

**STAMP DUTIES ACT 2005****Principal Act****Act. No. 2005-73***Commencement (LN. 2006/001)*

12.1.2006

*Assent*

22.12.2005

Amending  
enactmentsRelevant current  
provisionsCommencement  
date

Act. 2006-16 ss. 2, 25(1) and Sch. 1

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**Title and commencement.**

1.(1) This Act may be cited as the Stamp Duties Act 2005 and comes into operation on the date the Minister notifies by notice in the Gazette.

(2) Any duty paid or payable on an instrument under the Stamp Duty Act between 1 July 2005 and the repeal of that Act which would not have been paid or payable on that instrument had this Act been effective and the Stamp Duty Act not effective, shall be repaid or remitted as the case may be, save duty paid in respect of instruments relating to transactions over Real Property in Gibraltar.

(3) Any instrument that has been duly stamped with the duty charged on that instrument at the rate applicable to that instrument at the time that it is executed shall be deemed to be duly stamped.

**Interpretation.**

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

“Commissioner” means the Commissioner or Commissioners of stamp duties whose appointment is provided for in Section 9;

“conveyance on sale” shall have the meaning ascribed to that term in section 19;

“die” includes any plate, type, tool or implement whatever used under the direction of the Minister or of the Commissioner for expressing or denoting any duty, or rate of duty, or the fact that any duty or rate of duty or penalty has been paid, or that the instrument is duly stamped, or that it is charged with any duty or for denoting any fee, and also any part of any such plate, type, tool or implement;

“duty” means any stamp duty for the time being chargeable under this Act or any regulations made hereunder and also includes any fee chargeable thereunder;

“executed” and “execution” with reference to instruments not under seal, mean signed and signature;

“Gibraltar Real Property Investment” means any Investment in a relevant body owning Real Property in Gibraltar;

“instrument” includes every written document;

“Interest” means any interest either directly or indirectly or through a company or series of companies and whether such interest is equitable, legal or contractual or by reason of any agreement or arrangement with any other person by which a right to acquire an Interest or any other benefit is acquired;

“Investment” means stock, shares, securities, debentures, debenture stock, loan stock, bonds certificates of deposit and any instruments creating or acknowledging indebtedness including bills of exchange of any kind in a relevant body, units in a collective investment scheme and any rights to and interests in any of the foregoing in or issued by an entity that is not quoted on a Recognised Stock Exchange;

“marketable security” includes the security of such a description as to be capable of being sold in any Recognised Stock Exchange authorised by the competent authority of the country in which that Exchange is located;

“material” includes every sort of material upon which words or figures can be expressed;

“Minister” means the Minister responsible for public finances;

“money” includes all sums expressed in the currency of Gibraltar or in any foreign currency;

“mortgage” shall have the meaning ascribed to that term in section 35;

“Property subject to duty” means Real Property in Gibraltar or Gibraltar Real Property Investment;

“Real Property in Gibraltar” means immoveables and land situated in Gibraltar or any estate, interest or rights including leasehold estates, interest or rights in or over immoveables and land situated in Gibraltar;

“Recognised Stock Exchange” has the meaning ascribed to it in the Income Tax Act;

“relevant body” means—

- (a) any company incorporated or registered under any law in force in Gibraltar or elsewhere;
- (b) any partnership constituted under any law in force in Gibraltar or elsewhere;
- (c) any body corporate incorporated or registered under any law in force in Gibraltar or elsewhere;
- (d) any unincorporated body constituted under any law in force in Gibraltar or elsewhere;

“stamp” means a stamp impressed by means of a die;

“stamped”, with reference to instruments and material, applies to instruments and material impressed with stamps by means of a die;

“Value of Real Property in Gibraltar” means the value of the Real Property in Gibraltar without deducting or setting off the amount of any debt or any other amount whether secured on the Real Property in Gibraltar or otherwise or unsecured represented by or held in a Gibraltar Real Property Investment.

#### **PART I.**

##### **PROVISIONS APPLICABLE TO INSTRUMENTS GENERALLY**

##### **Charge of duty upon instruments.**

3. The duties to be charged on behalf of Her Majesty, for the use of the Government of Gibraltar, upon the several instruments specified in Schedule 1 shall be the several duties specified in that Schedule, subject to the exemptions contained in this Act and in any other Act for the time being in force.

##### **Manner of denoting duty.**

4.(1) All stamp duties for the time being chargeable under the provisions of this Act upon any instruments are to be paid and denoted according to the provisions of this Act and, except where express provision is made to the contrary, are to be denoted by impressed stamps only.

(2) Every instrument written upon stamped material is to be written in such manner, and every instrument partly or wholly written before being stamped is to be so stamped, that the stamp may appear on the face of the instrument, and cannot be used for or applied to any other instrument written upon the same piece of material.

(3) If more than one instrument be written upon the same piece of material every one of the instruments liable to duty is to be separately and distinctly stamped with the duty with which it is chargeable.

(4) No impressed or embossed stamp or stamps made by means of a die may be used in any manner except upon the document upon which it was originally impressed, embossed or stamped.

(5) The amount of the duty upon any instrument may be denoted by several stamps and stamps of greater value than is required may be used upon any instrument.

### **Instruments to be separately charged with duty in certain cases.**

5. Except where express provision to the contrary is made either by this or by any other Act,—

- (a) an instrument containing or relating to several distinct matters is to be separately and distinctly charged as if it were a separate instrument, with duty in respect of each of such matters liable to duty;
- (b) an instrument made for any consideration or considerations in respect whereof it is chargeable with ad valorem duty, and also for any further or other valuable consideration or considerations, is to be separately and distinctly charged, as if it were a separate instrument, with duty in respect of each of the considerations.

### **Facts and circumstances affecting duty to be set forth in instrument.**

6. All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument and a person who, with intent to defraud the Government—

- (a) executes any instrument in which all such facts and circumstances are not fully and truly set forth; or
- (b) being employed or concerned in or about the preparation of any instrument, neglect or omits fully and truly to set forth therein all such facts and circumstances,

is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

**Mode of calculating ad valorem duty in certain cases.**

7.(1) Where an instrument is chargeable with ad valorem duty in respect of any money in any foreign currency, the duty shall be calculated on the value, on the day of the instrument, of the money in the currency of Gibraltar according to the current rate of exchange.

(2) Where the instrument contains a statement of current rate of exchange, or average rate of exchange, as the case may require, and is stamped in accordance with that statement, it is, so far as regards the subject matter of the statement, to be deemed duly stamped, unless or until it is shown that the statement is untrue, and that the instrument is in fact insufficiently stamped.

**Appropriated stamps.**

8.(1) A stamp which by any word or words on the face of it is appropriated to any particular description of instrument is not to be used, or if used, is not to be available, for an instrument of any other description.

(2) An instrument falling under the particular description to which any stamp is so appropriated is not to be deemed duly stamped, unless it is stamped with the stamp so appropriated.

**Commissioner of Stamp Duties and Assistant Commissioners of Stamp Duties.**

9.(1) The Minister shall designate one or more fit and proper persons who shall be Commissioners of Stamp Duties and shall have the care and management of the duties to be undertaken under this Act.

(2) Save as otherwise provided by this Act or by any law for the time being in force, any decision, act or thing required to be made or done by a Commissioner may be made or done by any one of the Commissioners when there is more than one Commissioner.

(3) The Minister may designate one or more fit and proper persons who shall be Assistant Commissioners of Stamp Duties, and any Assistant Commissioner of Stamp Duty so appointed may, subject to any directions and restrictions given to him by the Commissioner of Stamp Duty, exercise all the powers and perform all the duties of the Commissioner of Stamp Duties.

**Denoting certificate.**

10. Where the duty with which an instrument is chargeable depends in any manner upon the duty paid upon another instrument, the payment of the last



mentioned duty shall, upon application to the Commissioner, payment of the prescribed fee and production of both the instruments, be denoted upon the first mentioned instrument by a certificate under the hand of the Commissioner.

## **Commissioner's opinion as to duty.**

11.(1) The Commissioner may be required by any person upon payment of the prescribed fee to express his opinion with reference to the amount of duty (if any) payable on any executed instrument and in such case a certificate shall be endorsed on the instrument, under the hand of the Commissioner, stating that, in his opinion, such instrument is not chargeable with any duty, or the particular amount with which, in his opinion, it is chargeable, or if in his opinion such is the case, that it is duly stamped:

Provided that nothing in this section shall—

- (a) extend to any instrument chargeable with ad valorem duty and made as a security for money or stock without limit; or
- (b) authorise the stamping after the execution thereof of any instrument which by law cannot be stamped after execution.

(2) The Minister may make rules for the purpose of giving effect to the provisions of subsection (1).

## **Assessment by Commissioner and payment of duty.**

12. Every instrument bearing a certificate of the Commissioner that it is not chargeable with duty or that it is duly stamped, or being stamped with the amount of duty assessed and certified by him shall be admissible in evidence and available for all purposes, notwithstanding any objection relating to duty:

Provided that the instrument upon which the duty has been assessed by the Commissioner shall not be stamped otherwise than in accordance with the assessment of the Commissioner.

## **Evidence to the Commissioner.**

13. In any case of application to the Commissioner with reference to any instrument, the Commissioner may require to be furnished with such evidence as he may deem necessary in order to show to his satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully

and truly set forth therein, and he may refuse to proceed upon any such application until such evidence has been furnished accordingly.

**Right of appeal.**

14.(1) Any person who is dissatisfied with the assessment of the Commissioner may, within 21 days after the date of the assessment, and on payment of duty in conformity therewith, appeal against the assessment to the Supreme Court, and may for that purpose require the Commissioner to state and sign a case, setting forth the question upon which his opinion was required and the assessment made by him.

(2) The Commissioner shall thereupon state and sign a case and deliver the same to the person by whom it is required, and the case may, within 7 days thereafter, be set down by him for hearing.

(3) Upon the hearing of the case the court shall determine the question submitted, and, if the instrument in question is in the opinion of the court chargeable with any duty, shall assess the duty with which it is chargeable.

(4) If it is decided by the court that the assessment of the Commissioner is erroneous, the court shall assess the correct amount of duties, and—

- (a) in the event of an excess of duty having been paid in conformity with the erroneous decision of the Commissioner, any excess of duty which may have been paid in conformity with such decision, together with any fine or penalty which may have been paid in consequence thereof, shall be ordered by the court to be repaid to the appellant, with or without costs as the court may determine; and
- (b) in the event of the court assessing an amount of duty greater than that assessed by the Commissioner, the difference between the amount of duty assessed by the Commissioner and the amount assessed by the court, together with any fine or penalty which may have been incurred but not yet paid, shall be paid by the appellant, forthwith or within such time as the Court may direct.

(5) If the assessment of the Commissioner is confirmed by the Court or if the Court assesses an amount of duty in excess of that assessed by the Commissioner, the Court may make an order for payment to the Commissioner of the costs incurred by him in relation to the appeal.

**Instruments received in evidence.**

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15.(1) Upon the production of an instrument chargeable with any duty as evidence in any court of civil judicature in Gibraltar, or before any arbitrator or referee, notice shall be taken by the judge, arbitrator or referee of any omission or insufficiency of the stamps thereon, and if the instrument is one which may legally be stamped after the execution thereof, it may, on payment to the officer of the court whose duty it is to read the instrument, or to the arbitrator or the referee, of the amount of the unpaid duty, and the penalty payable on stamping the same, and of a further sum of £25, be received in evidence saving all just exceptions on other grounds.

(2) The officer, arbitrator or referee receiving the duty and penalty shall give a receipt for the same, and make an entry in a book kept for that purpose of the payment and of the amount thereof, and shall communicate to the Commissioner the name or title of the proceedings in which and the party from whom, he received the duty and penalty and the date and description of the instrument, and shall pay into the Consolidated Fund the money so received by him for the duty and penalty.

(3) On production to the Commissioner of any instrument in respect of which any duty or penalty has been paid, together with the receipt, the payment of the duty and penalty shall be denoted on the instrument.

(4) Save as aforesaid, an instrument executed in Gibraltar, or relating, wheresoever executed, to any property situate or to any matter or thing done or to be done in Gibraltar, shall not, except in criminal proceedings, be given in evidence or be available for any purpose whatever, unless it is duly stamped in accordance with the law in force in Gibraltar at the time when it was first executed.

## **Stamping of instruments after execution.**

16.(1) Save where other provision is made in this Act, any unstamped or insufficiently stamped instrument may be stamped after the execution thereof, on payment of the unpaid duty and a penalty of an amount equal to 10% of the duty payable or £100, whichever shall be the greater, and also by way of further penalty, where the unpaid duty exceeds £1,000, of interest on such duty, at the rate of 5 per cent per annum or such other rate which may be prescribed by the Minister by notice in the Gazette, from the day upon which the instruments was first executed up to the time when the amount of interest is equal to the unpaid duty.

(2) Stamps representing the amount of the unpaid duty together with the penalty shall, upon payment thereof, be impressed on the instrument by the Commissioner.

(3) In the case of such of the instruments mentioned in Schedule 2 as are chargeable with ad valorem duty, the following provisions shall have effect—

- (a) the instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper ad valorem duty before the expiration of forty days after it is first executed unless the opinion of the Commissioner with respect to the amount of duty with which the instrument is chargeable has, before such expiration, been required under the provisions of this Act;
- (b) if the opinion of the Commissioner with respect to any such instrument has been required, the instrument shall be stamped in accordance with the assessment of the Commissioner within fourteen days after notice of the assessment;
- (c) if any such instrument executed after the coming into operation of this Act has not been or is not duly stamped in conformity with the foregoing provisions of this subsection, the person in that behalf specified in Schedule 2 is guilty of an offence and is liable on conviction to a fine not exceeding level 4 on the standard scale, and in addition to the penalty prescribed under subsection (1) on stamping the instrument, there shall be paid a further penalty equivalent to the unpaid duty thereon, unless a reasonable excuse for the delay in stamping or the omission to stamp, or the insufficiency of stamp, be afforded to the satisfaction of the Commissioner, or of the court, judge, arbitrator or referee before whom it is produced.

(4) Save where other express provision is made by this Act in relation to any particular instrument, the Commissioner may, if he thinks fit and with the consent of the Minister, mitigate or remit any penalty payable on stamping.

**Rolls and books to be open to inspection.**

17.(1) Every person having in his custody any rolls, books, records, papers, documents or proceedings, the inspection whereof may tend to secure any duty, or to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereto authorised by the Commissioner to inspect the rolls, books, records, papers, documents and proceedings, and to take such notes and extracts which he may deem necessary, without fee or reward, and a person who refuses is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

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(2) Where such rolls, books, records, papers, documents or proceedings are in the custody of any bank, such inspection shall first be made by the Commissioner unaccompanied by any other person unless the Commissioner decides that it is necessary for him to have assistance in determining whether any fraud or omission in relation to any duty has taken place.

### **Penalty for enrolling instrument not stamped.**

18. A person whose office it is to enrol, register or enter in or upon any rolls, books or records any instrument chargeable with duty and who enrolls, registers or enters any such instrument not duly stamped, is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

## **PART II**

### **PROVISIONS APPLICABLE TO PARTICULAR INSTRUMENTS**

#### **Meaning of “conveyance on sale”.**

19.(1) For the purposes of this Act the expression “conveyance on sale” means—

- (a) every instrument, and every decree or order of any court whereby any Property subject to duty, upon the sale thereof is transferred to or vested in a purchaser, or any other person on his behalf or by his direction;
- (b) a decree or order for, or having the effect of an order for foreclosure of Property subject to duty:

Provided that—

- (i) the ad valorem duty upon any such decree or order shall not exceed the duty on a sum equal to the Value of the Real Property in Gibraltar or the Value of the Real Property in Gibraltar represented by a Gibraltar Real Property Investment to which the decree or order relates, and where the decree or order states that value that statement shall be conclusive for the purpose of determining the amount of the duty; and
- (ii) where ad valorem duty is paid upon such decree or order, any conveyance following upon any such decree or order shall be exempt from the ad valorem duty.

#### **How consideration consisting of stock and securities, to be charged.**

20.(1) Where the consideration, or any part of the consideration, for a conveyance on sale of Property subject to duty consists of any stock or marketable security, such conveyance is to be charged with ad valorem duty in respect of the value of the stock or security.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale of Property subject to duty consists of any security not being a marketable security such conveyance is to be charged with ad valorem duty in respect of the amount due on the day of the date thereof for principal and interest upon the security.

**How consideration consisting of periodical payments, to be charged.**

21.(1) Where the consideration, or any part of the consideration, for a conveyance on sale of Property subject to duty consists of money payable periodically for a definite period not exceeding twenty years, so that the total amount to be paid can be previously ascertained, the conveyance is to be charged in respect of that consideration with ad valorem duty on such total amount.

(2) Where the consideration, or any part of the consideration, for a conveyance on sale consists of money payable periodically for a definite period exceeding twenty years or in perpetuity or for an indefinite period not terminable with life, the conveyance is to be charged in respect of that consideration with ad valorem duty on the total amount which will or may, according to the terms of sale, be payable during the period of twenty years next after the day of the date of the instrument.

(3) Where the consideration, or any part of the consideration, for the conveyance on sale consists of money payable periodically during any life or lives, the conveyance is to be charged in respect of that consideration with ad valorem duty on the amount which will or may, according to the terms of the sale, be payable during the period of twelve years next after the day of the date of the instrument.

(4) No conveyance on sale chargeable with ad valorem duty in respect of any periodical payments, and containing also provision for securing the payments, is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing the payments is to be charged with any higher duty than £5.

**Conveyance on sale with further covenant.**

22. A conveyance on sale made for any consideration in respect whereof it is chargeable with ad valorem duty, and in further consideration of a

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covenant by the purchaser to make, or of his having previously made, any substantial improvement of or addition to the property conveyed to him, or of any covenant relating to the subject-matter of the conveyance, is not chargeable, and shall be deemed not to have been chargeable, with any duty in respect of such further consideration.

### **How conveyance in consideration of a debt is to be charged.**

23. Where any Property subject to duty is conveyed to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the property or not, the debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the conveyance is chargeable with the ad valorem duty.

### **Direction as to duty in certain cases.**

24.(1) Where Property subject to duty contracted to be sold for one consideration for the whole is conveyed to the purchaser in separate parts or parcels by different instruments, the consideration is to be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part or parcel is set forth in the conveyance relating thereto, and such conveyance is to be charged with ad valorem duty in respect of such distinct consideration.

(2) Where Property subject to duty contracted to be purchased for one consideration for the whole by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in separate parts or parcels by separate instruments to the persons by or for whom the same was purchased for distinct parts of the consideration, the conveyance of each separate part or parcel is to be charged with ad valorem duty in respect of the distinct part of the consideration therein specified.

(3) Where there are several instruments of conveyance for completing the purchaser's title to Property subject to duty sold, the principal instrument of conveyance only is to be charged with ad valorem duty, and the other instruments are to be respectively charged with such other duty as they may be liable to, but the last-mentioned duty shall not exceed the ad valorem duty payable in respect of the principal instrument.

(4) Where a person having contracted for the purchase of any Property subject to duty, but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance is to be charged

with ad valorem duty in respect of the consideration moving from the sub-purchaser.

(5) Where a person having contracted for the purchase of any Property subject to duty but not having a conveyance contracts to sell the whole, or any part or parts thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons in parts or parcels, the conveyance of each part or parcel is to be charged with ad valorem duty in respect only of the consideration moving from the sub-purchaser thereof, without regard to the amount or value of the original consideration.

(6) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with ad valorem duty in respect of the consideration moving from him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same Property subject to duty by the original seller shall be chargeable only with such other duty as it may be liable to, but the last-mentioned duty shall not exceed the ad valorem duty.

(7) Where a Gibraltar Real Property Investment consists of an Investment representing Real Property in Gibraltar and also represents other property or is in a relevant body owning Real Property in Gibraltar and also owning other property ad valorem duty is to be charged and paid on the basis that the consideration is a sum equivalent to the Value of Real Property in Gibraltar, that is to say as if the property being sold were the Real Property in Gibraltar.

**Certain contracts to be chargeable as conveyances on sale.**

25.(1) Any contract or agreement under seal, or under hand only, for the sale of any legal or equitable estate or interest in any Property subject to duty whatsoever, shall be charged with the same ad valorem duty, to be paid by the purchaser, as if it were an actual conveyance on sale of the estate, interest or Property contracted or agreed to be sold.

(2) Where the purchaser has paid the said ad valorem duty and before having obtained a conveyance or transfer of the Property subject to duty, enters into a contract or agreement for the sale of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with the ad valorem duty payable in respect of such excess consideration, and in any other case with the fixed duty of £5.

(3) Where the duty has been paid in conformity with the foregoing provisions, the conveyance or transfer made to the purchaser or sub-



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purchaser, or any other person on his behalf or by his direction, shall not be chargeable with any duty, and the Commissioner upon application shall either denote the payment of the ad valorem duty upon the conveyance or transfer, or shall transfer the ad valorem duty thereto upon production of the contract or agreement, or contracts or agreements, duly stamped.

(4) Provided that where any such contract or agreement is stamped with the fixed duty of £5, the contract or agreement shall be regarded as duly stamped for the mere purpose of proceeding to enforce specific performance or recover damages for the breach thereof.

(5) Provided also that where any such contract or agreement is stamped with the fixed duty, and a conveyance or transfer made in conformity with the contract or agreement is presented to the Commissioner for stamping with ad valorem duty chargeable thereon within a period of six months after the first execution of the contract or agreement or within such longer period as the Commissioner may think reasonable in the circumstances of the case, the conveyance or transfer shall be stamped accordingly, and the same, and the contract or agreement, shall be deemed to be duly stamped. Nothing in this proviso shall alter or affect the provisions as to the stamping of a conveyance or transfer after the execution thereof.

(6) Provided also, that the ad valorem duty paid upon any such contract or agreement shall be returned by the Commissioner in case the contract or agreement be afterwards rescinded or annulled, or for any other reason be not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.

(7) Any certificate required from the Commissioner under this section shall be free of charge.

## **Principal instrument how to be ascertained.**

26. The parties may determine for themselves which of several instruments is to be deemed the principal instrument, and may pay the ad valorem duty thereon accordingly.

## **Duty payable on vesting of Property subject to duty by Act.**

27. Where by virtue of any Act, either—

- (a) any Property subject to duty is vested by way of sale in any person; or
- (b) any person is authorised to purchase Property subject to duty,

such person shall within three months of the passing of the Act, or the date of vesting, whichever is later, or after the completion of the purchase, as the case may be, produce to the Commissioner a copy of the Act printed by the Government Printer or some instrument relating to the vesting in the first case, and an instrument of the conveyance of the Property subject to duty in the other case, duly stamped with the ad valorem duty payable upon a conveyance on sale of the property; and in default of such production of the unpaid duty and a penalty of a sum equal to 10 per cent of the duty payable or £100, whichever shall be the greater, and of interest on such duty, at the rate of 5 per cent per annum or such other rate which may be prescribed by the Minister by notice in the Gazette from the passing of the Act, date of vesting or completion of the purchase, as the case may be.

**Duty on gifts inter vivos.**

28.(1) Any conveyance or transfer of Property subject to duty operating as a voluntary disposition inter vivos shall be chargeable with the like duty as if it were a conveyance or transfer on sale, with the substitution in each case of the Value of the Real Property in Gibraltar or, in the case of a Gibraltar Real Property Investment, the Value the Real Property in Gibraltar represented by the Gibraltar Real Property Investment conveyed or transferred for the amount or value of the consideration from the sale:

Provided that this section shall not apply to a conveyance or transfer operating as a voluntary disposition of Property subject to duty to a body of persons incorporated by a Special Act, if that body is by its Act precluded from dividing any profit among its members and the property conveyed is to be held for the purposes of an open space or for the purposes of its preservation for the benefit of Gibraltar.

(2) Notwithstanding anything in section 11 of this Act, the Commissioner may be required to express his opinion under that section on any conveyance or transfer operating as a voluntary disposition inter vivos, and no such conveyance or transfer shall be deemed to be duly stamped unless the Commissioner has expressed his opinion thereon in accordance with that section.

(3) The certificate required under subsection (2) shall be supplied free of charge.

(4) Any conveyance or transfer of Property subject to duty (not being a disposition made in favour of a purchaser or incumbrancer or other person in good faith and for valuable consideration) shall, for the purposes of this section, be deemed to be a conveyance or transfer operating as a voluntary disposition inter vivos, and (except where marriage is the consideration) the consideration for any conveyance or transfer shall not for this purpose be

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deemed to be valuable consideration where the Commissioner is of opinion that by reason of the inadequacy of the sum paid as consideration or other circumstances the conveyance or transfer confers a substantial benefit on the person to whom the Property subject to duty is conveyed or transferred.

(5) A conveyance or transfer of Property subject to duty made for nominal consideration for the purpose of securing the repayment of an advance or loan or made for effectuating the appointment of a new trustee or the retirement of a trustee, whether the trust is expressed or implied, or under which no beneficial interest passes in the property conveyed or transferred, or made to a beneficiary by a trustee or other person in a fiduciary capacity under any trust, whether expressed or implied, or a disentailing assurance not limiting any new estate other than an estate in fee simple in the person disentailing the property, shall not be charged with duty under this section, and this subsection shall have effect notwithstanding that the circumstances exempting the conveyance or transfer from charge under this section are not set forth in the conveyance or transfer.

### **What is to be deemed a conveyance on any occasion, not being a sale or mortgage.**

29. Every instrument, and every decree or order of any court, whereby any Property subject to duty on any occasion, except a sale or mortgage, is transferred to or vested in any person, is to be charged with duty as a conveyance or transfer of property:

Provided that a conveyance or transfer made for effectuating the appointment of a new trustee or for effectuating the retirement of a trustee although no new trustee is appointed is not to be charged with any higher duty than £5.

### **Provision as to duplicates and counterparts.**

30. The duplicate or counterpart of an instrument chargeable with duty (except the counterpart of an instrument chargeable as a lease, such counterpart not being executed by or on behalf of any lessor or grantor), is not to be deemed duly stamped unless it is stamped as an original instrument or unless it is made to appear to the Commissioner (who shall, upon payment of a fee of £1 in adhesive stamps or money, certify on such duplicate or counterpart accordingly) that the full and proper duty has been paid upon the original instrument of which it is the duplicate or counterpart.

### **As to exchange, &c.**

31. Where upon the exchange of any Property subject to duty for any other Property subject to duty, or upon the partition or division of any Property subject to duty, any consideration exceeding in amount or value £100 is paid

or given, or agreed to be paid or given, for equality, the principal or only instrument whereby the exchange or partition is effected is to be charged with the same ad valorem duty as a conveyance on sale for the consideration, and with that duty only; and where in any such case there are several instruments for completing the title of either party, the principal instrument is to be ascertained, and the other instruments are to be charged with duty in the manner hereinbefore provided in the case of several instruments of conveyance.

**Agreements for not more than thirty-five years to be charged as leases.**

32.(1) An agreement for a lease of any lands or tenements in Gibraltar, or with respect to the letting of any lands or tenements in Gibraltar, for any term not exceeding thirty-five years, or for any indefinite term, is to be charged with the same duty as if it were an actual lease made for the term and consideration mentioned in the agreement.

(2) A lease made subsequently to, and in conformity with, such an agreement duly stamped is to be charged with the duty of £5 only.

**Leases how to be charged in respect of produce.**

33.(1) Where the consideration, or any part of the consideration, for which a lease of any lands or tenements in Gibraltar is granted or agreed to be granted, consists of any produce or other goods, the value of the produce or goods is to be deemed a consideration in respect of which the lease or agreement is chargeable with ad valorem duty.

(2) Where it is stipulated that the value of the produce or goods is to amount at least to, or is not to exceed, a given sum, or where the lessee is specially charged with, or has the option of paying after any permanent rate of conversion, the value of the produce or goods is, for the purpose of assessing the ad valorem duty, to be estimated at the given sum or according to the permanent rate.

(3) A lease of land or tenements in Gibraltar or agreement for a lease made either wholly or partially for any such consideration, if it contains a statement of the value thereof, and is stamped in accordance with the statement, is, so far as regards the subject matter of the statement, to be deemed duly stamped, unless or until it is otherwise shown that the statement is incorrect, and that the lease or agreement is in fact not duly stamped.

**Directions as to duty in certain cases.**

34.(1) A lease or agreement for a lease of any lands or tenements in Gibraltar or with respect to any letting in respect of any lands or tenements

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in Gibraltar, is not to be charged with any duty in respect of any penal rent, or increased rent in the nature of a penal rent, thereby reserved or agreed to be reserved or made payable, or by reason of being made in consideration of the surrender or abandonment of any existing lease or agreement, of, or relating to the same subject-matter.

(2) A lease of any lands or tenements in Gibraltar made for any consideration in respect whereof it is chargeable with ad valorem duty, and in further consideration either of a covenant by the lessee, to make, or of his having previously made, any substantial improvement of or addition to the real property demised to him, or of any covenant relating to the matter of the lease, is not to be charged with any duty in respect of such further consideration:

Provided that if the further consideration in the lease consists of a covenant which if it were contained in a separate deed would be charged with ad valorem duty, the lease shall in any such case be charged with duty in respect of any such further consideration under section 5 of this Act.

(3) An instrument whereby the rent reserved by any other instrument chargeable with duty and duly stamped as a lease of any lands or tenements in Gibraltar is increased is not to be charged with duty otherwise than as a lease in consideration of the additional rent thereby made payable.

#### **Meaning of “mortgage”.**

35.(1) For the purposes of this Act, the expression “mortgage” means a security by way of mortgage of Property subject to duty for the payment of any definite and certain sum of money advanced or lent at the time, or previously due and owing, or forborne to be paid, being payable, or for the repayment of money to be thereafter lent, advanced or paid, or which may become due upon an account current, together with any sum already advanced or due, or without, as the case may be and includes,—

- (a) conditional surrender by way of mortgage of Property subject to duty, further charge, disposition or tack in security; and
- (b) any conveyance of any lands, estate or Property subject to duty whatsoever in trust to be sold or otherwise converted into money, intended only as a security, and redeemable before the sale or other disposal thereof, either by express stipulation or otherwise, except where the conveyance is made for the benefit of creditors generally, or for the benefit of creditors specified who accept the provision made for payment of their debts in full satisfaction thereof, or who exceed five in number; and

- (c) any defeasance, letter of reversion, declaration or other deed or writing for defeating or making redeemable or explaining or qualifying any conveyance, transfer, disposition or tack of any lands, estate or Property subject to duty whatsoever, apparently absolute, but intended only as a security; and
- (d) any agreement (other than an agreement chargeable with duty as an equitable mortgage), contract or bond accompanied with a deposit of title deeds for making a mortgage, or any other security or conveyance as aforesaid of any lands, estate or property in Gibraltar comprised in title deeds, or for pledging or charging the same as a security; and

(2) For the purposes of this Act, the expression “equitable mortgage” means an agreement or memorandum, under hand only, relating to the deposit of any title deeds or instruments constituting or being evidence of the title to any Property subject to duty whatever, or creating a charge on such property.

### PART III PROVISIONS RELATING TO COMPANIES.

#### **Charge of duty on capital of limited liability companies.**

36.(1) A statement of the amount which is to form the nominal share capital of any company to be registered with limited liability, and a statement of the amount of any increase of registered capital of any company shall be delivered to the Registrar of Companies.

(2) The statements referred to in subsection (1) shall be charged with duty of £10.

#### **Charge of duty on capital of companies with limited liability otherwise than under the Companies Act.**

37.(1) Where by virtue of any Act or by any other lawful authority the liability of holders of shares in the capital of any corporation or company is limited otherwise than by registration with limited liability under the laws in that behalf, a statement of the amount of nominal share capital of the corporation or company shall be delivered by the corporation or company to the Registrar of Companies within one month after the date of the passing of the Act or the granting of the authority; and in case of any increase of the amount of the nominal share capital of any corporation or company being authorised by any Act or other authority a statement of the amount of such increase shall be delivered by the corporation or company to the Registrar of Companies within the like period.

(2) The statements referred to in subsection (1) shall be charged with duty of £10.

### **Duty on loan capital.**

38.(1) Where any corporation, company or body of persons formed or established in Gibraltar propose to issue any loan capital, they shall, before the issue thereof, deliver to the Registrar of Companies a statement of the amount proposed to be secured by the issue.

(2) Subject to the provisions of this section every such statement shall be charged with duty of £10.

(3) In this and the following section, “loan capital” means any debenture stock, corporation stock, municipal stock or funded debt by whatever name known or any capital raised by any corporation, company or body of persons formed or established in Gibraltar, which is borrowed, or has the character of borrowed money, whether it is in the form of stock or in any other form, but does not include any overdraft at the bank or other loan raised for a merely temporary purpose for a period not exceeding twelve months.

### **Mode of payment of duties.**

39. The duties to be paid under sections 36 to 38 (inclusive) shall be paid into the Consolidated Fund and at the time of payment of the duty the Accountant General shall have endorsed on the document in respect of which duty is paid a statement of the amount of duty paid and the number of the official receipt given in respect thereof and this endorsement shall be prima facie evidence that the duty to the amount mentioned in the endorsement has been paid.

## **PART IV MISCELLANEOUS**

### **Anti-avoidance.**

40.(1) Where the Commissioner has reason to believe that Property subject to duty has been transferred and—

- (a) the duty payable on the instrument transferring the Property subject to duty is less than the ad valorem duty on the Value of the Real Property in Gibraltar; and

- (b) the Commissioner has reason to believe that the amount of duty payable on the instrument has been eliminated or reduced as a result of arrangements entered into by the vendor and purchaser to reduce such duty or as a result of the manner in which any relevant or related transaction has been structured or documented,

he shall assess the duty payable on the instrument as the amount of the ad valorem duty payable on the Value of the Real Property in Gibraltar.

(2) An assessment under sub-section (1) is subject to the right of appeal specified in section 14.

(3) The Minister may by regulations make such further or other provisions he considers appropriate to ensure that transactions, however structured and documented or phased which affect directly or indirectly Property subject to duty shall be fully and effectively chargeable to duty under this Act.

**Conditions and agreements as to duty void.**

41. Every condition of sale framed with the view or precluding objection or requisition upon the ground of absence or insufficiency of stamp upon any instrument, and every contract, arrangement or undertaking for assuming the liability on account of absence or insufficiency of stamp upon any such instrument or indemnifying against such liability, absence or insufficiency, shall be void.

**Instruments relating to Crown property.**

42. Except where express provision to the contrary is made by the Act, these regulations or any other law for the time being in force, an instrument relating to property belonging to the Crown, is to be charged with the same duty as an instrument of the same kind belonging to a subject.

**Duties and fines recoverable summarily.**

43. All duties, fines and penalties imposed by this Act or regulations made under this Act shall be recoverable in a summary manner in the name of the Attorney General and all proceedings for the recovery of any such fine or penalty may be commenced or prosecuted at any time within three years after the offence committed by reason whereof such fine or penalty shall be incurred.

**Power of Minister as to penalties and rewards.**

44. The Minister may, in his discretion remit or mitigate any fine or penalty and may reward any person who may give information of any offence, or



assist in the recovery of any fine or penalty under this Act or regulations made hereunder.

### **Spoiled or misused stamps.**

45. The Minister may, upon the production of such evidence, by affidavit or otherwise, as he may require, make such allowance (if any) for spoiled or misused stamps, as may seem to him to be just.

### **Regulations.**

46. The Minister may make all such regulations as to him seem appropriate generally for carrying into effect this Act and for prescribing anything which may be prescribed, and in particular, but without prejudice to the generality of the foregoing, may make regulations for all or any of the following purposes—

- (a) determining or changing the method of calculating and rate of ad valorem duty;
- (b) determining the proper method and time for stamping instruments, and such regulations may provide for different times in respect of different classes of instrument and for stamping of instruments after execution;
- (c) prescribing of fees, penalties and fines in relation to matters contained in the regulations and to provide for fines on summary conviction not exceeding level 5 on the standard scale;
- (d) determining the requirements in respect to particular instruments and particular activities and the effects of failure to comply therewith;
- (e) determining the requirements of or changing provisions relating to duties in respect of Gibraltar Real Property Investments;
- (f) determining the circumstances in which the Commissioner may mitigate or remit fees;
- (g) providing generally for the exercise by the Commissioner of his powers under this Act;
- (h) determining the effect of instruments not duly stamped and of conditions and agreements as to duty;

- (i) to provide for relief from duties in respect of reconstructions and amalgamations of companies and transfers between associated companies; and
- (j) to introduce measures to prevent the avoidance of duty on instruments subject to the provisions of this Act.

#### **Repeal of Stamp Duties Act.**

47. The Stamp Duties Act and the Stamp Duties Act 1991 are repealed.

#### **Transitional provisions.**

48. Notwithstanding the provisions of section 47 and subject to section 1(2), the Stamp Duties Act shall operate in relation to any instrument on which any duty or penalty was due under that Act prior to the operative date of this Act and any fees, penalties or fines in connection with such instrument shall be those provided for by that Act.

#### **Transitional provisions.**

49.(1) Where in respect of the sale of a Property subject to duty an agreement has been entered into on or before the 9<sup>th</sup> December 2005, then provided that all of the conditions stipulated in sub-section (2) are satisfied, upon completion of the sale contracted under the terms of that agreement, the instrument of transfer shall, notwithstanding any provision of this Act imposing a charge at a higher rate, be charged to duty at the rate of 1.26 per cent.

(2) The conditions referred to in sub-section (1) are the following:

- (a) a copy of the agreement has been delivered to the Commissioner by midday on the 15<sup>th</sup> working day after the date of commencement of this Act;
- (b) upon completion of the purchase and sale, the purchaser and transferee of the Property subject to duty shall be the same as the purchaser named in the agreement.

(3) In this section 'agreement' means an agreement:

- (a) for purchase and sale, or if the Property subject to duty is under construction or not yet constructed and the vendor is the developer thereof, a reservation agreement upon which a non-refundable reservation fee of at least £2000 shall have been paid;

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- (b) is signed by both the vendor and the purchaser; and
  - (c) is entered into in good faith and at arms length between a bona fide vendor and a bona fide purchaser.
- (4) The Commissioner's judgement and decision on any fact, circumstance or other matter relevant to this section shall be final and conclusive.

## SCHEDULE 1

## Section 2

AGREEMENT or CONTRACT, accompanied with a deposit of title deeds of Real Property in Gibraltar or of documents of title of any Gibraltar Real Property Investment.

See MORTGAGE, ETC., and section 35.

AGREEMENT for a lease or for any letting of any lands or tenements in Gibraltar.

See LEASE and SECTION 32

AGREEMENT for the Sale of any Property subject to duty.

See CONVEYANCE ON SALE and section 25.

AGREEMENT or any MEMORANDUM of an Agreement under hand only relating to Property subject to duty and not otherwise specifically charged with any duty whether the same be only evidence of a contract or obligatory upon the parties from its being a written instrument.

£5

ASSIGNMENT.

By way of security of Property subject to duty.

See MORTGAGE, ETC.

Upon a sale, or otherwise of Property subject to duty.

See CONVEYANCE.

CAPITAL DUTY –

On the nominal share capital or any increase thereof of Limited liability companies registered under the Companies Act and corporations or companies with limited liability otherwise than under the Companies Act –

£10

And see sections 36 and 37.

On loan capital –

£10

And see section 38.

CERTIFICATE from the Commissioner:–

For denoting under section 10, or that the full and proper duty has been paid upon the original of the original of any document under section 30

£5

That an instrument is not chargeable with duty, or that it is duly stamped or the amount of duty with which it is chargeable in pursuance of section 11.

£5

CONTRACT. See AGREEMENTS.

CONVEYANCE or TRANSFER on sale of any Property subject to duty,–

(1) Where the value of the whole of the Property subject to duty does not exceed £160,000 a sum equivalent to zero per cent of the amount or value of the consideration

(2) Where the value of the whole of the Property subject to duty exceeds £160,000 but does not exceed £250,000, a sum equivalent to 1.26% (one point two six per cent) of the amount or value of the consideration

(3) Where the value of the whole of the Property subject to duty exceeds £250,000 but does not exceed £350,000, a sum equivalent to 1.6% (one point six per cent) of the amount or value of the consideration

(4) Where the value of the whole of the Property subject to duty exceeds £350,000, a sum equivalent to 2.5% (two point five per cent) of the amount or value of the consideration

And see Sections 19-27.

CONVEYANCE or TRANSFER by way of security of any Property subject to duty.

See MORTGAGES, ETC.

CONVEYANCES or TRANSFERS of Property subject to duty operating as voluntary dispositions inter vivos.

See sections 16 and 28.

CONVEYANCE or TRANSFER of Property subject to duty of any kind not hereinbefore described £5

COUNTERPART. See DUPLICATE.

COVENANT for securing the payment or repayment of money on any Property subject to duty.

See MORTGAGE, ETC.

COVENANT. Any separate deed of covenant (not being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage) made on the sale or mortgage of any Property subject to duty, and relating solely to the conveyance

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<p>or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid.</p> <p>Where the ad valorem duty in respect of the consideration or mortgage money does not exceed 50 pence.</p>	<p>A duty equal to the amount of such ad valorem duty.</p>
<p>In any other case</p>	<p>£5</p>
<p>DEBENTURE for securing on any Property subject to duty the payment or repayment of money or the transfer or retransfer of stock.</p> <p style="padding-left: 40px;">See MORTGAGE, ETC.</p>	
<p>DECLARATION of any use or trust of or concerning any Property subject to duty by any writing, not being a will, or an instrument chargeable with ad valorem duty as a settlement</p>	<p>£5</p>
<p>DEED of any kind whatsoever over or concerning Property subject to duty, not described in this Schedule</p>	<p>£5</p>
<p>DEFEAZANCE. Instrument of defeazance of any conveyance, transfer, disposition, or tack over or concerning Property subject to duty apparently absolute but intended only as a security for money or stock.</p> <p style="padding-left: 40px;">See MORTGAGE, ETC., and section 35.</p>	
<p>DEMISE. See LEASE.</p>	
<p>DEPOSIT of title deeds over or concerning real property in Gibraltar.</p> <p style="padding-left: 40px;">See MORTGAGE, ETC., and section 35.</p>	
<p>DUPLICATE or COUNTERPART of any instrument Chargeable with any duty.</p> <p>Where such duty does not amount to £5 {the same duty as the original instrument.</p> <p>In any other case</p> <p>And see SECTION 30.</p>	<p>£5</p>
<p>EQUITABLE MORTGAGE of Property subject to duty.</p> <p style="padding-left: 40px;">See MORTGAGE, ETC., and section 30.</p>	

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EXCHANGE – Instrument effecting over or concerning Property subject to duty.

See section 30.

FURTHER CHARGE OR FURTHER SECURITY of Property subject to duty.

See MORTGAGE, ETC., and section 35.

LEASE of any Property subject to duty –

(1) For every £100 and also for any fractional part of £100 of the rent for a year–

- |   |      |
|---|------|
| (a) If the term is definite and                   |      |
| (i) does not exceed 7 years                       | 1.00 |
| (ii) exceeds 7 years and does not exceed 21 years | 2.00 |
| (iii) exceeds 21 years                            | 4.00 |

(b) If the term is indefinite	4.00
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(2) Of any other kind whatsoever not hereinbefore described	1.00
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(3) In addition to any duty payable under paragraphs (1) and (2), where the consideration or any part of the consideration moving to the lessor or to any other person, consists of any money, stocks, or security there shall be payable in respect of such consideration the same duty as on a conveyance on sale for the same consideration.

And see sections 32 - 34.

LIMITED PARTNERSHIP DUTY Statement of amount contributed by a limited partner, and a statement of any increase in that amount, as the case may be, sent to the Registrar under section 7 or 8 of the Limited Partnership Act–

£10

MORTGAGE, BOND, DEBENTURE and COVENANT

of Property subject to duty.

(1) Being the only or principal or primary security (other than an equitable mortgage) for the payment or repayment of money–

for every £100, and also for any fractional part of the amount secured where the sum to be paid or repaid does not exceed £200,000	0.13
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where the sum to be paid or repaid exceeds £200,000	0.20
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(2) Being a collateral, or auxiliary security, or substituted security (other than an equitable mortgage), or by way of further assurance for the above mentioned purpose where the principal or primary security is duly stamped	£5
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(3) Being an equitable mortgage: For every £100 and any fractional part of £100 of the amount secured	0.05	
(4) TRANSFER ASSIGNMENT or DISPOSITION of any mortgage, bond debenture, or covenant of Property subject to duty or of any money or stock secured by any such instrument: For every £100, and also for any fractional part of £100 of the amount transferred, assigned, or disposed, exclusive of interest, which is not in arrear And also where any further money is added to the money already secured	0.03 The same duty as a principal security for such further money.	
(5) RECONVEYANCE, RELEASE, DISCHARGE, SURRENDER, RESURRENDER or RENUNCIATION of any such security as aforesaid, or the benefit thereof, or of the money thereby secured: For every £100, and also for any fractional part of £100, of the total amount or value of the money at any time secured	0.03	
PARTITION or DIVISION –Instrument effecting over or concerning Property subject to duty. See section 31.		
RECONVEYANCE, RELEASE or RENUNCIATION of any security of Property subject to duty. See MORTGAGE, ETC.		
RELEASE or RENUNCIATION of any Property subject to duty, or of any right or interest in any Property subject to duty– Upon a sale. See CONVEYANCE ON SALE. By way of security. See MORTGAGE, ETC. In any other case		£5
RENUNCIATION of Property subject to duty. See RECONVEYANCE AND RELEASE.		
SURRENDER of any kind whatsoever of Property subject to		



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duty not chargeable with duty as a conveyance or a mortgage £5

TACK IN SECURITY of Property subject to duty.  
See MORTGAGE ETC.

TRANSFER of Property subject to duty.  
See CONVEYANCE or TRANSFER.

## GENERAL EXEMPTION FROM ALL STAMP DUTY.

- (1) All instruments on which the duty would be payable by any Government Department.
- (2) All contracts, conveyances and other documents made in pursuance of or in connection with the acquisition of land (which shall include messuages, tenements and hereditaments of any tenure, and any part, share, estate, right, title or interest therein) by way of purchase or otherwise by Her Majesty's Government in the United Kingdom for the use or the purpose of any of Her Majesty's Forces.
- (3) All instruments in connection with the establishment, maintenance and upkeep of lighthouses on which duty would be payable by Trinity House.

**SCHEDULE 2**

Section 16

Title of Instrument described in Schedule 1	Person liable to pay
Conveyance on sale of Property subject to duty.	The purchaser or transferee.
Conveyance or transfer operating as a voluntary disposition inter vivos over Property subject to duty.	The grantor or transferor.
Lease	The lessee.
Mortgage, bond debenture, covenant of Property subject to duty.	The mortgagee or obligee, in the case of a transfer or reconveyance, the transferee, assignee or disponee or the person redeeming the security.