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A BILL

i n t i t u l e d

An Act to provide for the conservation and preservation of National Heritage, natural heritage, tangible and intangible cultural heritage, underwater cultural heritage, treasure trove and for related matters.

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1.(1) This Act may be cited as the National Heritage Act 2005.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*; and the Minister may appoint different dates for the coming into operation of this Act to different parts of Malaysia.

Interpretation

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

"building" means a building or groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of hi story, art or science;

"antiquity" means —

- (a) any moveable object which is or is reasonably believed to be at least fifty years old;
- (b) any part of any such object which has at any later date been added or re-constructed or restored; and
- (c) any human, plant or animal remains which is or is reasonably believed to be at least one hundred years old;

"heritage item" means any National Heritage, heritage site, heritage object or underwater cultural heritage listed in the Register;

"foreign heritage item" means any item designated and protected as such by a legislation of a foreign country, which is a party to a treaty on the protection of cultural object or material;

"Register" means the National Heritage Register established and maintained under section 23 containing a list of heritage items;

"treasure trove" means any money, coin, gold, silver, plate, bullion jewellery, precious stone or any object or article of value found hidden in, or in anything affixed to, the soil or the bed of a river or lake or of the sea, the owner of which is unknown or cannot be found, but does not include any tangible cultural heritage;

"area" includes works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view;

"Fund" means the Heritage Fund established under section 20;

"customs airport" and "customs port" have the same meaning assigned to it by the Customs Act 1967 [Act 235];

"Council" means the National Heritage Council established under section 8;

"safeguarding" means the identification, protection, conservation, restoration, renovation, maintenance, documentation and revitalization of historic or traditional matter, artefact, area and their environment;

"Minister" means the Minister charged with the responsibility for heritage;

"monument" means architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwellings and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

"object" includes any moveable antiquity, tangible cultural heritage, intangible cultural heritage and historical object but excluding treasure trove;

"historical object" means any artefact or other object to which religious, traditional, artistic or historic interest is attached and includes any—

- (a) ethnographic material such as a household or agricultural implement, decorative article or personal ornament;
- (b) work of art such as a carving, sculpture, painting, architecture, textile, musical instrument, weapon and any other handicraft;
- (c) manuscript, coin, currency note, medal, badge, insignia, coat of arm, crest flag, arm or armour; or
- (d) vehicle, ship and boat, in part or in whole, whose production has ceased;

"heritage object" means an object declared under section 49 or registered under section 51 as a heritage object;

"proper officer of customs" has the same meaning assigned to it by the Customs Act 1967;

"port officer" has the same meaning assigned to it by the Merchant Shipping Ordinance 1952 [*Ord. No. 70 of 1952*];

"enforcement officer" means any officer appointed by the Minister under section 97;

"conservation management plan" means a plan for conservation prepared under section 46;

"restoration" means the process of accurately recovering the form and details of a structure or part of a structure and its setting, as it appeared at some period in time, by removing the latter work and replacing the missing original work, and includes—

- (a) full restoration which involves both exterior and interior;
- (b) partial restoration which involves the exterior, interior, or any partial combination and is adopted when only parts of a structure are important in illustrating cultural values at its level of historic significance, or contribute to the values for which the area was designated; and
- (c) adaptive restoration which involves all or a portion of the exterior restoration with the interior adapted to a modern functional use;

"reconstruction" means the process of accurately reproducing by new construction, the form and detail of a vanished structure, or part of it, as it appeared at some period in time and includes full or partial reconstruction;

"preservation" means aiming to halt further deterioration, decay or a state of dilapidation and providing structural safety and well being but does not contemplate significant rebuilding and includes—

- (a) techniques of arresting or slowing the process of deterioration, decay or state of dilapidation of an item or structure;
- (b) improvement of structural conditions to make a structure safe, habitable, or otherwise useful; and
- (c) normal maintenance and minor repairs that do not change or adversely affect the fabric or historic appearance of a structure;

"rehabilitation" means the process of returning a property to a state of utility through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic architecture;

"conservation" includes preservation, restoration, reconstruction, rehabilitation and adaptation or any combination;

"owner", in relation to any land, means the registered owner or the holder by customary tenure of the land;

"occupier" includes the cultivator or person in actual possession, management or control of any land, and includes any person having the possession or control of any moveable property in that premises or land;

"collector" means any person who acquires tangible moveable cultural heritage for purposes other than for sale;

"dealer" means any person who receives profit from the purchase and resale of exhibits and includes a registered dealer;

"registered dealer" means any dealer who is licenced under section 91;

"Malaysian waters" means the territorial waters of Malaysia determined in accordance with the Emergency (Essential Powers) Ordinance No. 7 of 1969 [*P.U.(A) 307A/1969*];

"Commissioner" means the Commissioner of Heritage appointed under section 4;

"local planning authority" shall have the same meaning assigned to it by the Town and Country Planning Act 1976 [*Act 172*] in Peninsular Malaysia and the competent planning authority under the State laws of Sabah and Sarawak;

"archaeological relic" means—

- (a) any archaeological deposit; or
- (b) any artefact, remains or material evidence associated with an archaeological deposit,

in any part of Malaysia and is fifty or more years old;

"archaeological reserve" means an area in which archaeological relics are situated;

"site" includes any area, place, zone, natural heritage, monument or building attached to land, archaeological reserve and any land with building, garden, tree or archaeological reserve;

"heritage site" means a site designated as a heritage site under section 24;

"heritage" imports the generic meaning of a National Heritage, sites, objects and underwater cultural heritage whether listed or not in the Register;

"National Heritage" means any heritage site, heritage object, underwater cultural heritage or any living person declared as a National Heritage under section 67;

"cultural heritage" includes tangible or intangible form of cultural property, structure or artefact and may include a heritage matter, object, item, artefact, formation structure, performance, dance, song, music that is pertinent to the historical or contemporary way of life of Malaysians, on or in land or underwater cultural heritage of tangible form but excluding natural heritage;

"underwater cultural heritage" means all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least one hundred years such as—

- (a) sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context;
- (b) vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and
- (c) objects of prehistoric character;

"tangible cultural heritage" includes area, monument and building;

"intangible cultural heritage" includes any form of expressions, languages, lingual utterances, sayings, musically produced tunes, notes, audible lyrics, songs, folksongs, oral traditions, poetry, music, dances as produced by the performing arts, theatrical plays, audible compositions of sounds and music, martial arts, that may have existed or exist in relation to the heritage of Malaysia or any part of Malaysia or in relation to the heritage of a Malaysian community;

"cultural heritage significance" means cultural heritage having aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, linguistic or technological value;

"natural heritage" includes natural features of any area in Malaysia which may consist of earthly physical or biological formations or group of such formations, geological or physiographical features, mountains, rivers, streams, rock formation, sea shore or any natural sites of outstanding value from the point of view of nature, science, history conservation or natural beauty including flora and fauna of Malaysia;

"zone" means an area or part of an area for the purpose of preservation and restoration in respect of rural and urban landscapes whether natural or man-made, which embraces any cultural heritage significance.

(2) In this Act, references to the State Authority in relation to the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya shall be construed as references to the Minister responsible for the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya.

(3) For the purposes of this Act, the following shall not be considered as underwater cultural heritage:

- (a) pipelines and cables placed on the seabed; and
- (b) installations other than pipelines and cables, placed on the seabed.

PART II

CONSERVATION AND PRESERVATION OF HERITAGE

Policy in relation to conservation and preservation of heritage

3. (1) Subject to subsection (2), the Minister shall be responsible for providing or issuing policies, statements or directives in respect of any matter, business, strategy or conduct on the conservation and preservation of heritage.

(2) The Minister shall not provide or issue any policies, statements or directives under subsection (1) where the matter, business, strategy or conduct on the conservation and preservation of heritage concerns the power or jurisdiction of a State unless the relevant State Authority has been consulted.

PART III

ADMINISTRATION OF THE ACT

Appointment of Commissioner of Heritage

4. (1) There shall be appointed by the Minister, an officer to be known as the "Commissioner of Heritage" for the purpose of carrying out the powers and functions assigned to the Commissioner under this Act.

(2) The appointment of the Commissioner shall be published in the *Gazette*.

(3) The Commissioner appointed under subsection (1) shall be a body corporate having perpetual succession and a common seal.

(4) The Commissioner may sue and be sued in its name.

(5) The officer appointed to be the Commissioner shall hold office for a period of not more than three years and shall be eligible for reappointment.

Appointment of officers

5. (1) The Minister may, from time to time, appoint such number of Deputy Commissioners, Assistant Commissioners, authorized officers and such other officers as are necessary to assist the Commissioner in the performance of his functions and the exercise of his powers under this Act.

(2) All officers appointed under subsection (1) shall be subject to the supervision, direction and control of the Commissioner.

Functions of the Commissioner

6. The functions of the Commissioner are as follows:

- (a) to determine the designation of sites, registration of objects and underwater cultural heritage;
- (b) to establish and maintain the Register and to determine and specify the categories of heritage to be listed in the Register;
- (c) to supervise and oversee the conservation, preservation, restoration, maintenance, promotion, exhibition and accessibility of heritage;

- (d) to promote and facilitate any research relating to heritage;
- (e) to authorise, monitor and supervise excavations for heritage purposes;
- (f) to maintain documents relating to any excavation, exploration, finding or search for heritage;
- (g) to establish and maintain liaison and co-operation with the State Authority in respect of conservation and preservation of heritage matters;
- (h) to advise and co-ordinate with the local planning authority, the Council and other bodies and entities at all levels for the purpose of safeguarding, promoting and dealing with any heritage;
- (i) to promote and regulate that best standards and practices are applied in the conservation and preservation of heritage;
- (j) to advise the Minister with regard to any matter in respect of conservation and preservation of heritage;
- (k) to perform such other functions under this Act as the Minister may assign from time to time; and
- (l) to do all such things as may be incidental to or consequential upon the discharge of his powers and functions.

Powers of the Commissioner

7. Subject to and for the purpose of this Act, the powers of the Commissioner are as follows:

- (a) to enter into contracts;
- (b) to acquire, purchase, take, hold and enjoy movable and immovable property of every description;
- (c) to convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer, or otherwise dispose of, or deal with any movable or immovable property and any interest in any movable or immovable property, vested in the Commissioner; and

- (d) to do all things reasonably necessary for the performance of its duties under this Act.

PART IV

NATIONAL HERITAGE COUNCIL

Establishment of National Heritage Council

8. There shall be established a National Heritage Council.

Functions of Council

9. (1) The functions of the Council shall be—

- (a) to advise the Minister and the Commissioner on all matters relating to heritage, and the due administration and enforcement of laws relating to heritage; and
- (b) to advise the Minister and the Commissioner on any matter referred to it by the Minister or the Commissioner.

- (2) The Minister and the Commissioner shall not be bound to act upon the advice of the Council.

Membership of Council

10. (3) The Council shall consist of the following members:

- (a) a Chairman, to be appointed by the Minister;
- (b) the Secretary General of the Ministry of Culture, Arts and Heritage or his representative;
- (c) the Secretary General of the Ministry of Tourism or his representative;
- (d) the Director General of Town and Country Planning or his representative;
- (e) the Director General of the Museums and Antiquity Department or his representative;
- (f) the Commissioner; and

(g) not more than six other members, at least one of whom shall be a public officer who possess experience or expertise in relation to the management, conservation or preservation of sites and objects of natural or cultural heritage significance, to be appointed by the Minister.

(2) The Minister may appoint any member of the Council to perform the functions of the Chairman —

(a) if for any substantial period the Chairman is unable, by reason of illness, leave of absence or any other cause, to perform his functions; or

(b) during any period of vacancy in the office of the Chairman.

(3) A member appointed as the Chairman under subsection (2) shall, during the period in which he is performing the functions of the Chairman under this section, be deemed to be the Chairman.

Secretary

11. There shall be a secretary to the Council who shall be appointed by the Commissioner.

Tenure of office

12. Subject to section 13, a member appointed under paragraph X0(a) or (g) shall, unless he sooner resigns or his appointment is sooner revoked, hold office for such period not exceeding three years as the Minister may determine at the time of his appointment and shall be eligible for reappointment.

Revocation of appointment and resignation of members

13. (1) The appointment of members under paragraph 10(a) or (g) may at any time be revoked by the Minister.

(2) A member appointed under paragraph 10(a) or (g) may at any time resign his office by giving fourteen days' written notice addressed to the Minister.

Vacation of office

14. The office of a member appointed under paragraph 10(*a*) or (*g*) shall be vacated if—

- (*a*) he dies;
- (*b*) there has been proved against him, or he has been convicted of, a charge in respect of—
 - (i) an offence involving fraud, dishonesty or moral turpitude;
 - (ii) an offence under any law relating to corruption; or
 - (iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;
- (*c*) he becomes bankrupt;
- (*d*) he is of unsound mind or is otherwise incapable of discharging his duties;
- (*e*) he absents himself from three consecutive meetings of the Council without leave of the Chairman and in the case of the Chairman without leave of the Minister;
- (*f*) his resignation is accepted by the Minister; or
- (*g*) his appointment is revoked by the Minister.

Filling of vacancies

15. Where a member appointed under paragraph 10(*a*) or (*g*) ceases to be a member of the Council, the Minister may appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed.

Meetings of Council

16. (1) The Council shall meet as often as may be necessary in a year for the performance of its functions.

(2) The Chairman shall preside at all meetings of the Council.

(3) A meeting of the Council shall be convened by the Chairman by notice in writing to the other members and the meeting shall be held at the time and place specified in the notice.

(4) The quorum of the Council shall be five.

(5) The decision of the Council shall be by majority votes, and where there is an equality of votes, the Chairman shall have the casting vote.

Procedure of meetings

17. Subject to this Act, the Council shall determine its own procedure of meetings.

Committees

18. The Council may establish committees consisting of members of the Council or persons who are not members of the Council or a combination of both to advise or assist the Council on such matters concerning its functions as it may consider necessary in performing its functions under this Act.

Remuneration or allowance

19. Members of the Council or a committee may be paid from the Fund such remuneration or allowance as the Minister may, after consultation with the Minister of Finance, determine.

PART V

HERITAGE FUND

Establishment of the Fund

20. (1) For the purposes of this Act, a fund to be known as the "Heritage Fund" is established.

(2) The Fund shall be controlled, maintained and operated by the Commissioner.

- (3) The Fund shall consist of—
- (a) such sums as may be appropriated by Parliament from the Consolidated Fund and otherwise for the purpose of this Act;
 - (b) all moneys received by way of donations, gifts or grants;
 - (c) all moneys derived from levy imposed under this Act;
 - (d) interest received from investment by way of fixed deposit of moneys standing to the credit of the Fund;
 - (e) repayment of any loan disbursed under this Act;
 - (f) all moneys standing to the credit of the Fund that is not immediately required for the purposes of this Act as may be approved by the Minister;
 - (g) all moneys borrowed with the consent of the Minister of Finance for the purposes of the Fund; and
 - (h) all other moneys or property which may in any manner become payable to or vested in the Commissioner in respect of any matter incidental to its functions, powers or duties.

Expenditure to be charged on the Fund

21. The Fund may be expended for the following purposes:
- (a) payment for the purchase of heritage and conservation areas in accordance with this Act;
 - (b) payment of the expenses incurred for—
 - (i) the conservation and preservation of any heritage and conservation areas whether they are owned by the Government or otherwise;
 - (ii) organizing campaigns, research, study, publication of materials for the protection of heritage and conservation areas; and
 - (iii) the conservation and preservation of any heritage item and activities incidental to it;

- (c) any disbursement of grant or loan under this Act; and
- (d) any other payment for the purpose of this Act.

Accounts and audit

22. The Commissioner shall cause proper accounts to be kept and maintained in respect of the Fund and in compliance with the provisions of the Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*].

PART VI

NATIONAL HERITAGE REGISTER

National Heritage Register

23. (3) The Commissioner shall establish and maintain a register known as the National Heritage Register as may be prescribed containing the lists of heritage items registered under this Act.

(2) The Commissioner shall make the Register available for public inspection subject to such conditions as he thinks fit.

(3) Any person may on payment of a fee to be prescribed by the Minister—

- (a) inspect the Register; and
- (b) make a copy of, or take extracts from, the Register.

PART VII

HERITAGE SITE

Chapter 1

Designation of Heritage Site

Designation of heritage site

24. The Commissioner may designate any site which has natural heritage or cultural heritage significance to be a heritage site.

Adjacent and nearby site

25. (1) Where a site has no natural heritage or cultural heritage significance but the Commissioner is satisfied that it should be designated as a heritage site because of its proximity to and for the protection and enhancement of another site designated as a heritage site under section 24, the Commissioner may so designate such site as a heritage site.

(2) Any designation made under subsection (1) shall be revoked in the event the designation of that other site is revoked.

Inspection of site

26. (1) The Commissioner may at any time enter upon a site to inspect, survey, investigate or to carry out any work necessary for the purpose of determining whether to designate the site as a heritage site.

(2) The owner or occupier of the site shall be given a notice in writing of not less than seven days of any proposed entry.

(3) Where any person objects to such entry under subsection (1) on conscientious or religious grounds, such entry shall not be effected except with the permission in writing of the State Authority in which the site is situated.

(4) The Commissioner may enter into any arrangements with the owner or occupier of the site for any loss or damage suffered or alleged to have been suffered by the owner or occupier by reason of such entry under subsection (1).

(5) Any person who obstructs the Commissioner or refuses entry into any site for inspection, survey, investigation, or to carry out any work under subsection (1) commits an offence.

Notice to owner, etc.

27. (1) Upon determining to designate a site as a heritage site, the Commissioner shall, at least sixty days before making the designation, give a written notice in the form and manner as prescribed by the Commissioner to the owner of the site of the intention to register the site as a heritage site.

(2) As soon as possible after giving notice under subsection (1) the Commissioner shall —

(a) cause to be published in the *Gazette* and a local newspaper—

(i) a notice of intention to designate the site as a heritage site; and

(ii) any other matters constituting or relating to the designation which in his opinion is desirable to publish; and

(b) file a notice of intention to designate the site as a heritage site at the land office where the site is situated.

Objection

28. An owner of the site or any other person affected or likely to be affected by the designation of the site as a heritage site may make an objection to the designation of the site by serving a notice of objection on the Commissioner within thirty days from the date of the publication of the notice under paragraph 21(2)(a).

Hearing

29. Where a notice of objection to the designation of the site is served in accordance with section 28 the Commissioner shall set a date, time and place for the hearing of the objection and shall, at least twenty one days before the date of the hearing serve a notice of hearing in the form and manner as prescribed by the Commissioner, upon the objecting party and the owner of the site.

Consent of the State Authority

30. Where the site is situated in a State, the Commissioner shall obtain the consent of the State Authority of that State before any designation is made.

Decision of the Commissioner

31. (1) Where the Commissioner, after hearing the parties, if any, is satisfied that—

- (a) the site is of cultural heritage significance; and
- (b) the State Authority has given its consent under section 30, he shall —
 - (i) designate the site as a heritage site; (ii) record the heritage site in the Register; and
 - (iii) give the owner a written notice of the Commissioner's decision.

(2) As soon as possible after the decision in subsection (1), the Commissioner shall —

- (a) cause to be published in the *Gazette* and a local newspaper—
 - (i) a notice that the site has been designated as a heritage site; and
 - (ii) any other matters constituting or relating to the heritage site which in his opinion is desirable to publish; and
- (b) file a notice in the land office where the heritage site is situated notifying that the site has been designated as a heritage site.

(3) Where the Commissioner makes a decision not proceed with the proposed designation of a site, he shall immediately notify the owner of the site and the land office where the site is situated in writing of such decision, with or without assigning any reason.

Notice to local planning authority

32. The Commissioner shall notify the local planning authority for the area of the local authority where the heritage site is situated of the designation of the heritage site so that the local planning

authority shall take into consideration any matter, policy, strategy or plan of action pertaining to the interest of the heritage site in preparing any development plan in that local authority area under the Town and Country Planning Act 1976 in Peninsular Malaysia or the relevant State laws in Sabah and Sarawak.

Chapter 2

Interim Protection Order

Commissioner may make Interim Protection Order

33^' (1) Upon a notice being served on the owner of a site under subsection 27(1) the Commissioner may, with the concurrence of the State Authority, make an Interim Protection Order in relation to a site if in the opinion of the Commissioner it is necessary to do so for the purpose of conservation and preservation of the site.

(2) An Interim Protection Order shall contain such conditions as may be specified by the Commissioner.

(3) The Commissioner shall cause the Interim Protection Order to be served on the owner of the site.

(4) An Interim Protection Order takes effect upon the service of the Interim Protection Order.

(5) The Commissioner may at any time revoke an Interim Protection Order.

(6) Any person who contravenes an Interim Protection Order commits an offence.

(7) The Commissioner may enter into any arrangements with the owner or occupier of a site for any loss or damage suffered or alleged to have been suffered by the owner or occupier by reason of the Interim Protection Order.

(8) For the purposes of this section, the State Authority shall mean the Menteri Besar or Chief Minister of a State, as the case may be.

Period of Interim Protection Order

34. (1) An Interim Protection Order shall continue to be in force—

(a) for a period of ninety days or for such further period as may be extended by the Commissioner under subsection (2); or

(b) until—

(i) the site is designated as a heritage site;

(ii) the Commissioner makes a decision not to proceed with the proposed designation of the site; or

(iii) the Commissioner revokes the Interim Protection Order.

(2) The Commissioner may at any time extend the period during which an Interim Protection Order continues to remain in force.

(3) A notice of an extension shall be served in the same manner as the Interim Protection Order is served.

Works permitted during an Interim Protection Order

35. (1) Any person affected by the Interim Protection Order may apply to the Commissioner to carry out any work or activities on the site.

(2) Upon receipt of an application the Commissioner may approve any reasonable work or activities on the site provided that the proposed work or activities do not reduce or affect the cultural heritage significance of the site.

(3) An approval under subsection (2) may be subject to such conditions as the Commissioner may impose.

(4) Any person who fails to comply with conditions imposed under subsection (2) commits an offence.

Chapter 3

Dealings involving heritage site

Notice of intention to sell heritage site

36. An owner of a heritage site who enters into an agreement of sale of the whole or any part of the heritage site, shall notify the Commissioner in writing in the prescribed form of the information about the existence of that agreement within twenty-eight days of the date of the agreement.

Change of owner of a heritage site

37. (1) Any person who purchases or acquires any heritage site shall within twenty-eight days of the date of the completion of the purchase or acquisition, notify the Commissioner in writing of-

- (a) that person's name and address; and
- (b) whether the person intends to occupy the site.

(2) A person who has notified the Commissioner of information under subsection (1) shall, within twenty-eight days of any change to the information provided, notify the Commissioner in writing of the change.

Chapter 4

Conservation and preservation of heritage site

Care of heritage site

38. (1) Where a heritage site is situated on an alienated land, the Commissioner may after consultation with the State Authority —

- (a) make arrangements with the owner or occupier for the inspection, maintenance, conservation and preservation of the heritage site;
- (b) purchase or lease the heritage site;

- (c) acquire the heritage site in accordance with the provisions of any written law relating to the acquisition of land for a public purpose; or
- (d) remove the whole or any part of a building or monument on the heritage site.

(2) Where the owner or occupier agrees to such arrangements under paragraph *l(a)*, the Commissioner may make a contribution towards the costs of carrying out any works of repair or conservation which is deemed necessary.

(3) Where a contribution towards the costs of carrying out the works is made, such works shall be carried out in accordance with the direction of the Commissioner.

(4) The Commissioner shall make good any damage done to the site or to monument by the removal of any monument under paragraph *l(d)* and may agree to the payment of any compensation to the owner of the site.

(5) Any dispute as to the amount of compensation shall be referred to the Minister whose decision shall be final.

Inspection of heritage site

39. (1) The owner or occupier of a heritage site situated on an alienated land shall permit the Commissioner or any authorized officer to enter upon the site to inspect, survey, investigate or to carry out any work necessary for the conservation, repair, maintenance and cleanliness as is deemed expedient or necessary.

(2) The owner or occupier shall be given a notice in writing of not less than seven days of any proposed entry.

(3) Where any person objects to such entry under subsection (1) on conscientious or religious grounds, such entry shall not be effected except with the permission in writing of the State Authority where the heritage site is situated.

(4) The owner or occupier shall be entitled to claim compensation for any loss or damage suffered or alleged to have been suffered by him by reason of such entry under subsection (1).

(5) Any dispute as to the amount of compensation shall be referred to the Minister whose decision shall be final.

Application for planning permission for heritage site

40. (1) The Commissioner shall co-ordinate and advise the local planning authority before any planning permission or development order is granted involving a heritage site.

(2) Where the local planning authority refers any application by any person for planning permission or development order to the Commissioner, such application shall contain —

- (a) sufficient particulars to identify the monument to which the application relates, including its layout plan, measured building plan and photographs of its every angle, including the exterior and interior of such monument;
- (b) such other plans and drawings as are necessary to describe the work which is the subject of the application;
- (c) measures that have been taken to secure the safety of the heritage site and the neighbouring land; and
- (d) such other particulars as may be required by the Commissioner.

(3) For the purpose of paragraph 2(c), neighbouring land means —

- (a) any land adjoining within a distance of two hundred metres from the boundary of the land to which an application under this section relates;
- (b) any land separated from the land to which an application made under this section relates by any road, lane, drain or reserved land, the width of which does not exceed twenty metres and which would be adjoining the land to which the application relates had they not been separated by such road, lane, drain or reserved land; or
- (c) any land located within a distance of two hundred metres from the boundary of the land to which an application under this section relates.

(4) The Commissioner shall advise the local planning authority to impose conditions when approving planning permission or a development order involving a heritage site which may include —

- (a) requiring compliance with any conservation guidelines and procedures issued by the Minister;
- (b) requiring the making good of any damage caused to any heritage site after the works authorized by the planning permission or the development order are completed; or
- (c) requiring the protection and retention of any specified feature of the heritage site.

(5) Where the planning permission is approved, the Commissioner shall liaise, co-operate and co-ordinate with the local planning authority to monitor and supervise that the terms and conditions imposed relating to the conservation of heritage are complied with.

(6) Any person who contravenes any condition imposed under subsection (4) commits an offence.

Monument Preservation Order

41. (1) Where the Commissioner, with the concurrence of the State Authority, is satisfied that any monument regarded as suitable to be registered as a heritage site is in dilapidation or in imminent danger of demolition, destruction, damage or alteration, the Commissioner shall serve on the owner of the monument a Monument Preservation Order pending approval of its registration.

(2) The Monument Preservation Order shall contain such conditions as may be specified.

(3) A Monument Preservation Order shall come into operation as soon as it is served on the owner of the monument.

(4) A Monument Preservation Order shall remain in operation for a period of ninety days from the date it is served and may be extended by the Commissioner for such period of time as he may think fit.

(5) Notwithstanding subsection (4), the Monument Preservation Order shall cease to be in force —

- (a) if the monument is designated as a heritage site; or
- (b) if the Commissioner has decided not to designate the monument as a heritage site.

(6) Any person who contravenes the Monument Preservation Order commits an offence.

Duty to keep heritage site in good repair

42. (1) The owner of a heritage site shall ensure that the heritage site is always in a state of good repair.

(2) Where the Commissioner is satisfied that reasonable steps are not being taken for properly preserving the monument, he may carry out such repair works, after giving any person appearing to the Commissioner to be the owner of the monument two weeks notice of his intention to do so, and all costs and expenses reasonably incurred to carry out the works shall be reimbursed by such person.

Financing conservation work

43. (1) An owner of a heritage site may, for the purpose of carrying out any conservation and preservation works on the heritage site apply to the Commissioner for any grant or loan.

(2) The Commissioner may, in consultation with the Council and the State Authority, make arrangements with the owner of a heritage site to carry out any conservation and preservation works as the Commissioner deems appropriate.

(3) The Commissioner may, with the approval of the Council, issue a grant or loan which is to be disbursed from the Fund for such conservation and preservation works.

(4) The Commissioner may, when giving the grant or loan, impose such conditions as he deems appropriate on the owner.

Power to impose entry fee

44. (1) An owner of a heritage site may, with the approval and subject to such conditions as the Commissioner may impose, charge an entrance fee into the heritage site.

(2) Where the Commissioner has contributed towards the expense of conservation and preservation of any heritage site, the Commissioner may impose a levy on the entrance fee received by the owner of that heritage site and any levy paid by such owner shall be paid into the Fund.

Chapter 5

*Conservation area and conservation management plan***Conservation area**

45. (1) Where a site is designated as a heritage site, that site shall on the date of the designation become a conservation area and shall be conserved and preserved according to a conservation management plan.

(2) A conservation area may —

- (a) incorporate a buffer zone around a central core; or
- (b) incorporate a buffer zone around a site that has been designated as a heritage site.

(3) The Minister may, in consultation with the Council, determine the buffer zone and the central core.

Conservation management plan

46. (1) The Commissioner shall, in consultation with the Council, prepare a conservation management plan for the purposes of—

- (a) promoting the conservation, preservation, rehabilitation, restoration or reconstruction of a heritage site;

- (b) ensuring the proper management of a heritage site including the use and development of all buildings and lands in the heritage site and the preservation of the environment including measures for the improvement of the physical living environment, communications, socio-economic well-being, the management of traffic and the promotion of economic growth; and
- (c) promoting schemes for the education of, or for practical and financial assistance to, owners and occupiers, and for community involvement in decision making.

(2) The Commissioner shall from time to time submit such conservation management plan to the State Authority or the relevant local planning authority, as the case may be, and advise and co ordinate with the State Authority or the local planning authority for the implementation of the conservation management plan and its guidelines.

(3) The Commissioner shall from time to time revise any conservation management plan.

PART VIII

HERITAGE OBJECT

Chapter 1

Discovery of object

Discovery of object

47. (1) Any person who discovers any object which he has reason to believe has cultural heritage significance shall immediately notify the Commissioner, any authorized officer or the District Officer of the district where the object was discovered, and where practicable, deliver the object to the Commissioner, authorized officer or the District Officer who shall give a written acknowledgement thereof.

(2) Where the District Officer has reason to believe that any object discovered in his area has cultural heritage significance, he may by notice in writing require the person having possession of it to deliver the object immediately to him, and the District Officer on receiving such object shall give a written acknowledgement and shall keep safely the said object.

(3) A District Officer shall communicate the notification under subsection (1) or the written notice under subsection (2) to the Commissioner as soon as practicable.

(4) Any agent, contractor or executor of a Federal Government, State Government or an owner of an alienated land who discovers at the project site any object which he has reason to believe that the object has cultural heritage significance, such agent, contractor or executor shall report to the Commissioner who shall immediately inspect the object.

(5) Any person who contravenes subsection (1) or (4) commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Proprietary right in the object

48. (1) Any object discovered after the date of the coming into operation of this Act shall be the absolute property of the Federal Government provided that where the object is discovered on an alienated land, compensation may be paid to the owner of the land.

(2) A competent heritage valuer may be appointed by the Commissioner to decide on the value of the object for the purposes of ascertaining the amount of compensation, and the decision of the competent heritage valuer shall be final.

(3) Every object which before the date of the coming into operation of this Act is not owned by any person or the control of which is not vested in any person as a trustee or manager, shall be deemed to be the absolute property of the Federal Government.

(4) All undiscovered objects whether lying on or hidden beneath the surface of the ground or in any river or in the sea, shall be

deemed to be the absolute property of the Federal Government but if the said object is at a later date found to be discovered on or in an alienated land the provisions of subsections (1) and (2) shall apply.

(5) In any legal proceedings relating to the date of discovery of an object of cultural heritage significance, it shall be presumed until the contrary is proved that it was discovered after the date of the coming into operation of this Act.

Declaration as heritage object by Commissioner

49. (1) The Commissioner may declare in the *Gazette* any object which has cultural heritage significance to be a heritage object and shall cause it to be listed in the Register.

(2) Before making the declaration under subsection (1), the consent of the owner of such object shall be obtained and for that purpose, the Commissioner may furnish the owner such prior opportunity for representation or submission in regard to the proposed declaration as may be practicable in the circumstances and in such manner as may be prescribed.

(3) The Commissioner may, in the same manner as in subsection (1), amend or revoke the *Gazette* and in each case of such amendment or revocation he shall substantiate his action with the necessary background and reason.

(4) Upon the object being listed in the Register, the object shall be a heritage object starting from the date of its registration and shall cease to be a heritage object when the Commissioner revokes registration.

Chapter 2 Application for

registration

Application for registration of heritage object

50. (1) Any person may apply for an object to be registered as a heritage object.

(2) An application for registration shall be in such form and accompanied by such documents or information as may be prescribed.

(3) The Commissioner may at any time after receiving the application under subsection (1) and before it is determined, by a written notice require the applicant to provide such additional documents or information as the Commissioner deems necessary.

(4) Where any additional document or information required under subsection (3) is not provided by the applicant within the time specified in the notice or any extension thereof granted by the Commissioner, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without prejudice to a fresh application being made by the applicant.

(5) An application under this section may be withdrawn at any time before it is approved or refused.

Approval or refusal of application for registration

51. (1) Where the Commissioner is satisfied that an object is of cultural heritage significance, he shall register the object as a heritage object in the Register and give the applicant a written notice of the Commissioner's decision under this section.

(2) Where the application involves an object which is attached to any alienated land, the concurrence of the State Authority shall be obtained before the application is approved.

(3) Where the application involves intangible cultural heritage in which copyright subsists, the consent of the copyright owner shall be obtained before the application is approved.

(4) An application for registration which is approved under this section may be subject to such conditions as the Commissioner may impose.

(5) As soon as possible after the approval in subsection (4), the Commissioner shall cause to be published in the *Gazette* a notice that the object has been registered as a heritage object and on any other matter constituting or relating to the heritage object which in his opinion is desirable to publish.

(6) Where the Commissioner refuses the application, he shall immediately notify the applicant in writing of the refusal with or without assigning any reason for the refusal.

Certificate of registration

52. (1) When an object is registered under section 51 the Commissioner shall issue a certificate of registration to the owner.

(2) Upon the heritage object being ceased to be registered as a heritage object, the owner of the object must surrender the certificate of registration to the Commissioner within three months from the date of such cessation.

Chapter 3

Management of heritage object

Compensation for certain heritage object

53. (1) On the discovery of any object having cultural heritage significance, the Commissioner shall be entitled to the custody and possession of the same on behalf of the Federal Government and shall be responsible for its safeguarding and safekeeping.

(2) If the Commissioner decides not to retain such object, it shall be returned to the person who delivered it subject to any condition that may be imposed by the Commissioner.

(3) When an object is retained by the Commissioner or where in the opinion of the Commissioner that object should be safeguarded at the place where it was found, the Commissioner shall at his discretion pay a reasonable amount of compensation to —

- (a) the finder;
- (b) the owner of an alienated land in or on which the object was discovered; or
- (c) the informant.

Apportionment of share of heritage object

54. The Commissioner may enter into a written agreement with the owner of the heritage object for the apportionment of share of such object as may be agreed upon by the Commissioner and the owner.

Dispute as to compensation or apportionment

55. Where there is any dispute regarding the compensation to be paid for any heritage object or apportionment of share of such object, such dispute shall be referred to the Minister whose decision shall be final.

Sale or disposal of heritage object

56. (1) The Commissioner may by notice in writing require any person in possession of any heritage object which is deemed to be of a national importance or interest, not to sell or dispose of such object without prior written consent of the Commissioner.

(2) Any person who receives such notice shall not sell or dispose of any heritage object in his possession or custody.

(3) Within the period of thirty days from the date of the notice under subsection (1) the Commissioner shall have the first right to purchase such heritage object at an agreeable value.

(4) Any person who contravenes subsection (2) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Notice of intention to sell or transfer a heritage object

57. The owner of a heritage object who enters into a contract to sell or transfer the heritage object shall notify the Commissioner in writing of the information about the existence of that contract within twenty-eight days of the date of the contract.

Change of owner of a heritage object

58. (1) Any person who purchases or acquires a heritage object shall, within twenty-eight days of the date of the purchase or acquisition, notify the Commissioner in writing of that purchaser or acquirer's name, particulars and address.

(2) Any change to the information under subsection (1) shall be notified to the Commissioner in writing within twenty-eight days.

(3) Any person who contravenes subsection (1) or (2) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Conservation of heritage object

59. (1) The owner or custodian of a heritage object shall keep the heritage property in good condition and in a secure place.

(2) The owner or custodian of a heritage object shall immediately report to the Commissioner any loss or damage to such heritage object or any part of it upon discovery of such loss or damage.

(3) Any person who fails to comply subsection (1) or (2) commits an offence.

Conservation of intangible cultural heritage

60. (1) The owner or custodian of a heritage object in the form of an intangible cultural heritage shall take all necessary steps to develop, identify, transmit, cause to be performed and facilitate the research on the intangible cultural heritage according to the guidelines and procedures as may be prescribed.

(2) The Commissioner may enter into any arrangements with the owner or custodian of the intangible cultural heritage for the compliance with the guidelines and procedures as prescribed.

PART IX

UNDERWATER CULTURAL HERITAGE

Discovery of underwater cultural heritage

61. (1) Any person who discovers an underwater cultural heritage in the Malaysian waters shall, as soon as practicable, give notice of such discovery to the Commissioner or the port officer.

(2) The port officer upon receiving such notice shall as soon as practicable notify, and where possible deliver the underwater cultural heritage to, the Commissioner.

(3) The Commissioner may, upon being satisfied that the underwater cultural heritage has cultural heritage significance, cause it to be listed in the Register.

(4) Any person who fails to give notice under subsection (1) commits an offence.

Possession, custody or control of moveable underwater cultural heritage

62. (1) Where it appears to the Commissioner that a person is in or may have had possession, custody or control of any moveable underwater cultural heritage or part of an underwater cultural heritage the Commissioner may, by notice in writing to the person, require the person within the specified time in the notice furnish him with the full information of such moveable underwater cultural heritage.

(2) Where the person has ceased to have such possession, custody or control of the moveable underwater cultural heritage, the person shall give the Commissioner particulars of the circumstances in which he ceased to have the possession, custody or control of such moveable underwater cultural heritage.

(3) Where the person has transferred such possession, custody or control of the moveable underwater cultural heritage to another person, he shall give to the Commissioner the name and address of the person to whom such possession, custody or control of such moveable underwater cultural heritage was transferred.

(4) Any person who fails to comply with any of the requirements under this section commits an offence.

Declaration of underwater cultural heritage

63. (1) Where the Commissioner is of the opinion that any underwater cultural heritage is situated in Malaysian waters is of cultural heritage significance but less than one hundred years old, he shall advise the Minister and the Minister may by notice published in the *Gazette* declare the site or object to be a underwater cultural heritage.

(2) Any site or object declared to be an underwater cultural heritage shall be listed in the Register.

Protected zone

64. (1) The Minister may on the advise of the Commissioner, declare in the notice published in the *Gazette* any area within which an underwater cultural heritage is situated to be a protected zone.

(2) No person shall carry out any activity in the protected zone except with approval in writing from the Commissioner.

(3) Any person who contravenes subsection (2) commits an offence.

Salvage and excavation works to be licensed

65. (1) No person shall carry on any salvage or excavation work in any Malaysian waters for the purpose of finding any underwater cultural heritage, except with a licence approved by the Commissioner.

(2) Any person who contravenes subsection (1) commits an offence.

Ownership of underwater cultural heritage found during survey, salvage or excavation

66. (J) Any underwater cultural heritage discovered during any survey, salvage or excavation works shall vest in the Commissioner and shall be listed in the Register.

(2) Where the Commissioner takes possession of any underwater cultural heritage, he shall within forty-eight hours cause to be posted a list of the underwater cultural heritage in any port office within the district where the underwater cultural heritage was discovered.

(3) Any owner of the underwater cultural heritage may, upon establishing his claim to the satisfaction of the Commissioner, within one year from the time at which the underwater cultural heritage came into the possession of the Commissioner, and upon paying the salvage fees and expenses due, be entitled to have the possession of the underwater cultural heritage upon such terms and conditions as may be imposed by the Commissioner.

(4) An owner who fails to comply with any of the terms and conditions imposed under subsection (3) commits an offence.

(5) Where no owner establishes a claim within one year, the underwater cultural heritage shall be the absolute property of the Federal Government.

(6) Unless otherwise directed by the Minister, the Commissioner may preserve the underwater cultural heritage *in situ*.

PART X**NATIONAL HERITAGE****Declaration of National Heritage**

67. (1) The Minister may, by order published in the *Gazette*, declare any heritage site, heritage object, underwater cultural heritage listed in the Register or any living person as a National Heritage.

(2) In making a declaration under subsection (1) the Minister may consider—

- (a) the historical importance, association with or relationship to Malaysian history;
- (b) the good design or aesthetic characteristics;
- (c) the scientific or technical innovations or achievements;
- (d) the social or cultural associations;
- (e) the potential to educate, illustrate or provide further scientific investigation in relation to Malaysian cultural heritage;
- (f) the importance in exhibiting a richness, diversity or unusual integration of features;
- (g) the rarity or uniqueness of the natural heritage, tangible or intangible cultural heritage or underwater cultural heritage;
- (h) the representative nature of a site or object as part of a class or type of a site or object; and
- (i) any other matter which is relevant to the determination of cultural heritage significance.

(3) Where the site, object or underwater cultural heritage is situated on State land, the Minister shall consult the State Authority before making any declaration under subsection (1).

(4) Where the site, object or underwater cultural heritage is on an alienated land or belongs to any person other than the Federal Government or a State Government, the owner, custodian or trustee of that site, immovable object or underwater cultural heritage shall be notified at least thirty days prior to the date of the proposed declaration.

(5) Where the declaration under subsection (1) involves an intangible cultural heritage and copyright still subsists in such works, the consent of the copyright owner shall be obtained before any declaration is made.

(6) Where the declaration under subsection (1) involves a living person, the consent of that person shall be obtained before any declaration is made.

(7) A copy of the order shall be served on the owner, custodian or trustee of the site, object or underwater cultural property or on the living person.

(8) Any person who objects to the making of the declaration under subsection (1) may submit an objection in writing to the Minister within three months of its publication and may apply to the Minister for the revocation of the order.

(9) The Minister may, after having been advised by the Council, revoke or refuse to revoke the order and such decision shall be final.

Nomination as National Heritage

68. Any person may nominate to the Minister in the prescribed form any natural heritage, tangible or intangible cultural heritage, living person or underwater cultural heritage to be declared as a National Heritage.

Ownership or possession of National Heritage

69. Any National Heritage which is owned or possessed by a person other than the Federal Government or the State Government may remain in the possession of its owner, custodian or trustee.

Change in the ownership of National Heritage

70. (1) There shall be no change in respect of the ownership of any National Heritage except by —

(a) inheritance; or

(b) sale, with the prior approval of the Commissioner.

(2) Where the owner, custodian or trustee intends to sell a National Heritage, that owner, custodian or trustee shall give priority to the Commissioner to purchase that National Heritage on an agreed value or upon the instruction of the Commissioner to deal with in such manner that the Commissioner deems fit.

(3) Where there is any dispute between the Commissioner and the owner as to the reasonable compensation for such National Heritage, such dispute shall be referred to the Minister whose decision shall be final.

(4) Where a sale is effected pursuant to paragraph (1)(b), the owner, custodian or trustee and the purchaser shall inform in writing to the Commissioner within thirty days after the change in ownership and the Commissioner shall cause to be made the necessary amendment in the Register.

Listing of the National Heritage in the Register

71. The Commissioner shall cause to be listed a National Heritage declared under subsection 67(1) in the Register.

Conservation and preservation of National Heritage

72. (1) The Minister may impose different procedures and guidelines as may be prescribed for the management, conservation and preservation of different categories of National Heritage.

(2) The Minister may approve any financial assistance to the owner, custodian or trustee of a National Heritage for the compliance with any procedure or guidelines prescribed under subsection (1).

PART XI

TREASURE TROVE

Uniformity of law with respect to treasure trove

73. This Part is made pursuant to Clause 1 (b) of Article 76 of the Federal Constitution for the purpose of promoting uniformity of the laws of the States of Malaysia relating to treasure trove.

Notice of discovery of treasure trove

74. (1) Any person who discovers any treasure trove shall, immediately give notice of such discovery to the Commissioner or District Officer of the district where the treasure trove was discovered and shall deliver the treasure trove to the District Officer who shall acknowledge receipt.

(2) A District Officer receiving a notice under subsection (1) shall notify the same to the Commissioner where such treasure trove was discovered.

(3) If the District Officer has reason to believe that any treasure trove has been discovered in his district and the discovery of the same has not been notified to him under this Act, he shall by notice in writing require the finder or suspected finder or the owner or occupier of the place in which the treasure trove is discovered to appear personally before him on a day and at a place mentioned in the notice and deliver to him such treasure trove or suspected treasure trove so discovered, and the District Officer shall acknowledge receipt.

Notification for enquiry

75. (1) The District Officer shall cause a notice to the finder or suspected finder or the owner or occupier of the place in which the treasure trove is discovered or other person claiming the treasure trove or any part of it requiring them to appear personally before the District Officer on a day and at a place mentioned in the notice for purpose of enquiring to determine—

- (a) whether any object or article is treasure trove;
- (b) the person by whom, the place at which, and the circumstances under which, such treasure trove was discovered; and
- (c) as far as is possible, the person by whom, and the circumstances under which, such treasure trove was hidden.

(2) The rights of a person mentioned in subsection (1) over the treasure trove if they are found to be so are forfeited upon failure of that person to appear.

Time to be allowed for suit by claimant

76. Where, after an enquiry made under section 75, the District Officer has reason to believe that the treasure trove was hidden within fifty years before the date of the discovery by a person appearing as required by the said notification and claiming such treasure trove, or by some other person under whom such person

claims, the District Officer shall make an order adjourning the hearing of the case for such period as he deems sufficient, to allow a suit being instituted in a court of competent jurisdiction by the claimant to establish his right.

When treasure trove may be declared ownerless

77. (1) Where-

- (a) after such enquiry the District Officer sees no reason to believe that the treasure trove was so hidden;
- (b) a period is fixed under section 76, no suit is instituted within such period to the knowledge of the District Officer; or
- (c) such suit is instituted within such period and the claimant's claim is finally rejected,

the District Officer may declare the treasure trove to be ownerless.

(2) Any person aggrieved by a declaration made under subsection (1) may appeal against the declaration within two months from the date of the declaration to the High Court.

When treasure trove vests in State Government

78. When a declaration has been made in respect of any treasure trove under section 77, such treasure trove shall vest in and belong to the State Government.

Disposal of treasure trove

79. The State Authority may in its discretion pay as a reward to the finder of any treasure trove and to the owner of any land in which it was discovered such sums as it may think fit.

Power of the Commissioner to inspect any treasure trove

80. (1) The Commissioner or any officer authorized by him in writing for that purpose may at all reasonable times inspect any treasure trove in the possession of any person.

(2) It shall be the duty of every such person to permit such inspection and to give to the Commissioner or such officer all reasonable facilities to study such treasure trove and to make drawings, photographs, prints, squeezes or reproductions by the making of casts or by any other means.

(3) No such drawings, photographs, prints, squeezes or reproductions under subsection (2) shall be sold without the consent of the person in possession of the treasure trove.

Offence

81. Any person who, being the finder of any treasure trove, fails to report the same or to deliver up the treasure trove or to state the circumstances of the discovery or the origin of the same, or wilfully makes a false report of such circumstances or such origin commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

Forfeiture of claim to and interest in treasure trove

82. (1) Any person who is convicted of any offence under this Part in respect of any treasure trove shall by virtue of such conviction be not entitled to all claims to or interests in the same or the value thereof or any reward in connection with the discovery thereof, and in any such case the Magistrate may order the treasure trove to be delivered to the State Secretary on behalf of the State Authority wherein the same was discovered and in the case of the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya to the Minister responsible for the Federal Territory of Kuala Lumpur, the Federal Territory of Labuan and the Federal Territory of Putrajaya, and where the Magistrate makes such order it shall be the duty of any person in whose possession the treasure trove to deliver it accordingly.

(2) The respective State may order any treasure trove forfeited under this section to be delivered to the owner or other person entitled thereto or returned to the finder, as the case may be, upon such terms and conditions as it may deem fit.

PART XII

LICENSING

Chapter 1

Export and import of heritage item

Licence to export

83. (1) No person shall export any heritage item unless a licence to export has been obtained from the Commissioner.

(2) The Commissioner shall not issue such a licence if in his opinion the heritage item concerned is reasonably believed to be of national importance or interest.

(3) In an application for a licence to export any heritage item, the applicant shall submit the description, declare the value and furnish such relevant particulars which the Commissioner may require and shall, if so required, deposit such heritage item with the Commissioner for inspection.

(4) No licence shall be issued to any person unless he proves to the satisfaction of the Commissioner that he is the owner of such heritage item or that he is acting on behalf of and with the authority of the owner.

(5) Where an enforcement officer or a proper officer of customs has any reason to believe that an object or material which is to be exported is a heritage item and without having a valid export licence, he shall detain such object or material and immediately notify the Commissioner within twenty-four hours for the determination of such object or material.

(6) If the Commissioner is satisfied that the object or material is a heritage item and is or will be of national importance or interest, he may prohibit the export thereof.

(7) Any person who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand ringgit or to both.

Importation of foreign heritage item

84. (1) A person who intends to import any foreign heritage item shall notify the Commissioner with the documents certifying that such foreign heritage item was lawfully transported out of a foreign country.

(2) If there is a valid reason to believe that a foreign heritage item which is in transit or has already been imported was unlawfully transported out of a foreign country, the Commissioner may take possession of it and keep it in custody but before he executes such act he shall consult the Minister whose decision shall be final.

(3) Where a foreign heritage item is detained under subsection (2), the Commissioner shall keep and manage it as he thinks fit.

(4) Where such foreign heritage item is proven to have been lawfully transported out of the foreign country, the Commissioner shall return it to the person importing it without delay.

(5) Where any country has proved that such foreign heritage item was unlawfully exported and requested it be returned in accordance with the terms of a treaty, or when the Commissioner performs the duty of returning it in accordance with a treaty, he shall, with the help of the competent authorities, take necessary measures to return it to such country.

Minister may prescribe the necessary procedure

85. Where a foreign heritage item is brought into Malaysia by any means, the Minister may prescribe the necessary procedure and methods of safekeeping and may direct the Commissioner accordingly to comply with such directions.

Chapter 2

*Licence to excavate***Excavation of heritage object**

86. (1) No person shall excavate any land for the purpose of discovering an object unless he holds a licence approved by the Commissioner.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

Application for licence to excavate

87. An application for a licence to excavate shall —

- (a) be made to the Commissioner in the prescribed form; and
- (b) contain a full and accurate description of the land on which it is proposed to be carried out, the purpose, nature and extent of the proposed excavation and such other particulars as may be required.

Approval or refusal of licence to excavate

88. (1) The Commissioner may in his discretion approve or refuse any application for a licence to excavate.

(2) No licence under subsection (1) shall be approved unless the Commissioner is satisfied —

- (a) that the owner of the land where the proposed excavation is to be made has consented to the excavation;
- (b) that the proposed excavation will not cause any damage or inconvenience to persons residing in the vicinity of such land, or to any place used for religious purposes, or to any cemetery, school, water source or supply, irrigation or drainage works or public road, or that if any such damage is likely to be caused adequate provision has been made by the applicant for the payment of compensation; and
- (c) that the applicant is able to furnish security for the due observance by him of any conditions imposed on the licence or any regulations as may be prescribed.

Terms and conditions of licence

89. A licence approved under section 88 shall be valid for such period as specified in the licence and subject to such conditions as may be specified in it.

Extension and revocation of licence

90. (1) Any licence to excavate may, at any time before the expiration of the period for which it was granted, be extended by the Commissioner for such further period as he thinks fit.

(2) Any licence to excavate may, at any time before the expiration of the period for which it was granted, be revoked by the Commissioner in the event the licence holder is in breach of any term or condition of the licence or such revocation is necessary to safeguard the national interest, interest of national security or for the purpose of any Government policy.

(3) A licence holder shall not be entitled to claim compensation for any loss or damage suffered or alleged to have been suffered by him by reason of such revocation under subsection (2).

(4) For the purposes of this section, what constitutes "national interest", "interest of national security" or "Government policy" shall be determined by the Minister on the recommendation of the Commissioner and such determination shall be final.

(5) No appeal shall lie against the decision of the Minister under subsection (4).

Chapter 3

*Registration of dealer of heritage item***Registered dealer of heritage item**

91. (1) No person shall deal in any heritage item unless he is a registered dealer and holds a certificate of registration approved by the Commissioner.

(2) Any person who contravenes the provision of subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

(3) Any person may apply to be registered as a registered dealer of cultural heritage to the Commissioner in the prescribed form and manner.

(4) The Commissioner may approve or refuse such application.

Information of stolen heritage item

92. (1) Any information on any stolen or lost of heritage item which has been received by the police shall be communicated to the Commissioner.

(2) Upon receiving the information under subsection (1) the Commissioner shall notify the registered dealers the list and description of such stolen or lost heritage item.

(3) If any property answering to the list and description is in the possession of any registered dealer or which has been offered or shown to any registered dealer, he shall without any delay give information to that effect at the nearest police station or to any police officer, with the name and address of the person from whom he acquired or who offered or showed him the same.

(4) Any registered dealer who fails to give information required under subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

(5) The registered dealer in such case may detain the person offering or showing such item to him until the arrival of the police.

Reports of sale or purchase of heritage item

93. (1) Every registered dealer who deals in heritage item shall, when so required by order in writing by the Commissioner, in respect of such period and in such manner as may be specified in such order, report in writing to the nearest authorized officer full details of any heritage item which he has bought or sold with the price paid and the name and address of the vendor or purchaser thereof, as the case may be.

(2) Such reports shall be legibly written in the national language or in English language.

(3) Any registered dealer who, without reasonable excuse, fails to comply with such order commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Enforcement officer may enter and search registered dealer's business premises, etc.

94. Any enforcement officer may enter any registered dealer's business premises at any time and may search without warrant such premises which he has reason to suspect that any stolen or lost heritage item is found in the premises.

Delivery to owner

95. (1) If any person is convicted in any court of an offence under Chapter XVII of the Penal Code [*Act 574*] in respect of any heritage item and it appears to the court that the same has been sold to a registered dealer, the court, on proof of the ownership of the property, may, if it thinks fit, order, the delivery of that heritage item to the owner either on payment to the registered dealer of the amount of the purchase price or any part thereof or without payment thereof or of any part thereof as the court may deem fit and proper.

(2) The court may also adjourn the proceeding for the attendance of the registered dealer and may summon the registered dealer to attend the adjourned hearing for the determination under subsection (1).

PART XIII

APPEAL

Appeal

96. (1) Any person may, within thirty days from the date of the notification of the decision of the Commissioner, appeal in writing to the Minister if that person is aggrieved—

(a) by the decision of the Commissioner to designate or not to designate a site as a heritage site under section 31;

- (b) by the issuance of an Interim Protection Order under section 33;
- (c) by the issuance of a Monument Preservation Order under section 41;
- (d) by the decision of the Commissioner to approve or refuse the application to register an object as a heritage object under section 51; or
- (e) by the refusal of the Commissioner to approve any licence under section 83 or 86 or any registration under section 91.

(2) The Minister may confirm, reverse or vary the decision appealed against and, in confirming, reversing or varying the decision, may impose such terms or conditions as he deems just or necessary.

(3) Before making any decision under subsection (2), the Minister may refer the matter to the Council.

(4) The decision of the Minister under this section shall be final.

(5) Where the decision is reversed or varied, the particulars of the reversal or variation shall be entered in the Register.

PART XIV

POWERS RELATING TO ENFORCEMENT, SEIZURE, ARREST, *ETC.*

Appointment of enforcement officers

97. The Minister may appoint such number of enforcement officers as may be necessary for the purposes of this Act and regulations made under this Act.

Power to investigate

98. An enforcement officer or a police officer shall have the power to investigate any offence under this Act.

Authority card

99. (1) There shall be issued to each enforcement officer an authority card which shall be signed by the Minister.

(2) Whenever an enforcement officer exercises any of the powers under this Act or any regulations made under this Act, he shall on demand produce to the person against whom the power is being exercised the authority card issued to him under subsection (1).

Search and seizure with warrant

100. (1) If it appears to a Magistrate, upon written information on oath and after such enquiry as he considers necessary, that there is reasonable cause to believe that—

- (a) any premises has been used or are about to be used for;
or
- (b) there is in any premises evidence necessary to the conduct of an investigation into,

the commission of an offence under this Act or any regulations made under this Act, the Magistrate may issue a warrant authorizing the enforcement officer or police officer named therein, at any reasonable time by day or by night and with or without assistance, to enter the premises, if need be by force.

(2) A warrant issued under subsection (1) may authorize the enforcement officer or police officer to search the premises for, and to seize and remove from the premises —

- (a) any object, material, book, document or other thing in respect of which an offence has or is suspected to have been committed; and
- (b) any object, material, book, document or other thing that is reasonably believed to furnish evidence of the commission of the offence.

(3) An enforcement officer or a police officer acting under subsection (1) or (2) may —

- (a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises;

- (b) remove by force any obstruction to entry, search, seizure or removal as he is empowered to effect under subsection (1) or (2); and
- (c) detain every person found in the premises until the search has been completed.

Search and seizure without warrant

101. Whenever an enforcement officer or a police officer has reasonable grounds to believe that any object, material, book, document or other thing in respect of which an offence under this Act or any regulations made under this Act has been committed is likely to be found in or on any place, premises, person, vehicle, vessel or conveyance and that by reason of delay in obtaining a warrant under section 100 the object of the search is likely to be frustrated, he may, without warrant, with such assistance and force as is necessary —

- (a) enter and search that place or those premises;
- (b) stop and search that person, vehicle, vessel or conveyance; and
- (c) seize any object, material, book, document or other thing which may be found and may be evidence of the commission of such offence.

Search of persons

102. No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

Seizure of thing, etc.

103. Without prejudice to subsection 100(2) and section 101, any object, material, book, document or other thing that an enforcement officer or a police officer reasonably suspects has been used or will be used in the commission of any offence under this Act or any regulations made under this Act may be seized and detained by the enforcement officer or police officer.

Notice of seizure

104. (1) Where any seizure is made under this Part, the enforcement officer or police officer making the seizure shall prepare a list of every object, material, book, document or other thing seized and of the place in which it is found and shall sign the list.

(2) The list prepared in accordance with subsection (1) shall be delivered immediately to the occupant of the place or premises where the object, material, book, document or other thing seized is found.

(3) Where the seizure is made in or from any place or premises which are unoccupied, the enforcement officer or police officer making the seizure shall whenever possible post a list of the things seized conspicuously at the place or premises.

(4) Where any object, material, book, document or other thing is seized otherwise than in or from any place or premises, the enforcement officer or police officer making the seizure shall give a notice in writing of the seizure and the grounds of the seizure to the owner of the object, material, books, document or other thing seized by delivering a copy of such notice to the owner in person or by post at his place of business or residence.

(5) A notice under subsection (4) need not be given where the seizure is made in the presence or with the knowledge of the owner.

Power of arrest

105. (1) Any enforcement officer or police officer may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this Act or any regulations made under this Act.

(2) An enforcement officer making an arrest under subsection (1) shall without unnecessary delay make over the person so arrested to the nearest police officer or, in the absence of a police officer, take such person to the nearest police station, and thereafter the person shall be dealt with as is provided for by the law relating to criminal procedure for the time being in force as if he had been arrested by a police officer.

Obstruction of search, etc.

106. Any person who —

- (a) assaults, obstructs, hinders or delays any enforcement officer in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act; or
- (b) fails to comply with any lawful demand of an enforcement officer in the execution of his duty under section 105,

commits an offence and shall on conviction be liable to imprisonment for a term not exceeding one year or to a fine not exceeding ten thousand ringgit or to both.

*

Power to require attendance of persons acquainted with case

107. (1) The enforcement officer making an investigation under this Act or any regulations made under this Act may, by order in writing, require the attendance before himself of any person who appears to him to be acquainted with the facts and circumstances of the case, and such person shall attend as required.

(2) If any such person refuses to attend as required by an order made under subsection (1), the enforcement officer may report his refusal to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.

Examination of persons acquainted with case

108. (1) An enforcement officer making an investigation under this Act or any regulations made under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.

(2) Such person shall be bound to answer all questions relating to such case put to him by the enforcement officer, but he may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to questions.

(4) The enforcement officer examining a person under subsection (1) shall first inform that person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumb print, as the case may be, after—

- (a) it has been read to him in the language in which he made it; and
- (b) he has been given an opportunity to make any correction he may wish.

Admissibility of statements by accused persons

109. (1) In any trial or inquiry by a court into an offence under this Act, any statement, whether the statement amounts to a confession or not, is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation or not and whether or not wholly or partly in answer to questions, by an accused person to or in the hearing of any enforcement officer or a police officer, whether or not interpreted to him by any other enforcement officer or police officer or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement made under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in authority and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(3) Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served with a notice in writing, which shall be explained to him, to the following effect:

"You have been arrested/informed that you may be prosecuted for ... (the possible offence under this Act). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done."

(4) Notwithstanding subsection (3), a statement by any person accused of any offence under this Act made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible thereafter.

(5) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.

(6) Where in any criminal proceedings against a person for an offence under this Act, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, may draw such inference from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(7) Nothing in subsection (6) shall, in any criminal proceedings—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from that subsection; or

- (b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.

Forfeiture of things, etc., seized

110. (1) Any object, material, book, document or other thing seized under this Act shall be liable to forfeiture.

(2) Where anything has been seized under this Act the enforcement officer may at his discretion temporarily return such thing to the owner of the same on security being furnished to his satisfaction that such thing shall be surrendered to him on demand or to produce it before a court of competent jurisdiction.

(3) An order for the forfeiture under subsection (1) shall be made if it is proved to the satisfaction of the court that an offence under this Act or any regulations made under this Act has been committed and that the object, material, book, document or other thing was the subject-matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(4) If there is no prosecution with regard to any object, material, book, document or other thing seized under this Act, such object, material, book, document or other thing shall be taken and deemed to be forfeited at the expiration of a period of one calendar month from the date of service of a notice to the last known address of the person from whom the object, material, book, document or other thing was seized indicating that there is no prosecution in respect of such object, material, book, document or other thing, unless before the expiration of that period a claim thereto is made in the manner set out in subsections (5), (6), (7) and (8).

(5) Any person asserting that he is the owner of the object, material, book, document or other thing referred to under subsection (4) and that it is not liable to forfeiture may personally or by his agent authorized in writing give written notice to the enforcement officer or police officer in whose possession such object, material, book, document or other thing is held that he claims the object, material, book, document or other thing.

(6) On receipt of the notice referred to in subsection (5), the enforcement officer or the police officer shall refer the matter to the Magistrate for a decision.

(7) The Magistrate to whom a matter is referred under subsection (6) shall issue a summons requiring the person asserting that he is the owner of the object, material, book, document or other thing and the person from whom it was seized to appear before the Magistrate, and when they appear or when they fail to appear, due service of the summons having been proved, the Magistrate shall proceed to examine the matter.

(8) If it is proved that an offence under this Act or any regulations made under this Act has been committed and that object, material, book, document or other thing referred to in subsection (7) was the subject-matter of or was used in the commission of such offence, the Magistrate shall order the object, material, book, document or other thing to be forfeited and shall, in the absence of such proof, order its release.

(9) Any object, material, book, document or other thing forfeited or deemed to be forfeited shall be delivered to an enforcement officer or a police officer and shall be disposed of in accordance with the directions of the Magistrate.

(10) Where anything seized in exercise of the powers conferred under section 100 or section 101 is of a perishable nature or where the custody of such thing involves unreasonable expense and inconvenience, the Commissioner, Deputy Commissioner or Assistant Commissioner or the enforcement officer, as the case may be, may direct that such thing be sold at any time and the proceeds of the sale be held to abide by the result of any prosecution or claim under this section.

No costs or damages arising from seizure to be recoverable

111. No person shall, in any proceedings before any court in respect of the seizure of anything seized in the exercise or the purported exercise of any powers conferred under this Act be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

PART XV

OFFENCES

Offences in respect of heritage site

112. (1) No person shall, without the approval in writing of the Commissioner—

- (a) dig, construct, excavate, build, plant trees, quarry, irrigate, burn lime or deposit earth or refuse, on or in the heritage site or conservation area;
- (b) demolish, disturb, obstruct, modify, mark, pull down or remove any monument in any heritage site;
- (c) erect any building or structure abutting upon a monument in any heritage site;
- (d) destroy the relationship of a building and its environment that is incompatible with the character of the neighbourhood in any heritage site;
- (e) clear any area or interfere with, destroy or remove any tree, plant undergrowth, weed, grass or vegetation in any heritage site; or.
- (f) do any activities or actions that would likely cause damage to the adjacent and surrounding land which have been registered as heritage site.

(2) Any person who, without lawful authority, contravenes subsection (1) shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

(3) Any person who has in his possession or custody or under his control, any material originating from the land which constitutes a natural heritage or cultural heritage, shall be presumed to have extracted, removed or transported or permitted the extraction, removal or transportation of natural heritage or cultural heritage without lawful authority.

(4) Any person convicted of an offence under this section may be ordered to pay, in addition to any punishment, imposed under subsection (2), compensation equal to the value of the object and of anything damaged in the course of its extraction.

(5) For the purposes of subsection (4), the value of any object shall, in the absence of evidence to the contrary, be deemed to be such amount as the Federal Government valuer may certify.

(6) Any sum ordered to be paid under subsection (4) shall be recoverable as if it were a fine imposed on conviction.

Offences in respect of heritage object

113. Any person who destroys, damages, disfigures, disposes or alters a tangible cultural heritage, without a permit issued by the Commissioner commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

Offences in respect of National Heritage

114. (1) No person shall, without the written approval of the Commissioner, transfer, demolish, remove, alter, renovate, export, add to or deal with any National Heritage except in case of urgent and immediate necessity for the safety of persons or property.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand ringgit or to both.

PART XVI

MISCELLANEOUS

Prosecution

115. No prosecution in respect of any offence under this Act or any regulations made under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Jurisdiction of Court of First Class Magistrate

116. Notwithstanding anything contained in any written law to the contrary, a Court of a First Class Magistrate shall have the jurisdiction to try any offence under this Act and to award the full punishment for any such offence.

Offences committed by body corporate

117. Where a person charged with an offence under this Act or any regulations made thereunder is a body corporate, every person who, at the time of the commission of such offence was a managing director, manager or other similar officer of such body corporate, may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence charged, every such managing director, manager or officer shall also be deemed to have committed the offence and shall be liable to the same penalty as the body corporate, unless he proves that the offence was committed without his knowledge, consent or connivance or that he took reasonable precautions to prevent its commission.

General penalty

118. (1) Any person who commits an offence under this Act or any regulations made under this Act where no penalty is expressly provided shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both, and for a second or subsequent offence he shall be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) Where the offence committed resulted in damage to or the demolition or destruction of a heritage item, the court may order the person to pay, in addition to any penalty that may be imposed under subsection (1), the costs of the repair, restoration or reconstruction of the heritage item.

Compounding of offences

119. (1) The Commissioner may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under this Act or any regulations made under this Act, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding fifty percent of the maximum fine for that offence, within the time specified in the offer.

(2) An offer under subsection (1) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted.

(3) If the amount specified in the offer under subsection (1) is not paid within the time specified in the offer or within such extended period as the Commissioner may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (1) no prosecution shall be instituted after that in respect of the offence against the person to whom the offer to compound was made and where possession has been taken of any books, records or other documents or any other thing, such books, records, documents or things may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.

(5) The amounts received under this section shall be paid into and form part of the Federal Consolidated Fund and in the case of offences under Part XI the amounts received shall be paid into and form part of the State Consolidated Fund.

Public servants

120. The Commissioner, Deputy Commissioner, Assistant Commissioners, authorized officers, enforcement officers, all members of the Council and the committee, any member of the staff or agent of the Commissioner while discharging their duties or performing their functions or exercising their powers under this Act, shall be deemed to be public servants within the meaning of the Penal Code.

Immunity from legal action

121. No legal proceeding, prosecution or other form of litigation may be instituted or maintained against—

- (a) the Commissioner, Deputy Commissioner or Assistant Commissioner;
- (b) any member of the Council;

- (c) any authorized officer or enforcement officer; or
- (d) any person employed in the office of the Commissioner or the Council,

in his personal capacity in respect of any act, omission, decision or statement done or made for the purpose of or incidental to the implementation or proposed implementation of the provisions of this Act or any regulations made under this Act unless such act, omission, decision or statement was done or made by his wilful neglect or default.

Public Authorities Protection Act 1948

122. The Public Authorities Protection Act 1948 [*Act J98*] shall apply to any action, suit, prosecution or proceeding against the Commissioner, Deputy Commissioner, Assistant Commissioners, authorized officers, enforcement officers, any member of the Council or the committee, any member of the staff or agent of the Commissioner or the Council in respect of any act, neglect or default done or committed by it or by him, as the case may be, in such capacity.

Delegation of powers

123. The Commissioner may generally or specially authorize the exercise, performance or discharge of any of his powers, duties or functions under this Act or any regulations made under this Act to any officer appointed under subsection 5(1).

Regulations

124. (1) The Minister may make any regulations as may be expedient or necessary for the better carrying into effect of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made for all or any of the following purposes:

- (a) prescribing any matter which is required under this Act to be prescribed;

- (b) prescribing the conservation management plan;
- (c) prescribing the conditions and restrictions (including the payment and amount of a fee) subject to which any licence or permit under this Act may be granted or issued;
- (d) providing for procedures for application, terms and conditions to be imposed on licences, and for fees, charges and deposits in respect thereof, including provisions for the forfeiture, use or return of such deposits;
- (e) prescribing the management and procedures for the conservation and preservation of heritage sites, heritage objects, underwater cultural heritage and National Heritage;
- (f) prescribing guidelines and procedures for the conservation and preservation of intangible cultural heritage;
- (g) prescribing the procedure for compounding such offences; and
- (h) prescribing a penalty or a fine not exceeding twenty-five thousand ringgit for the contravention of or failure to comply with any of the provisions of any regulations made under this Act or with the restrictions or conditions of any licence or permit granted under any such regulations.

PART XVII

REPEAL AND SAVING PROVISIONS

Repeal and saving

125. (1) Subject to subsection (2), the Antiquities Act 1976 [*Act 168*] and the Treasure Trove Act 1957 [*Act 542*] are repealed.

(2) The Treasure Trove Act 1957 shall continue to apply to those States which do not adopt the provisions of Part XI of this Act by a law made by the Legislature of the relevant States in accordance with Clause (3) of Article 76 of the Federal Constitution.

(3) All appointments, regulations, rules, by-laws, exemptions, directions and orders made, all registers kept and all certificates granted or having effect under the laws or orders repealed by this section and in force or having effect at the commencement of this

Act, shall (without prejudice to the power of the Minister to amend the regulations, rules and by-laws or to amend, revoke or withdraw the exemptions, directions or certificates by order or direction made under the appropriate provisions of this Act and subject to such modifications as may be necessary to bring the regulations, rules, by-laws, exemptions, directions or orders in conformity with this Act) continue to be in force and have effect as if they had been made, kept or granted under this Act, until otherwise provided for under this Act.

Prevention of anomalies

126. (1) The Minister may, by order, make such modifications in the provisions of this Act as may appear to him to be necessary or expedient for the purpose of removing any difficulty occasioned by the coming into force of this Act.

(2) The Minister shall not exercise the powers conferred by this section after the expiration of two years from the date of coming into operation of this Act.

(3) In this section, "modifications" includes amendments, additions, deletions, substitutions, adaptations, variations, alterations and non-application of any provision of this Act.

EXPLANATORY STATEMENT

The National Heritage Act 2005 ("the Act") proposed by this Bill contains provisions for the conservation and preservation of National Heritage, natural heritage, tangible and intangible cultural heritage, underwater cultural heritage, treasure trove and for related matters.

PART I

2. Part I of the Bill contains preliminary matters.
3. *Clause 1* contains the short title. It also seeks to empower the Minister to appoint different dates for the coming into operation of the Act to different parts of Malaysia.
4. *Clause 2* contains the definitions of certain expressions used in this Bill.

PART II

5. Part II of the Bill deals with policies in relation to conservation and preservation of heritage.

6. *Clause 3* seeks to empower the Minister to issue policies, statements or directives in respect of any matter, business, strategy or conduct on the conservation and preservation of heritage.

PART III

7. Part III of the Bill deals with the administration of the Act.

8. *Clause 4* provides for the appointment of Commissioner of Heritage who shall be a body corporate having perpetual succession and a common seal.

9. *Clause 5* provides for the appointment of Deputy Commissioners, Assistant Commissioners, authorized officers and such other officers as may be necessary to assist the Commissioner in the performance of his functions.

10. *Clause 6* lists out the functions of the Commissioner which includes determination of the designation of sites, registration of objects and underwater cultural heritage as heritage items, to establish and maintain the Register, to supervise and oversee the conservation, preservation, restoration, maintenance, promotion, exhibition and accessibility of heritage and to promote and facilitate any research relating to heritage.

11. *Clause 7* seeks to empower the Commissioner to enter into contracts, to acquire, purchase, take, hold and enjoy movable and immovable property of every description, to convey, assign, charge, mortgage or transfer movable or immovable property vested in the Commissioner.

PART IV

12. Part IV of the Bill contains provisions relating to the National Heritage Council.

13. *Clause 8* provides for the establishment of the Council.

14. *Clause 9* lists out the functions of the Council and *clause 10* provides for the membership of the Council.

15. *Clause 11* deals with the appointment of secretary to the Council.

16. *Clauses 12, 13, 14* and *15* provide for the tenure of office, revocation of appointment and resignation of members of the Council, vacation of office and the filling of vacancies in the Council.

17. *Clauses 16* and *17* deal with meetings of the Council and the procedure of the Council.

18. *Clause 18* provides for the establishment of committees to assist the Council in performing its functions under the Act.

19. *Clause 19* provides for the remuneration and allowances for the members of the Council or its committees.

PART V

20. Part V of the Bill contains provisions relating to the Heritage Fund.
21. *Clause 20* seeks to establish the Fund which shall be controlled, maintained and operated by the Commissioner.
22. *Clause 21* provides for the expenditure which may be charged on the Fund and *clause 22* provides that accounts are to be kept and maintained in compliance with the Statutory Bodies (Accounts and Annual Reports) Act 1980.

PART VI

23. Part VI of the Bill contains a provision on the National Heritage Register.
24. *Clause 23* provides for the establishment and maintenance of the Register by the Commissioner. It also provides for the Register to be made available for public inspection.

PART VII

25. Part VII of the Bill contains 5 chapters and provides for matters relating to the designation of heritage site, Interim Protection Order, dealings involving heritage site, conservation and preservation of heritage site, conservation area and conservation management plan.

Chapter 1

26. *Clauses 24* and *25* empower the Commissioner to designate a site or any neighbouring site as a heritage site.
27. *Clause 26* seeks to allow the Commissioner to inspect any site for the purposes of determining a site to be designated as a heritage site.
28. *Clause 27* provides for notice to be given to an owner of a site by the Commissioner before a site is designated as a heritage site.
29. *Clause 28* seeks to allow any owner of a site or any other person affected or likely to be affected by the designation of the site as a heritage site to make an objection to the designation and *clause 29* imposes a duty on the Commissioner to conduct a hearing to hear those objections.
30. *Clause 30* provides for the Commissioner to obtain consent from the State Authority before any site in that State is designated as a heritage site.
31. *Clause 31* lists out the decisions that the Commissioner may make.
32. *Clause 32* imposes a duty on the Commissioner to notify the local planning authority of any designation of a heritage site in that local authority area.

Chapter 2

33. *Clauses 33 and 34* provide for the making of an Interim Protection Order and the duration of that Interim Protection Order.

34. *Clause 35* provides the activities that can be carried out on a site during an Interim Protection Order.

Chapter 3

35. *Clause 36* provides that 28 days notice to be given to the Commissioner when an owner of a heritage site wishes to sell the site.

36. *Clause 37* seeks to impose a duty on the new owner of a heritage site to notify the Commissioner of such changes in ownership of the heritage site within 28 days of the completion of the transfer.

Chapter 4

37. *Clause 38* deals with care of heritage site.

38. *Clause 39* seeks to enable the Commissioner to inspect a heritage site in order to conserve and preserve the site.

39. *Clause 40* seeks to enable the Commissioner to coordinate and advise the local planning authority on any development or renovation of a heritage site.

40. *Clause 41* seeks to enable the Commissioner to issue Monument Preservation Order on an owner of a monument for purposes of conserving and preserving the heritage site.

41. *Clause 42* deals with the duty of the owner of heritage site to keep the heritage site in a good state of repair.

42. *Clause 43* seeks to empower the Commissioner to finance conservation and preservation works in a heritage site.

43. *Clause 44* seeks to empower the Commissioner to approve any application made by an owner of a heritage site to impose entry fee on that site.

Chapter 5

44. *Clauses 45 and 46* deal with conservation area and conservation management plan respectively.

PART VIII

45. Part VIII contains provisions on discovery of an object, application for registration of an object and the management of a heritage object.

Chapter 1

46. *Clauses 47, 48 and 49* respectively deal with discovery of an object, the proprietary rights in the object so discovered and the declaration of that object as a heritage object by the Commissioner.

Chapter 2

47. *Clauses 50, 5J and 52* respectively deal with an application for registration of an heritage object as a heritage object, the approval or refusal of an application by the Commissioner and the issuance of a certificate of registration by the Commissioner.

Chapter 3

48. *Clause 53* seeks to empower the Commissioner to take custodial rights of an object and to give compensation for certain heritage objects.

49. *Clauses 54 and 55* respectively deal with the apportionment of share of a heritage object and the dispute on the compensation or apportionment of share of the heritage object.

50. *Clause 56* provides that the Commissioner may order an owner of heritage object not to sell or dispose of the object without prior consent of the Commissioner.

51. *Clauses 57 and 58* respectively provide that a notice must be given to the Commissioner by the owner of a heritage object before selling or transferring a heritage object and the requirement for a new owner or a purchaser of such object to give his particulars to the Commissioner.

52. *Clause 59* deals with the conservation of a heritage object and *clause 60* deals with the conservation of an intangible cultural heritage.

PART IX 53. Part IX contains provisions

relating to underwater cultural heritage.

54. *Clause 61* deals with the procedure to be taken when an underwater cultural heritage is discovered.

55. *Clause 62* deals with possession, custody or control of moveable underwater cultural heritage.

56. *Clauses 63 and 64* respectively provide for the declaration of underwater cultural heritage and declaration of a protected zone.

57. *Clause 65* provides that license to salvage and excavate must be obtained from the Commissioner before carrying out any excavation works and *clause 66* deals with the Commissioner's right of ownership of underwater cultural heritage found during survey, salvage and excavation.

PART X

58. Part X contains provisions relating to National Heritage.
59. Clause 67 deals with power of the Minister to declare any heritage site, heritage object, underwater cultural heritage or any living person as a National Heritage.
60. Clause 68 allows any person to nominate to the Minister any natural heritage, tangible or intangible cultural heritage, living person or underwater cultural heritage to be declared as a National Heritage. Clause 69 deals with the ownership and possession of National Heritage by party other than the Federal Government or the State Government.
61. Clause 70 deals with the changes of ownership of a National Heritage. Clause 71 provides for the listing of a National Heritage in a Register.
62. Clause 72 empowers the Minister to impose procedures and guidelines for the management and conservation of different categories of National Heritage.

PART XI

63. Part XI contains provisions relating to treasure trove.
64. Clause 73 seeks to spell out that Part XI is enacted for purposes of promoting uniformity of laws of the States of Malaysia relating to treasure trove.
65. Clause 74 provides that where a person discovers treasure trove, the notice of that discovery shall be given to the Commissioner or the District Officer.
66. Clause 75 empowers the District Officer to hold an inquiry relating to the treasure trove and clause 76 allows the District Officer to adjourn such hearing and allow time for a suit to be instituted in a court of competent jurisdiction.
67. Clause 77 provides for the treasure trove to be declared ownerless and clause 78 provides that where the treasure trove has been declared ownerless such treasure trove shall vest in the State Government.
68. Clause 79 provides that the State Authority may pay a reward to a finder of any treasure trove and to the owner of any land in which it was found.
69. The power of the Commissioner to inspect any treasure trove is provided in clause 80.
70. Clause 81 seeks to make it an offence for any person who finds any treasure trove but fails to report it or deliver the treasure trove or makes a false report of the circumstances of the discovery or origin of the treasure trove.

71. *Clause 82* seeks to provide that where a person is convicted of any offence under this Part the person shall not be entitled to any claim or interest in the treasure trove or to any reward in connection to that finding.

PART XII

72. Part XII of the Bill contains provision relating to licensing.

Chapter 1

73. *Clause 83* provides that licence is required to import or export any heritage item and *clause 84* provides for the requirements to notify the Commissioner on intention to import any heritage item.

74. *Clause 85* deals with the powers of the Minister to prescribe any procedures or methods to be used in the safekeeping of any foreign heritage item imported into Malaysia.

Chapter 2

75. The requirement to have a licence to excavate is provided in *clause 86* and the provisions for an application for such licence is provided in *clause 87*.

76. *Clause 88* provides for the power of the Commissioner to either approve or refuse to grant a licence. *Clause 89* provides that the Commissioner may stipulate terms and conditions in the licence.

77. *Clause 90* provides that any licence to excavate may be extended by the Commissioner. It also provides that the Commissioner may revoke any such licence before the expiration of the period for which it was granted.

Chapter 3

78. *Clause 91* provides that no person shall deal in any heritage item unless he is a registered dealer and holds a certificate of registration approved by the Commissioner.

79. *Clause 92* seeks to provide that any information on any stolen or lost heritage item which is received by the police shall be communicated to the Commissioner. The Commissioner shall upon receiving that information notify the registered dealers for purposes of recovery of the heritage item.

80. *Clause 93* seeks to require a registered dealer to report any sale or purchase of a heritage item to the Commissioner.

81. *Clause 94* seeks to empower any enforcement officer to enter and search without warrant any registered dealer's business premises which he has reason to suspect that any stolen or lost heritage item is in the premises.

82. *Clause 95* provides that where any person is convicted in any court of an offence under Chapter XVII of the Penal Code [*Act 574*] in respect of any heritage item the court may order the heritage item to be delivered to the owner on proof of ownership with or without payment.

PART XIII

83. Part XIII of the Bill contains a provision on appeals.

84. *Clause 96* provides a right of appeal to a person aggrieved by a decision of the Commissioner to designate or not to designate a site as a heritage site, issuance of an Interim Protection Order, issuance of a Monument Preservation Order, approve or refuse to approve an application to register an object as a heritage object or refusal to grant any import, export or excavation licence or registration of a registered dealer. Such appeals lies to the Minister whose decision shall be final.

PART XIV

85. Part XIV contains provisions relating to enforcement, seizure, arrest *etc.*

86. *Clause 97* seeks to empower the Minister to appoint enforcement officers necessary for the purposes of this Act.

87. *Clause 98* provides that any enforcement officer or a police officer shall have the power to investigate any offence under this Act. *Clause 99* provides that each enforcement officer shall be issued an authority card and shall on demand produce his authority card when necessary under this Act.

88. *Clauses 100, 101, 102, and 103* deal with provisions relating to search and seizure with warrant, search and seizure without warrant, search of persons and seizure of things respectively.

89. *Clause 104* seeks to provide that notice of seizure shall be given to the owner of the object, material, books, document or other thing seized by the officers making the seizure.

90. *Clause 105* seeks to empower any enforcement officer or police officer to arrest without warrant any person whom he reasonably believes has committed or attempting to commit an offence under this Act.

91. *Clause 106* seeks to make it an offence for any person who obstructs any search done by any enforcement officer under this Act.

92. *Clause 107* seeks to allow an enforcement officer to order the attendance of persons acquainted with the case and *clauses 108 and 109* empower an enforcement officer to examine the person acquainted with the case.

93. *Clause 110* deals with the forfeiture of things seized under this Act.

94. *Clause 111* provides that no costs or damages arising from any seizure of anything in the exercise or the purported exercise of any powers under this Act to be recoverable in proceeding of court unless the seizure was done without reasonable cause.

PART XV

95. Part XV of the Bill contains provisions relating to offences under the Act.

96. *Clauses 112, 113 and 114* list out the offences relating to heritage sites, heritage objects and National Heritage respectively.

PART XVI

97. Part XVI of the Bill contains miscellaneous provisions.

98. *Clause 115* provides that no prosecution in respect of any offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

99. *Clause 116* provides for jurisdiction of court of First Class Magistrate to try any offence under this Act and to award full punishment for any such offence.

100. *Clause 117* provides for offences committed by body corporate.

101. *Clause 118* provides for a penalty for general offences.

102. *Clause 119* seeks to empower the Commissioner to compound offences.

303. *Clause 120* provides that the Commissioner, all members of the Council and the committee, any member of the staff or agent of the Commissioner shall be deemed to be public servants.

104. *Clause 121* provides for immunity from legal action of certain officers.

105. *Clause 122* provides that the Public Authorities Protection Act 1948 shall apply to any action, suit, prosecution or proceedings against the Commissioner or the Council.

106. *Clause 123* seeks to empower the Commissioner to delegate his powers, duties or functions under this Act to any officer of the Commissioner.

107. *Clause 124* seeks to empower the Minister to make regulations for the better carrying into effect of the provisions of the Act.

PART XVII

108. Part XVII of the Bill contains repeal and saving provisions.

109. *Clause 125* repeals the Antiquities Act 1976 and Treasure Trove Act 1957 and seeks to empower the Minister to make transitional provisions to ensure smooth implementation of the proposed Act. The proposed Act also provide for the continuation of all by-laws, appointments, exemption orders, registers and certificates made under previous law until repealed under this Act.

110. *Clause 126* seeks to empower the Minister to make such amendments, additions, deletion and others to remove any difficulty occasioned by the coming into operation of this Act.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

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