

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5041 GIBRALTAR Thursday 23rd March 2023

B. 03/23

BILL

FOR

AN ACT to amend the Heritage and Antiquities Act 2018 and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Heritage and Antiquities (Amendment) Act 2023.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of the Heritage and Antiquities Act 2018.

3.(1) The Heritage and Antiquities Act 2018 is amended in accordance with the provisions of this section.

(2) In section 3—

(a) before the definition of “antiquity or object of interest” insert —

““1970 UNESCO Convention” means the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by the United Nations Educational, Scientific and Cultural Organisation on 14th November 1970, as amended from time to time;

“1972 UNESCO Convention” means the Convention Concerning the Protection of the World Cultural and Natural Heritage adopted by the United Nations Educational, Scientific and Cultural Organisation on 16th November 1972, as amended from time to time.”;

(b) after the definition of “Curator” insert —

““Development and Planning Commission” means the Development and Planning Commission continued under section 3 of the Town Planning Act 2018;”;

(c) after the definition of “site of monument or building” insert —

““metal detector” means any device designed or adapted for detecting or locating any metal or mineral in the ground;”;

(d) after the definition of “seabed” insert—

““seashore” means any beach including the foreshore thereto;”.

(3) In section 27(a), after the word “seabed” insert “, whether in a scheduled archaeological area or otherwise”.

(4) After section 28, insert —

“PART 5A FINDINGS

Restrictions on use of metal detectors.

28A.(1) If a person uses a metal detector in a protected place without the prior written consent of the Minister he shall be guilty of an offence.

(2) This section shall not apply to the use of metal detectors by—

- (a) any police officer;
- (b) any other law enforcement officer; or
- (c) any person to whom the Armed Forces Act 2018 applies,

provided any such use is carried out in the course of their duties.

(3) In this section a protected place means any place which is either —

- (a) a scheduled building or monument;
- (b) a scheduled historical conservation area; or
- (c) any area to which the public has access, except the seashore.

(4) If a person without the prior written consent of the Minister removes any antiquity or object of interest which he has discovered by the use of a metal detector,

regardless of whether found in a protected place or otherwise, he shall be guilty of an offence.

(5) A consent granted by the Minister for the purposes of this section may be granted either unconditionally or subject to conditions.

(6) If any person –

(a) in using a metal detector in a protected place in accordance with any consent granted by the Minister for the purposes of this section; or

(b) in removing or otherwise dealing with any object which he has discovered by the use of a metal detector in accordance with any such consent;

fails to comply with any condition attached to the consent, he shall be guilty of an offence.

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

(a) on summary conviction to imprisonment for a term not exceeding 6 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.

(8) In any proceedings for an offence under subsection (1) above, it shall be a defence for the accused to show that –

(a) he used the metal detector for a purpose other than detecting or locating antiquities or objects of interest; or

(b) he did not know or had no reason to believe that the place on which the metal detector was used was a protected place.

(9) Nothing in this section shall affect the obligation to report an archaeological finding under section 29.”.

(5) In section 29(7), after “(including a desk-based assessment)” insert “, which shall be undertaken by a suitably qualified person who shall follow any guidance published by the Archaeological Officer”.

(6) After section 29, insert –

“Offence of dealing in tainted antiquities or objects of interest.

29A.(1) A person is guilty of an offence if they dishonestly deal in an antiquity or an object of interest that is tainted, knowing or believing that the object is tainted.

- (2) It is immaterial whether they know or believe that the object is an antiquity or an object of interest.
- (3) A person guilty of the offence is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding seven years or a fine (or both),
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both).

Meaning of “tainted”.

- 29B.(1) For the purposes of section 29A, an antiquity or object of interest is tainted if, after the commencement of this section –
- (a) a person removes the antiquity or object of interest in a case falling within subsection (3) or he excavates it; and
 - (b) the removal constitutes an offence.
- (2) It is immaterial for the purposes of this section whether–
- (a) the removal or excavation was done in Gibraltar or elsewhere;
 - (b) the offence is committed under the law of Gibraltar or under the law of any other country or territory.
- (3) An object is removed in a case falling within this subsection if –
- (a) it is removed from a structure of historical, architectural or archaeological interest where the object has at any time formed part of the structure; or
 - (b) it is removed from a monument or building; or
 - (c) it is removed in contravention of section 29.
- (4) It is immaterial whether a structure, monument or building is above or below the surface of the land, or below water.

Meaning of “deals in”.

- 29C.(1) For the purposes of section 29A, a person deals in an antiquity or object of interest if (and only if) they –
- (a) buy, hire, borrow or accept, sell, let on hire, lend, give or bequeath;
 - (b) import or export in contravention of section 49;

- (c) agree with another to do an act mentioned in paragraphs (a) or (b), or
 - (d) make arrangements under which another person does such an act or under which another person agrees with a third person to do such an act.
- (2) In relation to agreeing or arranging to do an act, it is immaterial whether the act is agreed or arranged to take place in Gibraltar or elsewhere.”.
- (7) In section 49 —
- (a) in the title, for “removal” substitute “import or export”, and after “interests” insert “in or”;
 - (b) in subsection (1) before “exports” insert “imports an antiquity or object of interest into Gibraltar or”;
 - (c) in subsection (2) before “exports” insert “imports and” and before “export” insert “import or”;
 - (d) in subsection (5) before “exported” insert “imported or”;
 - (e) after subsection (5), insert —
 - “(6) Any antiquity or object of interest which is imported or exported in contravention of this section shall be liable to forfeiture to the Crown, whether or not any person is charged with any offence in connection with them.
 - (7) The court shall, on the application of the Attorney General, issue a declaratory order that any antiquity or object of interest to which subsection (6) applies are forfeited to the Crown.
 - (8) Any antiquity or object of interest which is forfeited under this section shall be donated to the Curator and sections 35 and 36 of this Act shall apply to the vesting of such property in the Crown in right of the Government.”.
- (8) Section 50 is repealed in its entirety.
- (9) In section 51(2)(f) for “1971 UNESCO Convention” substitute “1972 UNESCO Convention”.
- (10) In Schedule 2, Part 3, after “Curtain Walls to Alexandra Battery”, insert “, including Alexandra Battery”.

Amendment of the Imports and Exports (Control) Regulations, 1987.

4. The Imports and Exports (Control) Regulations, 1987 are amended as follows —

- (a) in Schedule 1 by inserting, after paragraph 25-
“26. Antiquities and objects of interests within the meaning of the Heritage and Antiquities Act 2018, except in accordance with section 49 of that Act.”;
- (b) in Schedule 2, paragraph 1 after “gold coins”, by deleting “.” and inserting “(other than any gold bullion or gold coin which constitutes an antiquity or object of interest within the meaning of the Heritage and Antiquities Act 2018).”.

EXPLANATORY MEMORANDUM

This Act amends the Heritage and Antiquities Act 2018 to impose a requirement to obtain the prior consent of the Minister for using a metal detector in certain areas.

Dealing in tainted antiquities or objects of interest is an offence created by this Act, which prohibits, amongst other things, the sale, purchase, import or export of any antiquity or object of interest removed unlawfully. The Act also prohibits the importation of antiquities generally except with a permit granted by the Minister.

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