner damage or interfere with the scheduled monument or building;
- (c) write, draw, paint or carve any drawing, writing or figure whether indecent or not on the scheduled monument or building;
- (d) place, leave or deposit any refuse, rubbish or litter in or on a scheduled monument or building; or
- (e) excavate, dig, plough or otherwise disturb the ground within, around, or on the site of the scheduled monument or building.

(2) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 2 on the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both.

(3) Where a person is convicted of an offence under this section, the court by whom he is so convicted may, at the time of such conviction, and in addition to any penalty imposed under this section, order such person to pay to the Government such sum as the court shall fix as the reasonable cost of repairing the damage done to such scheduled monument by the commission of the offence and such sum shall be recoverable as a civil debt.

Control of works affecting scheduled monuments or buildings.

15.(1) Any person who executes or causes to be executed any works to which this section applies on a scheduled monument or building shall be guilty of an offence unless the works are authorised under this section.

(2) This section applies to any of the following works—

- (a) any works resulting in the demolition or destruction of or any damage to a scheduled monument or building;
 - (b) any works for the purpose of removing or repairing a scheduled monument or building or any part of it or of making any alterations or additions thereto; and
 - (c) any flooding or tipping operations on the site of or on land in, on or under which there is a scheduled monument or building.
- (3) Works to which this section applies shall be authorised works if—
- (a) the Minister has granted the person who will carry out the works written consent for the execution of works on a scheduled monument or building; and
 - (b) the works are executed in accordance with the terms and conditions attached to the consent.
- (4) Before granting scheduled monument or building consent, the Minister shall consult with—
- (a) the Council
 - (b) the Gibraltar Heritage Trust; and
 - (c) any other person or body as appears to him to have special knowledge of, or interest in antiquity or object of interests.
- (5) A condition attached to a scheduled monument or building consent may require that a member of or a person authorised by the Council be afforded an opportunity, before any works to which the consent relates are begun, to examine the scheduled monument and its site and carry out such excavations therein as appear to the Council to be desirable for the purpose of archaeological investigation within a period of 14 days or such other period as the Minister deems appropriate.
- (6) A condition attached to a scheduled monument or building consent may require that a member of or a person authorised by the Council be allowed access to any monument or building, before or after any works to which the consent relates are begun, to examine and inspect the scheduled monument or building and its site.

(7) Any member of or a person authorised by the Council, when exercising a right afforded by subsection (5) or (6), shall produce documentary evidence of his or her membership of the Council or authorisation granted by the Council.

(8) Without prejudice to subsection (1), if a person executing or causing or permitting to be executed any works to which a scheduled monument or building consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(9) In proceedings for an offence under this section it shall be a defence to prove the following matters—

- (a) that works to the scheduled monument or building were urgently necessary in the interests of safety or health or for the preservation of the monument or building;
- (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the scheduled monument or building by works of repair or works for affording temporary support or shelter;
- (c) that the works carried out under paragraphs (a) and (b) were limited to the minimum measures immediately necessary; and
- (d) that notice in writing justifying the carrying out of the works was given to the Minister either before the works were commenced or as soon as reasonably practicable after the works were commenced.

(10) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 2 on the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both.

Modification of scheduled monument or building consent.

16.(1) If it appears to the Minister, upon receipt of information from the holder of the consent or any other person, following a report submitted by the Council or otherwise, that it is expedient to modify or revoke any scheduled monument consent, he may after consulting the Council, by notice in writing to the person who has been granted the consent, modify the consent to such extent as he considers necessary or revoke the consent.

(2) The power conferred by this section to modify a scheduled monument or building consent in respect of any works may be exercised at any time before those works have been completed, but the modification shall not affect so much of those works as have been previously carried out.

Urgent preservation.

17.(1) If it appears to the Minister, that any remedial works are urgently necessary for the preservation of a scheduled monument or building, he may grant scheduled monument consent for the execution of any works specified in the consent which appear to be urgently necessary for the preservation of the monument or building.

(2) The works which may be executed under this section may consist of or include works for affording temporary support or shelter for the scheduled monument or building.

(3) Any costs incurred under this section may be recoverable from the owner of the scheduled monument or building as a civil debt

Placing of tablets.

18. The Minister may, after consultation with the Council, cause to be placed or affixed on a scheduled monument or building a tablet, plate, placard or inscription, or other notice containing information relevant to the scheduled monument or building.

**PART 4
CONSERVATION AREAS**

Scheduled conservation areas.

19.(1) For the purposes of this Act, areas of important architectural or historic interest listed in Schedule 3 shall be “scheduled conservation areas”.

(2) The Minister may, after consulting the Council, by Order published in the Gazette, amend Schedule 3 by–

- (a) including any area which is of importance by reason of the architectural or historic interest attaching thereto;
- (b) removing any scheduled conservation area; or
- (c) amending the entry relating to any scheduled conservation area to vary the description or the particulars of the conservation area; and
- (d) an inclusion or amendment under paragraphs (a) and (c) respectively shall describe by reference to a map the area affected and shall be to such a scale as the Minister considers appropriate.

(3) Before making an Order under subsection (2), the Minister shall consult with–

- (a) the Council; and
- (b) any other person or body as appears to him to have special knowledge of conservation areas.

(4) The Minister, after consultation with the Council, may, from time to time, publish proposals for the preservation and enhancement of scheduled conservation areas.

Control of demolition in scheduled conservation areas.

20.(1) Any person who executes or causes to be executed any demolition to which this section applies of a structure in a scheduled conservation area shall be guilty of an offence unless the works are authorised under this section.

(2) If it comes to the attention of the Minister, on a report submitted by the Council or otherwise, that any demolition of a structure in a scheduled

conservation area is being carried out, he may take proceedings for the purpose of securing an injunction or interdict prohibiting that demolition from continuing.

(3) Works to which this section applies are authorised under this section if–

- (a) the Minister has granted the person who is to execute the demolition a written consent for the execution of the demolition; and
- (b) the demolition is executed in accordance with the terms and conditions attached to the consent.

(4) Before granting consent under subsection (3), the Minister shall consult with–

- (a) the Council; and
- (b) any other person or body as appears to him to have special knowledge of conservation areas.

(5) A condition attached to a scheduled conservation area consent may require that a member of or a person authorised by the Council, with the consent of the Minister, be afforded an opportunity, after the conclusion of the demolition to which the consent relates, to examine the demolition site and carry out such excavations therein as appear to the Council to be desirable for the purpose of archaeological investigation within a period of 14 days or such other period as the Minister deems appropriate.

(6) A condition attached to a scheduled conservation area consent may require that a member of or a person authorised by the Council be allowed access to any scheduled conservation area, before or after any demolition to which the consent relates is begun, to examine and inspect the scheduled conservation area.

(7) Any member of or a person authorised by the Council, when exercising a right afforded by subsection (5) or (6), shall produce documentary evidence of his or her membership of the Council or authorisation granted by the Council.

(8) Without prejudice to subsection (1), if a person executing or causing or permitting the demolition to which a scheduled conservation area consent relates fails to comply with any condition attached to the consent he shall be

guilty of an offence unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(9) In proceedings for an offence under this section it shall be a defence to prove the following matters–

- (a) that the demolition was urgently necessary in the interests of safety or health;
- (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
- (c) that notice in writing justifying the demolition work was given to the Minister before or as soon as reasonably practicable before the works were commenced.

(10) A person guilty of an offence under this section shall be liable–

- (a) on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 2 on the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both.

Urgent works to preserve unoccupied buildings in scheduled conservation areas.

21.(1) If it appears to the Minister, on a report submitted by the Council or otherwise, that the preservation of an unoccupied structure in a scheduled conservation area is important for maintaining the character or appearance of that area, he may direct that any works specified in a scheduled conservation area consent which appear to him to be urgently necessary for the preservation of the unoccupied structure may be executed.

(2) The works which may be executed under this section may consist of or include works for affording temporary support or shelter for the structure.

(3) If the structure is partly occupied, works may be carried out only to those parts which are not in use.

Modification of scheduled conservation area consent.

22.(1) If it appears to the Minister, on a report submitted by the Council or otherwise, that it is expedient to modify any scheduled conservation area consent granted, he may, by notice published in the Gazette, modify the consent to such extent as he considers necessary.

(2) The power conferred by this section to modify a scheduled conservation area consent in respect of any works may be exercised at any time before those works have been completed, but the modification shall not affect so much of those works as has been previously carried out.

**PART 5
ARCHAEOLOGICAL AREAS AND FINDINGS**

Interpretation of this Part.

23.(1) In this Part—

- (a) references to “operations on any site on land” include references to operations in, under or over the land in question;
- (b) references to the “clearance of any site” are references to the demolition and removal of any existing building or other structure on the site and the removal of any other materials on that site so as to clear the surface of the land (but do not include the levelling of the surface or the removal of materials from below the surface);
- (c) references to the “clearance of any site on the seabed” are references to the demolition and removal of any structure on the site and the removal of any other materials on that site so as to clear the surface of the seabed (but do not include the levelling of the seabed);
- (d) references to “clearance operations” are references to operations undertaken for the purpose of or in connection with the clearance of any site on land or on the seabed.

Scheduled archaeological areas.

24.(1) For the purposes of this Act, areas of important archaeological interest listed in Schedule 4 shall be “scheduled archaeological areas”.

(2) The Minister may, by Order published in the Gazette, amend Schedule 4 by—

- (a) including any area which is of importance by reason of the archaeological interest attaching thereto;
- (b) removing any scheduled archaeological area; or
- (c) amending the entry relating to any scheduled archaeological area to vary the description of the archaeological area,

and an inclusion or amendment under paragraphs (a) and (c) respectively shall describe by reference to a map the area affected and shall be to such a scale as the Minister considers appropriate.

(3) Before making an Order under subsection (2), the Minister shall consult with—

- (a) the Council; and
- (b) any other person or body as appears to him to have special knowledge of archaeology.

Operations in scheduled archaeological areas.

25.(1) Any person who executes or causes to be executed any of the following operations within a scheduled archaeological area on land—

- (a) operations which disturb the ground;
- (b) flooding operations; or
- (c) tipping operations;

shall be guilty of an offence.

(2) Any person who executes or causes to be executed any of the following operations within a scheduled archaeological area on the seabed—

- (a) operations which disturb the ground; or
- (b) tipping operations,

shall be guilty of an offence.

(3) Any person who knows or has reasonable grounds for believing that any antiquity or object of interest has been excavated, removes such object from any scheduled archaeological area shall be guilty of an offence.

(4) Subsections (1) to (3) shall not apply to any operation for which scheduled archaeological area consent has been granted by the Minister under this section.

(5) Before granting scheduled archaeological area consent, the Minister shall consult with—

- (a) the Council; and
- (b) any other person or body as appears to him to have professionally recognised qualification in archaeology.

(6) A scheduled archaeological area consent shall specify—

- (a) the operations to which it relates;
- (b) the area on land or on the seabed on which the operations are to be carried out;
- (c) the date on which it is proposed to begin the operations;
- (d) where the operations are to be carried out after clearance of the area, an estimated date for completion of the clearance operations; and
- (e) the terms and conditions under which the operations must be executed which shall include—
 - (i) that the holder of a consent must take all reasonable measures for the preservation of antiquities or objects of interests discovered by him, and where the circumstances so require, reasonable measures shall

be deemed to have been taken when specialists in preservation are contracted to undertake such preservation;

- (ii) that the holder of a consent must keep a detailed record, to be undertaken by specialists in the field, of the operations and excavations conducted and must, as far as reasonably practicable, allow the taking photographs of the site and anything therein;
- (iii) that all antiquities or objects of interests discovered, records kept and photographs taken during the operations, along with any excavation or other report produced prior or subsequent to any operations, shall vest in the Government.

(7) Without prejudice to subsections (1) to (3), if a person executing or causing or permitting the execution of the operations to which a scheduled archaeological area consent relates fails to comply with any condition attached to the consent he shall be guilty of an offence, unless he proves that he took all reasonable precautions and exercised all due diligence to avoid contravening the condition.

(8) In proceedings for an offence under this section it shall be a defence to prove the following matters—

- (a) that all reasonable precautions were taken;
- (b) that all due diligence was exercised to avoid or prevent disturbance of the ground;
- (c) that the accused did not know and had no reason to believe that the site of the operations was within a scheduled archaeological area; or
- (d) that the operations were urgently necessary in the interests of public safety and/or health and/or public emergency and that notice in writing of the need for the operations was given to the Minister as soon as reasonably practicable after the operations were commenced.

(9) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 2 on the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both.

Qualifications for archaeological operations.

26. The Minister shall not grant a scheduled archaeological area consent to any person unless he is satisfied, after consultation with the Council that he is by professional qualifications, training and experience by a recognised, professional body or institution, competent to carry out the proposed operations in accordance with the most recent scientific methods.

Control of archaeological operations.

27. If it appears to the Minister, on a report submitted by the Council or otherwise, that—

- (a) any operations are being, or are about to be, carried out on any site on land or on the seabed; and
- (b) the site contains or is likely to contain antiquity or object of interests which will be disturbed, damaged, destroyed or removed without proper archaeological investigation if operations are carried out on the site,

the Minister may, after having taken legal advice and considered issues related to public interest, public safety, public health, public emergency take proceedings for the purpose of securing an injunction or interdict prohibiting those operations from being carried out.

Modification of scheduled archaeological area consent.

28.(1) If it appears to the Minister, upon receipt of information from the holder of the consent or any other person, following a report submitted by the Council or otherwise, that it is expedient to modify or revoke any scheduled archaeological area consent, he may after consulting the Council, by notice in

writing to the person who has been granted the consent, modify the consent to such extent as he considers necessary or revoke the consent.

(2) The power conferred by this section to modify a scheduled archaeological area consent in respect of any operation may be exercised at any time before those operations have been completed, but the modification shall not affect so much of those operations as have been previously carried out.

Reports of archaeological findings.

29.(1) A person who finds any antiquity or object of interest, or an object which he suspects to be a antiquity or object of interest, on land or on the seabed, whether inside or outside a scheduled archaeological area, shall within 24 hours after he has found such object, report the finding to a police officer, the Archaeological Officer or the Curator stating his name and address, the nature or character of the object and the time and place at which and the circumstances in which it was found by him.

(2) Such person shall also give to the police officer, the Archaeological Officer or the Curator (as the case may be) on request any further information within his knowledge about the antiquity or object of interest or the finding thereof and shall deliver to the Archaeological Officer or Curator or permit them to receive, the object of interest.

(3) On receiving an antiquity or object of interest under subsection (1), the Archaeological Officer or the Curator shall—

- (a) issue to the person who found the antiquity or object of interest a receipt fully describing the object;
- (b) retain the antiquity or object of interest in safe custody which, by virtue of section 5, is the property of the Government; and
- (c) report the discovery to the Minister and to the Council.

(4) Any person who finds an antiquity or object of interest, or an object which he suspects to be an antiquity or object of interest, and—

- (a) fails without reasonable excuse to make a report of such finding in accordance with subsection (1);

- (b) makes such a report of a finding which is to his knowledge false or misleading in any material respect;
- (c) in contravention of that subsection fails or refuses to give to a police officer, the Archaeological Officer or the Curator information in relation to such object or antiquity or the finding thereof;
- (d) gives to a police officer, the Archaeological Officer or the Curator information in relation to such object or antiquity or the finding thereof which is to his knowledge false or misleading in a material respect; or
- (e) fails to deliver or allow a police officer or the Archaeological Officer to deliver the object or antiquity to the Curator,

shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding 9 months or a fine not exceeding level 4 on the standard scale, or both.

(5) Where a person proposes to develop a site (the developer) in respect of which the Development and Planning Commission, on advice of the Archaeological Officer, has ascertained that that site has undiscovered archaeological potential, the developer shall undertake an archaeological impact study (including a desk-based assessment).

(6) The Archaeological Officer, having had regard to the study referred to in subsection (5) may direct the developer to undertake either or both-

- (a) an archaeological watching brief; and
- (b) an archaeological excavation,

as the case may be, and such direction shall be communicated in writing.

(7) The obligations under subsections (5) and (6) are not fulfilled unless these are undertaken in consultation with the Archaeological Officer or, in his absence, a representative of the Ministry for Heritage, and for such purposes the developer shall grant such access to the site, objects and to any other relevant material as may be required by the Archaeological Officer or his substitute.

(8) A study under subsections (5) and (6) shall include field and post-field analysis and shall be submitted to the Ministry for Heritage.

(9) The costs of compliance with the provisions of subsections (5) to (8) shall be borne by the person upon whom the duty is imposed.

(10) A person who fails to comply with subsections (5) to (8) commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 9 months or to a not exceeding level 4 on the standard scale or to both.

PART 6 THE ARCHAEOLOGICAL OFFICER

Archaeological Officer.

30.(1) There shall from time to time be appointed a public officer or any other person who is a fit and proper person being professionally qualified, by a recognised professional body or institution or having the suitable training and experience, to be the Archaeological Officer in charge of identifying and protecting monuments or buildings, conservation areas, archaeological areas and archaeological findings.

(2) The Archaeological Officer shall be the Government's chief advisor on archaeological, heritage and conservation matters and shall be responsible to the Minister in this respect.

General functions.

31. The Archaeological Officer shall have the following general functions which shall be exercised subject to administrative and financial considerations—

- (a) to promote and undertake the recording, identification, conservation, preservation, exhibition, appreciation and enjoyment of monuments or buildings, conservation areas, archaeological areas and findings;
- (b) to promote and undertake preservation and research into monuments or buildings, conservation areas, archaeological areas and archaeological findings;

- (c) to identify, advise, mitigate and protect against human impact on monuments or buildings, conservation areas, archaeological areas and archaeological findings;
- (d) to identify, advise, mitigate and protect against natural impact on monuments or buildings, conservation areas, archaeological areas and archaeological findings;
- (e) to assist the Council and the Gibraltar Heritage Trust in the formulation of policies and priorities on the Archaeological Officers functions under paragraphs (a), (b), (c) and (d) for presentation to the Minister for approval;
- (f) to undertake such other functions as are conferred on him or her by this Act or by any other enactment or on the instructions of the Minister.

PART 7 THE GIBRALTAR MUSEUM

Curator.

32.(1) The Minister shall from time to time, after consultation with the Council and the Gibraltar Heritage Trust appoint a fit and proper person to be the Curator of the Museum.

(2) The Curator shall be the Chief Executive Officer of the Museum and shall be responsible to the Minister for its due management.

General functions of the Museum vest in the Curator.

33. The Museum shall have the following general functions all of which shall vest in the Curator—

- (a) to promote and undertake the discovery, identification, preservation, exhibition, appreciation and enjoyment of antiquities or objects of interest;
- (b) to promote and undertake research into antiquities or objects of interest;

- (c) to assist the Council and the Gibraltar Heritage Trust in the formulation of policies and priorities on the Museum's functions under paragraphs (a) and (b) for presentation to the Minister for approval;
- (d) to undertake such other functions as are conferred on it by this Act or by any other enactment or on the instructions of the Minister.

General powers.

34. In the performance of his or her functions the Curator may, on behalf of the Museum—

- (a) accept by way of gift, loan or donation—
 - (i) an antiquity or object of interest;
 - (ii) books, manuscripts, pamphlets, reports, maps, pictures, and other documents that relate to Gibraltar and are suitable for the purposes of a reference library or archives;
 - (iii) other articles that are suitable for study or exhibition;
- (b) subject to approval by the Minister after consultation with the Council, and subject to the terms of any trust, hire out, exchange or lend copies of antiquities or objects of interest and other articles including anything specified in paragraph (a); and
- (c) after consultation with the Council, commission the undertaking of investigations to discover, obtain or recover antiquities or objects of interest and the undertaking of research in relation to antiquities or objects of interests.

Vesting of property of the Museum.

35. All antiquities or objects of interest, money, securities for money, and all other property, whether moveable or immovable, acquired, donated to or held by the Curator in the fulfilment of his or her functions under sections 31

or 32, shall vest in the Crown in right of the Government, subject always to the terms on which they were acquired or held and to the terms of any trust.

Property to be held for the benefit of the public.

36.(1) All property that is vested in the Crown in right of the Government by virtue of section 33 shall be so held on trust and shall be applied for the benefit and enjoyment of the public or otherwise employed in the public interest.

(2) All properties which are for the time being lent to the Curator shall, subject to the conditions on which they have been lent, be held in trust and applied for the benefit and enjoyment of the public.

(3) Property falling within subsection (1) shall, where requested by the Minister, be delivered to the Minister in accordance with the terms of such request.

Disposal of antiquities or objects of interest.

37.(1) On receiving any report of the discovery of an object believed to be an antiquity or object of interest, the Curator shall advise the Minister, who will determine, after consultation with the Council, whether it should be retained in the Museum or in any other place or should be disposed of under subsection (2).

(2) Where the Minister directs, after consultation with the Council, that the object believed to be an antiquity or object of interest should not be retained, by the Museum the Curator may offer the object to the British Museum, to any other public museum or institution, on such terms and conditions as the Curator and that museum may agree, including in every case, a condition that the museum to which it is offered pays to the Government an amount which the Curator deems appropriate, and the Curator shall report every case to the Minister beforehand explaining the reasons for the terms and conditions to be agreed.

**PART 8
GIBRALTAR NATIONAL ARCHIVES**

Interpretation.

38.(1) In this Part, “public records” includes administrative and departmental records belonging to the Government, whether in Gibraltar or elsewhere, in right of the Government of Gibraltar and, in particular—

- (a) records of, or held in, any Government department; or
- (b) records of any office, commission, agency, body corporate or other entity established by the Government.

(2) In this Part, “records” includes not only written records but records conveying information by any means whatsoever.

(3) Where records created at different dates are for administrative purposes kept together in one file or other assembly, all the records in that file or other assembly shall be treated for the purposes of this Part as having been created when the latest of those records was created.

Archivist.

39. There shall from time to time be appointed a public officer or any other person who is a fit and proper person being professionally qualified by a recognised professional body or institution, or having the suitable training and experience, to be the Archivist in charge of public records and the archives.

General responsibility.

40.(1) The Archivist shall be generally responsible for the execution of this Part and shall supervise the collection, conservation and preservation of public records and archives which warrant preservation and shall advise the Government on matters concerning public records and archives in general and, in particular, on those aspects which affect public officers and members of the public who make use of the facilities provided.

(2) It shall be the duty of the Archivist to take all practicable steps for the preservation of public records and archives under his charge and he shall have power to do all such things as appear to him necessary or expedient for maintaining the utility of the Gibraltar National Archives and may in particular—

- (a) compile and make available indexes and guides to, and calendars and texts of, the records kept in the archives;

- (b) prepare publications concerning the activities of and facilities provided;
- (c) regulate the conditions under which public officers and members of the public may inspect public and other records or archives or use the other facilities;
- (d) provide for the making and authentication of copies of and extracts from public records required as evidence in legal proceedings or for other purposes;
- (e) make arrangements for the separate housing of films and other records which have to be kept under special conditions;
- (f) lend public records and archives, in a case where the Minister, after consultation with the Council, gives his approval, for display at commemorative exhibitions or for other special purposes;
- (g) acquire records and accept gifts and loans; and
- (h) make arrangements for the digitisation of public records and maintenance of public records electronically created so as to both preserve and improve access to information.

Selection and preservation of public records and archives.

41.(1) It shall be the duty of every public officer or employee responsible for holding public records of any description which are not in the custody of the Archivist to make arrangements for the selection of those records which ought to be permanently preserved and kept safe.

(2) Public records selected for permanent preservation under this section shall be transferred to the Gibraltar National Archives not later than 20 years after their creation as soon as storage space is available.

(3) Where records created at different dates are for administrative purposes kept together in one file or other assembly all the records in that file or other assembly shall be treated as having been created when the latest of those records was created.

(4) Public records which, following the arrangements made in pursuance of this section, have been rejected as not required for permanent preservation shall be destroyed or, subject to the approval of the Minister, disposed of in any other way.

(5) Public records in the Gibraltar National Archives or other place of deposit shall be temporarily returned at the request of the public officer by whom or department or office from which they were transferred.

Place of deposit of public records and archives.

42.(1) If it appears to the Minister, after consultation with the Council, that a place outside the Gibraltar National Archives affords suitable facilities for the safe-keeping and preservation of public records and archives and their inspection by the public he may appoint it as a place of deposit as respects any class of public records or archives selected for permanent preservation under this Part.

(2) Public records and archives in the Gibraltar National Archives shall be in the custody of the Archivist and public records and archives in a place of deposit appointed under this section shall be in the custody of such officer as the Government may appoint which may also be the Archivist.

Access to public records.

43.(1) It shall be the duty of the Archivist to arrange that reasonable facilities are available to public officers and the public for inspecting and obtaining copies of those public records in the Gibraltar National Archives.

(2) Nothing in this Part shall permit the inspection or taking of copies of any public record-

- (a) which has been issued with a security classification which prohibits its dissemination to persons not falling within that security classification; or
- (b) if disclosure of that public record is prohibited by any law.

Destruction of public records.

44. If, as respects any public records in the Gibraltar National Archives or any place of deposit appointed under section 41, it appears to the Archivist

that they are duplicated by other public records which have been selected for permanent preservation or that there is some other special reason why they should not be permanently preserved, he may, with the approval of the Minister, authorise the destruction of those records or, with that approval, arrange for their disposal in any other way.

Legal validity of public records and authenticated copies.

45. A copy of or extract from a public record in the Gibraltar National Archives purporting to be examined and certified as true and authentic by the Archivist shall be admissible as evidence in any proceedings without any further or other proof thereof if the original record would have been admissible as evidence in those proceedings.

**PART 9
THE GIBRALTAR HERITAGE TRUST**

Gibraltar Heritage Trust.

46.(1) Notwithstanding the repeal of the Gibraltar Heritage Trust Act 1989 there shall continue to be maintained in Gibraltar, the Gibraltar Heritage Trust established under section 3 of the Gibraltar Heritage Trust Act 1989 as though that Trust had been established under this Act.

(2) The Trust shall continue to be a body corporate with perpetual succession and a common seal.

(3) The Minister may make regulations under section 76 relating to any matter appertaining to the functions, constitution and proceedings of the Trust.

(4) In this Part a reference to the “Trust” shall be construed as a reference to the Gibraltar Heritage Trust.

Objects and powers of the Trust.

47.(1) The object of the Trust shall continue to be the preservation of Gibraltar’s heritage.

(2) The acquisition in any manner and retention of any investments (being at the time of acquisition of a nature authorised by the general law for the investment of trust funds or of a nature authorised by the trusts imposed by

the donor of the same or of the funds out of which the same shall be acquired) the income whereof shall be applicable (subject to any trusts imposed by the donor or otherwise affecting the same) at the discretion of the Board for any particular purpose of the Trust or for its general purposes.

Board of the Trust.

48.(1) The affairs of the Trust shall be administered by the Board of the Gibraltar Heritage Trust.

(2) The Board shall have power to appoint such sub-committees as it considers appropriate.

General functions of the Board.

49.(1) Without prejudice to the generality of section 44 it shall be the general duty of the Board—

- (a) to promote and secure the preservation and enhancement of Gibraltar's heritage;
- (b) to promote the public's enjoyment of and advance their knowledge of Gibraltar's heritage;
- (c) at the request of Government, to advise Government at an early stage on any planning or other proposals affecting any building, structure, site or land; and
- (d) to promote research into and publications on Gibraltar's heritage and on the history of Gibraltar including its social, cultural, economic and political evolution; and
- (e) undertake such other functions as are conferred on it by this Part or by any other enactment.

(2) The Board—

- (a) shall, (so far as practicable) provide educational facilities and services, instruction and information to the public in relation to Gibraltar's heritage;

- (b) shall, if requested by the Government, or if the Board otherwise thinks fit to do so, to advise on any matter relating to the objects of the Trust and functions of the Board;
- (c) may, for the purpose of exercising its functions, carry out, or defray, or contribute towards the cost of research in relation to Gibraltar's heritage;
- (d) may, for the purpose of exercising its functions, make and maintain records in relation to Gibraltar's heritage; and
- (e) may make such charges for any of their services as they think fit.

(3) The provisions of Schedule 5 shall have effect with respect to the constitution and procedures of the Board.

Additional powers of the Board.

50.(1) The Board may make arrangements on its own behalf or enter into contracts which have any of the objects mentioned in subsection (2).

(2) The objects are—

- (a) the production, publication and sale of books, films or other informative material relating to Gibraltar's heritage and the commissioning of works of art, craft or design relating thereto; and
- (b) the production and sale of replicas or reproductions of works of art, craft or souvenirs relating to Gibraltar's heritage.

(3) The Board may acquire and hold interests in any company or other body having any of the objects mentioned in subsection (2), exercise rights conferred by the holding of an interest in it, and provide financial or other assistance to or in respect of it (including assistance by way of guarantee of the obligations of such a company or body).

Staff.

51.(1) There shall be a Chief Executive Officer, secretary and a treasurer to the Trust who shall be appointed by the Board other than from among their own number.

(2) The Secretary shall be responsible to the Board for the general exercise of the Board's functions.

(3) The Board may employ such persons, who are not trustees, as the Board thinks fit as long as the board has the necessary funds to pay for the employee.

(4) The Board shall appoint their employees on such terms and conditions and shall pay them such remuneration and allowances as the Board may determine within the remit of the Laws of Gibraltar.

Financial provisions.

52.(1) The funds of the Trust shall consist of–

- (a) subject to the terms of any trust, such monies as may be received from the sale, lease, hiring out, lending or other disposal, exhibition or display of any property under its control, (which, in relation to the Gibraltar Museum's original artefacts in the Museum, shall relate only to copies of such artefacts) subject to the consent of the Government;
- (b) any money received from the Gibraltar Tourist Board by way of royalties on ticket sales for admission to any properties in which the Trust has an interest as agreed with the Government from time to time;
- (c) subject to the terms of any trust, such monies as may be received by the Board by way of grants from the Government, subscriptions, contributions, donations or gifts or as may be otherwise received for any lawful purpose; and
- (d) all accumulations of its funds.

(2) Where the Board acquires any money for any particular specified purpose, it shall keep that money in a separate account and apply it for that purpose.

(3) The Board may borrow temporarily by way of overdraft or otherwise such sums as it may require for meeting its obligations and discharging its functions.

Accounts.

53.(1) The Board shall keep proper books of account of its operations during each financial year and shall cause a statement of its accounts for each financial year to be prepared within six months after the end of that year.

(2) The accounts of the Trust for each financial year shall be audited by the Principal Auditor as soon as practicable after the end of that year.

(3) The Principal Auditor shall, with reference to the accounts of the Trust, report—

- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of the audit;
- (b) whether, in his opinion, proper books of account have been kept by the Trust, so far as appears from his examination of those books;
- (c) whether the Trust's balance sheet and statement of income and expenditure are in agreement with the books of accounts; and
- (d) whether, in his opinion, and to the best of his information and according to the explanations given to him, those accounts give a true and fair view—
 - (i) in the case of the balance sheet, of the state of the Trust's affairs as at the end of its financial year; and
 - (ii) in the case of the statement of income and expenditure of the income and expenditure for its financial year.

(4) Within three months after the audit of its accounts for any financial year, the Board shall prepare and submit to the Minister a written report on its operations for that year together with a copy of the audited accounts for that year.

(5) The Minister shall lay a copy of the annual report and of the audited accounts before Parliament as soon as practicable after receipt of the report and accounts.

Exemption from taxes, etc.

54. The Trust shall be exempt from all taxes, duties, rates, levies or other charges whatsoever.

No personal liability to attach to the Board.

55. No personal liability shall attach to any member of the Board in respect of anything done or omitted to be done in good faith under the provisions of this Part.

Instruments.

56.(1) The fixing of the seal of the Board shall be authenticated by signature of two trustees, subject to resolution approved by not less than two-thirds of the Board.

(2) A document purporting to be duly executed under the seal of the Board, or to be signed on the Board's behalf, shall be received in evidence and, unless the contrary is proved, be deemed to have been executed and signed.

**PART 10
GIBRALTAR GARRISON LIBRARY TRUST**

The Gibraltar Garrison Library Trust.

57.(1) Notwithstanding the repeal of the Gibraltar Garrison Library Trust Act 2011 by this Act, there shall continue to be maintained in Gibraltar the Gibraltar Garrison Library Trust established under section 3 of the Gibraltar Garrison Library Trust Act 2011 as though that Trust had been established under this Act.

(2) In this Part-

“the Collections” means the collection of books, journals and other paper things described in Part 2 of Schedule 6; and

“Trust” means the Gibraltar Garrison Library Trust.

Trust to be body corporate.

58.(1) The Trust will continue to be a body corporate with perpetual succession and shall have a common seal which shall be officially and judicially noted.

(2) The common seal of the Trust may only be affixed to an instrument in the presence of the Chairman or other person authorised by the Chairman for that purpose and one other member of the Trust.

(3) The Trust may sue and be sued in its corporate name. Service of any process or notice on the Trust may be effected by leaving it at, or sending it by registered post to, the principal office of the Trust.

Board of Trustees.

59.(1) There shall be a board of Trustees of the Trust who shall be responsible for carrying on the business and affairs, exercising the powers and implementing the objects and purposes of the Trust.

(2) There shall be a minimum of three and a maximum of eight Trustees.

(3) The following shall be Trustees—

- (a) the Minister;
- (b) the Commanding Officer for the time being of the Royal Gibraltar Regiment;
- (c) such other persons as may be appointed by the Minister.

(4) The Minister shall be the Chairman of the Trustees.

(5) Subject to subsection (6), persons appointed Trustees by the Minister shall hold office for a three year period.

(6) If the Minister is satisfied that any Trustee appointed by him under subsection (3)(c)—

- (a) has been absent from three consecutive meetings of the Trust without reasonable excuse;
- (b) has become bankrupt;
- (c) has been convicted of a criminal offence involving dishonesty or has been convicted of any criminal offence and has been sentenced to a term of imprisonment;
- (d) is incapacitated by physical or mental illness; or
- (e) is otherwise unable or unfit to discharge the functions of Trustee,

the Minister may, by notice in the Gazette, declare his office as a Trustee to be vacant and thereupon his office shall become vacant and he shall cease to be a Trustee.

(7) A Trustee who wishes to resign his office shall do so in writing addressed to the Chairman and he may give up to three months prior written notice of such resignation.

(8) Any Trustee other than a Trustee to whom subsection (6)(b) to (e) applies who ceases to be a Trustee shall be eligible for re-appointment.

(9) The Minister shall appoint a person to be the Secretary of the Trust.

Meetings and proceedings of the Trust.

60.(1) The quorum at all meetings of the Trust shall if there be five or less Trustees be three and if there be more than five Trustees shall be four.

(2) The Trustees shall meet at least once every six months and meetings may be convened by the Chairman or by three Trustees through the Secretary.

(3) At all meetings of the Trust the Chairman or, in his absence, such Trustee as the Chairman may designate for that purpose, or failing such designation such other Trustee as the Trustees present may select, shall preside.

(4) Any matters arising at a meeting of the Trust shall be decided by a majority of the Trustees present and, in the case of an equality of votes, the Chairman (but not any substitute presiding Trustee) shall have a second or casting vote.

(5) All orders and directions of the Trust shall be given under the hand of the Chairman or the Secretary.

Property of the Trust.

61.(1) The property of the Trust shall comprise the following—

- (a) the Collections and other chattels and things vested in the Trust by this Act or subsequently acquired by the Trust;
- (b) the monies vested in the Trust under section 65;
- (c) any monies provided to the Trust by the Government for the purposes, objects or other affairs of the Trust;
- (d) any monies or other property of whatever kind gifted or bequeathed to the Trust by any person;
- (e) any monies of the Trust derived from the income or activities of the Trust.

(2) Unless the Government shall agree otherwise, the Collections shall at all times be housed in the Garrison Library Building.

Objects and purposes of the Trust.

62.(1) The objects and purposes of the Trust shall be, for the benefit, use and enjoyment of the people of Gibraltar and insofar as the Trust's own financial resources and financial resources provided to it by the Government permit—

- (a) to preserve, maintain, restore and expand the Collections and other Trust Property;
- (b) to preserve, manage and maintain the Garrison Library Building;

- (c) subject to such terms, condition and rules as the Trustees may determine and impose in that respect, to make the Garrison Library Building and the Collections accessible and available to the general public as a reading and reference library, and for such other purposes (not inconsistent or incompatible therewith or any other object or purpose of the Trust) as the Trustees may decide to permit;
- (d) to encourage, promote and advance the written culture, history and literary heritage of Gibraltar, and to promote reading, research and all forms of literary activity and culture.

(2) In its implementation of the objects and purposes of the Trust, and in the exercise of its powers the trustees shall be bound by the following specific provisions–

- (a) Officers of the Garrison shall not be required to pay any membership fee or other fee which the Trustees may impose for access to the Collections or the Garrison Library Building (save fees for use of the premises for social or other events);
- (b) the Trustees shall not permit the Garrison Library Building to be used for any purpose (other than as a Library) which the Government prohibits and if the Government allows use for a purpose subject to specified terms and conditions the Trustees shall not permit that use save in compliance with those terms and conditions.

Powers of the Trust.

63.(1) Subject to the provisions of this Act, the Trust shall with the approval of the Minister have power to do all things necessary for carrying out its objects and purposes.

(2) Without prejudice to the generality of the provision of subsection (1), the Trust may with the approval of the Minister –

- (a) acquire and hold such interest in the Garrison Library Building as the Crown may grant it;
- (b) purchase books, journals, maps, plans, prints and any other paper or printed matter to enhance or expand the Collections;

- (c) employ persons;
- (d) enter into any contract for the supply to, or by, the Trust of any goods, services or personnel;
- (d) maintain and equip the Garrison Library Building;
- (e) compile, prepare, print, publish, issue, circulate and distribute, whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the attainment of the objects and purposes of the Trust;
- (f) establish such terms, conditions (including but not limited to the payment of fees and charges) and rules for access to the Collections and access to and use of the Garrison Library Building;
- (g) establish and operate bank accounts;
- (h) engage in activities intended to stimulate the giving (whether on trust or otherwise) of money or other property to assist the Trust in advancing the purposes or objects of the Trust or in providing or improving any services or facilities or accommodation which is, or are, or is or are to be, provided by the Trust in connection with the objects and purposes of the Trust.

Boards, Committees and Procedures.

64.(1) The Trust may establish Boards or Committees for the purposes of conducting its affairs, including (but without prejudice to the generality of the foregoing) a management board to oversee its day to day business.

(2) Any Board or Committee established under subsection (1) shall be responsible and accountable to the Trustees and shall carry out their business in such manner as the Trustees shall direct.

(3) Persons shall be appointed to and be removed from Boards and Committees by the Trustees at will, and persons may be appointed whether

or not they are Trustees, provided that a majority of the members of every Board and Committee shall be either Trustees or employees of the Trust.

(4) Save as may be provided in this Act the Trust may regulate its own procedures and those of any Board or Committee established under this Section.

Financial duty of the Trust.

65. The Trust shall so manage its affairs as to ensure that, taking one year with another, its outgoings are not greater than its revenues from—

- (a) all funds which may from time to time be voted by Parliament for the purposes and objects of the Trust;
- (b) all fees due to the Trust for the provision of services and facilities in the implementation of the purposes and objects of the Trust;
- (c) all monies properly accruing to the Trust from any other source.

Accounting and auditing.

66.(1) The Trust shall keep proper books of account of its operations during each financial year, and shall also cause a statement of its accounts for each financial year to be prepared within six months after the end of each financial year.

(2) The accounts of the Trust for each financial year shall be audited by the principal Auditor as soon as practicable after the end of that year and shall be submitted to him for that purpose within seven months after the end of the financial year to be audited.

(3) The Principal Auditor shall, with reference to the accounts of the Trust, report—

- (a) whether he has obtained all the explanations and information which to the best of his knowledge and belief were necessary for the purposes of the audit; and

- (b) whether, in his opinion, proper books of account have been kept by the Trust, so far as appears from his examination of those books; and
- (c) whether the Trust has discharged its financial duties and obligations under the provisions of this Act.

(4) Within one month after the end of the audit of its accounts for any financial year, the Trust shall prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts for that year.

(5) The Minister shall lay one copy of the annual report and of the audited accounts on the table of the Parliament as soon as practicable after they have been received by him.

(6) The Trust shall furnish to the Government—

- (a) a copy of its estimates of income and expenditure, including capital expenditure, no later than the 31 January in each year for the next financial year of the Trust; and
- (b) such financial, statistical and other information about the affairs of the Trust as it may from time to time require.

Financial Year.

67. The financial year of the Trust shall be the twelve month period ending on the 31st March in each year provided that the first financial year of the Trust shall be the period commencing on the commencement date of this Act and ending on the 31st March next thereafter.

Vesting of Property.

68.(1) The premises described in Part 1 of Schedule 6 shall be vested in the Crown in fee simple to be held by it pursuant to and in accordance with the provisions of section 75(1) of the Constitution and it shall be the duty of the Government to keep or cause to be kept the premises in a state of good repair.

(2) The Collections and other personal property and chattels described in Part 2 of Schedule 6 shall vest in the Trust and shall constitute Trust Property.

No personal liability to attach to Trustees.

69. No personal liability shall attach to any Trustee in respect of anything done or omitted to be done in good faith under the provisions of this Act.

No personal liability to attach to members of Garrison Library.

70. No personal liability shall attach to any member of the Garrison Library Committee in respect of anything done or omitted to be done prior to the commencement of this Act, including but not limited to agreeing to the vesting of the property vested in the Crown and in the Trustees respectively under section 68.

Regulations.

71.(1) The Minister may make Regulations to regulate the affairs of the Trust, including but without prejudice to the generality of the foregoing to modify the powers of the Trustees and generally for carrying out the purposes of this Act.

(2) Regulations made under this section may provide for the implementation of any international or European Union obligation.

**PART 11
MISCELLANEOUS PROVISIONS**

Register of scheduled monuments etc..

72.(1) The Minister shall, in consultation with the Council, compile and maintain for the purposes of this Act a register of scheduled monuments, scheduled conservation and archaeological areas which are for the time included in Schedule 2, 3, and 4 respectively, whether as a single entry or in sections containing the monuments and areas

(2) The register shall record in respect of each scheduled monument, scheduled conservation area and scheduled archaeological area a chronological record of events, activities, operations, discoveries and any

other matter which provides a comprehensive account of the history of such monuments and areas.

(3) The Minister shall keep available the register for public inspection free of charge during normal office hours.

Treatment and preservation of finds.

73.(1) Where a person enters any scheduled archaeological area to carry out any operations in exercise of an archaeological area consent granted under section 25(4) on land or on the seabed, he may take temporary custody of any object of archaeological interest or any antiquity discovered and remove the object or antiquity from the area and take temporary custody of it for the purpose of examining, testing, treating, recording or preserving it.

(2) Where an authorised person enters any scheduled archaeological area to—

- (a) observe any operations in the land or seabed; or
- (b) to carry out any archaeological examination of the land or seabed,

he may take temporary custody of any object of archaeological interest or antiquity discovered and remove the object or antiquity from the area for the purpose of examining, testing, treating, recording or preserving it.

(3) An authorised person for the purposes of subsection (2) is-

- (a) the Minister or any public officer in the staff of the Minister;
- (b) any member of the Council;
- (c) any other person authorised by the Minister.

Restrictions on removal of antiquity or object of interests from Gibraltar.

74.(1) Any person who exports an antiquity or object of interest to any destination shall be guilty of an offence.

(2) Notwithstanding the control of exports under the Imports and Exports Act 1986, subsection (1) shall not apply to the export of an antiquity or object of interest on the authority of a permit granted by the Minister after consulting the Council.

(3) Without prejudice to its definition in section 3, “antiquity or object of interests”, for the purposes of this section, shall also include any goods manufactured or produced more than 50 years before the proposed date of exportation except–

- (a) postage stamps and other articles of philatelic interest;
- (b) birth, marriage or death certificates or other documents relating to the personal affairs of the exporter or the spouse, civil partner or partner of the exporter;
- (c) letters or other writings written by or to the exporter or the spouse, civil partner or partner of the exporter;
- (d) any goods exported by, and being the personal property of, the manufacturer or producer thereof, or the partner, civil partner, spouse, widow or widower of that person; and
- (e) any other item designated by the Minister after consulting the Council.

(4) A person guilty of an offence under this section shall be liable–

- (a) on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 2 on the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 of the standard scale, or both.

(5) In any proceedings for an offence under this section, it shall be a defence to prove that an antiquity or object of interest was exported in accordance with the terms of a valid permit issued under this section.

Restrictions on use of equipment.

75.(1) Any person who, in the site of a scheduled monument or in a scheduled conservation area or a scheduled archaeological area—

- (a) uses any equipment with the intention of finding or detecting any antiquity or object of interest; and
- (b) removes any such object or antiquity which he has discovered by the use of any such equipment,

without the written authority of the Minister shall be guilty of an offence.

(2) An authority under subsection (1) may be subject to conditions.

(3) If a person who has been granted an authority under subsection (1) fails to comply with any condition (if any) attached to the authority, he shall be guilty of an offence.

(4) A person guilty of an offence under this section shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 2 on the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 of the standard scale, or both.

(5) In any proceedings for an offence under this section, it shall be a defence to prove—

- (a) that he used the equipment for metal detection for a purpose other than detecting or locating antiquity or object of interests;
- (b) that he had taken all reasonable precautions to find out whether the place where he used the equipment was the site of a scheduled monument, a scheduled conservation area or a scheduled archaeological area and he did not believe it was.

Regulations.

76.(1) The Minister may from time to time make regulations for the purposes of providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

(2) Without prejudice to the generality of subsection (1) such regulations may provide for–

- (a) any matter appertaining to the functions, constitution and proceedings of the Council;
- (b) prescribing the procedure to be followed on any consent under this Act, the forms to be used in such consents;
- (c) prescribing fees in respect of any matters under this Act;
- (d) regulating conduct in the Gibraltar Museum, Gibraltar National Archives and the Gibraltar Garrison Library providing that a contravention of any such regulation shall constitute a criminal offence, and providing for a penalty for any such offence;
- (e) the form and contents of the register maintained under section 55.

Repeal of Gibraltar Heritage Trust Act 1989.

77. The Gibraltar Heritage Trust Act 1989 is repealed.

Repeal of Gibraltar Garrison Library Trust Act 2011.

78. The Gibraltar Garrison Library Trust Act 2011 is repealed.

Savings and Transitional Provisions.

79. Notwithstanding the repeal of the Gibraltar Heritage Trust Act 1989 under section 77 and the Gibraltar Garrison Library Trust Act 2011 under section 78, no personal liability shall attach to any trustee of the Gibraltar Heritage Trust or the Gibraltar Garrison Library Trust in respect of anything done or omitted to be done, in good faith, prior to the coming into operation of this Act.

SCHEDULE 1

Constitution and Procedure of the Heritage and Antiquities Advisory Council.

Membership of Council.

1.(1) The Council shall consist of the following members–

- (a) the Minister who shall be the chairperson;
- (b) the Curator of the Gibraltar Museum;
- (c) the Government Archivist;
- (d) the Government Archaeologist; and
- (e) seven other persons, as follows-
 - (i) one person representing the Garrison Library Trust
 - (ii) one person representing the Ministry for Heritage
 - (iii) one person representing the Tourist Board
 - (iv) one person representing the Department of the Environment
 - (v) one person representing the Board of the Gibraltar Heritage Trust;
 - (vi) one person representing the Town Planning Department
 - (vii) one person representing the Gibraltar Ornithological and Natural History Society.

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

(3) Where an appointment is made under sub-paragraphs (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 Minister may remove from office on the grounds of inability, neglect of duty, insolvency or misconduct any appointed or alternate member of the Council.

Chairperson and Procedure.

2.(1) The Minister as chairperson of the Council shall preside at all meetings of the Council.

(2) At any meeting of the Council seven voting members shall form a quorum.

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

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

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

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

Executive Officer and Secretary.

3. A public officer on the staff of the Minister shall be appointed by the Minister to be the executive officer and the secretary of the Council.

SCHEDULE 2
Scheduled Monuments

Part 1 – Buildings

Part 2 – Monuments

Part 3 – Fortifications

Part 4 – Caves and geological features

Part 5 – Other monuments or buildings

SCHEDULE 3
Scheduled Conservation Areas

SCHEDULE 4
Scheduled Archaeological Areas

SCHEDULE 5
Constitution and procedures of the Gibraltar Heritage Trust

PART 1

Constitution of the Board.

1.(1) Subject to sub-paragraph (5) the Board shall consist of twelve trustees, 6 of whom shall be appointed by the Minister, for such term as shall be specified in the instrument of appointment. The remaining six trustees shall be elected at an annual general meeting of the Trust.

(2) Subject to subsection (5) a chairperson and vice-chairperson shall be elected by the trustees from among themselves.

(3) If a trustee appointed by the Minister dies or resigns or otherwise ceases to be a trustee, the Minister may appoint another person in his place.

(4) The Minister may discharge an appointed trustee from his office at any time.

(5) If an elected trustee dies, resigns or otherwise ceases to be a trustee, the Board may appoint in his place another person and the person so appointed shall hold office until the next annual general meeting of the Trust.

(6) An elected trustee may resign his office by notice in writing addressed to the chairperson. A chairperson or vice-chairperson may resign his office by notice in writing to the Minister. A trustee who absents himself from three consecutive meetings of the Board, without leave of the Board, shall be deemed to have resigned his office.

(7) An appointed trustee may resign his office by notice in writing to the Minister.

(8) At every annual general meeting of the Trust, one third of the elected trustees shall retire and shall be eligible for re-election. The members of the Board shall decide among themselves which of the elected trustees shall retire and such retirements shall occur on rotation.

(9) A person is disqualified from the office of trustee if—

(a) he is an undischarged bankrupt, or

(b) he has been convicted by any court of a criminal offence involving fraud or dishonesty and sentenced to a term of imprisonment without option of a fine.

(10) The validity of any proceedings of the Board shall not be affected by any vacancy among the trustees or by any defect in the appointment of the trustees.

(11) The Board may regulate its own procedure.

(12) An elected trustee may be removed from office at any time by a resolution passed at a general meeting of the Trust by a majority of not less than two-thirds of the members present at the meeting.

Membership.

2. The membership, if any, of the Trust shall be divided into the classes specified in Part 2.

General meetings.

3. General meetings of the Trust shall be held once at least in every year and shall be called and held in accordance with such rules as may be made by resolution of the Board passed at its meeting by a majority of not less than two-thirds of the trustees present at the meeting and approved at the next meeting of the Trust.

PART 2

Classes of membership

4.(1) The members of the Trust shall be divided into the following classes—

(a) ordinary subscribing members;

(b) life members;

(c) benefactors;

(d) corporate members;

- (e) junior members;
 - (f) family members;
 - (g) such other classes as the Board may from time to time by resolution determine.
- (2) Ordinary subscribing members shall be annual subscribers to the funds of the Trust of such minimum annual subscription as may from time to time be fixed by a resolution of the Board.
- (3) Life members shall be persons who have made to the funds of the Trust a subscription of not less than a minimum amount fixed by a resolution of the Board as at the time when the subscription was made.
- (4) Benefactors shall be persons who have given to the Trust such sum of money or other property as, in the opinion of the Board, is such as to entitle such persons to be distinguished as benefactors.
- (5) Corporate members shall be corporate or other bodies or associations who may have made annual subscriptions to the funds of the Trust of such minimum amount as the Board may by resolution from time to time fix, and different minimum annual subscriptions may from time to time be fixed for different classes of corporate members.
- (6) Junior members shall be annual subscribers to the funds of the Trust as such minimum annual subscription and of such an age as the Board may from time to time fix by resolution.
- (7) Family members shall be persons who are members of the family of an ordinary subscribing member who make to the funds of the Trust an annual subscription of such minimum amount as the Board may from time to time by resolution fix.

SCHEDULE 6
Gibraltar Garrison Library Trust

PART 1

The Premises vested in the Crown

ALL THAT piece or parcel of land and the buildings erected thereon, being Freehold Property No 605 in the General Plan of the City of Gibraltar and recorded in R No 138, containing in the whole 69,454 square feet or thereabouts, including the Garrison Library and Library Gardens, ex printing works and editorial offices, various residential properties and all other associated or ancillary structures and buildings, but subject to the existing leasehold interests, all of which piece and parcel of land is bounded to the North by Library Ramp, to the West partly by Governor's Street and partly by Freehold Property No 607, Freehold Property No 614 and Crown Property No 620F, to the South by Crown Property No 620F, Crown Property No 620/620B, Crown Property No 613/615/616 and Freehold Property No 612 and to the East partly by Prince Edwards Road and partly by Crown Property No 603 and Freehold Property No 604/606.

AND ALL other real estate property or any interest therein whatsoever vested in the Gibraltar Garrison Library Trust at the time of commencement of this Act.

PART 2

The Collections and other chattels vested in the Gibraltar Garrison Library Trust

All books, journals, prints, plans, maps and other written materials and papers of whatever kind, and all furniture, fixtures, fittings, equipment, artefacts and things in the possession, ownership or control of the Trustees at the time of commencement of this Act.

Explanatory Memorandum

The Bill creates a new Heritage and Antiquities Act.

Part 1 of the Bill includes provision as to the scope of the Act, which will apply not only to land but also within BGTW.

Clause 5 relates to title in respect of objects or interest etc. which are discovered after the coming into operation of the Act. Title in newly discovered objects of interest etc. vest in the Government, irrespective of where they are found. Subclauses (2) to (4) provide for regulations to be made in respect of compensation.

Part 2 of the Bill establishes the Heritage and Antiquities Advisory Council, the procedural matters relating to the Council being set out in Schedule 1.

Clause 8 requires that in discharging its functions the Council must take account of certain prescribed matters including the need for social, cultural and economic development in Gibraltar and the interests of the community in general.

Where specific matters upon which the Minister requires advice, ad-hoc advisory committees may be established under clause 9.

The council is required to provide the Minister with an annual report which will be laid before Parliament.

Part 3 - Protection of Monuments and Buildings operates on the basis of listing of those monuments or buildings that should benefit from a regime of protection from damage or alteration through works. Damage, including damage by demolition through to graffiti is made an offence. Works to a scheduled building or monument may, however be undertaken where these have been authorised. The authorisation can be given subject to conditions (clause 15) and may be modified (clause 16). Where urgent preservation is required the Minister may order remedial works to be undertaken and the costs thereof be recovered from the owner under clause 17.

Part 4 provides for certain areas to be listed as scheduled conservation areas. In such areas demolition may only be undertake if authorised. The authorisation may include conditions which may be varied, where necessary.

In the case of unoccupied buildings within a scheduled conservation area the Minister may authorise urgent works under clause 21.

Part 5- Archaeological Areas and Findings. By listing an area as a scheduled archaeological area operations that may be carried out in that area are restricted. In particular the removal of any antiquity or object of interest is an offence. Consent for operations in such an area must specify the matters set out in clause 25(6) which includes provisions relating to what must be recorded.

Part 6 provides for the appointment of a suitable person as the Archaeological Officer, and sets out the functions general functions.

Part 7 relates to the Gibraltar Museum and provides for the appointment and functions of a Curator. The property of the Museum vests in the Crown and is held for the benefit and enjoyment of the public.

Part 8 establishes the Gibraltar National Archive and provides for the appointment of an Archivist.

This Part also makes it a duty of every public officer or employee who holds public records to select records for preservation and their eventual transfer to the Archive. Access to the records in the archive is to be facilitated by the Archivist under clause 43.

Part 9 deals with the Gibraltar Heritage Trust. The Gibraltar Heritage Trust Act 1989 is repealed by this Bill and the Trust will continue to exist and operate under this Act instead.

Part 10 provides for the continuance of the Gibraltar Garrison Library Trust and for its governance, objects and purposes on the same terms as the Gibraltar Garrison Library Trust Act 2011.

Part 11 deals with miscellaneous provisions including the creation of a register of scheduled monuments and conservation and archaeological areas; restrictions on the removal of antiquities and restrictions on the use of equipment.

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