



LAWS OF SARAWAK

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Chapter 77

SARAWAK HERITAGE ORDINANCE, 2019

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SARAWAK HERITAGE ORDINANCE, 2019

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LAWS OF SARAWAK

Chapter 77

SARAWAK HERITAGE ORDINANCE, 2019

An Ordinance to make better provisions for the preservation and conservation of antiquities, monuments and sites of cultural, archaeological, architectural, artistic, religious or traditional, historical, tangible and intangible interest or value and bio-anthropological, geographical and natural history items, for the benefit of the State and as a heritage of the people and for matters connected therewith or incidental thereto.

[]

Enacted by the Legislature of Sarawak—

PART I
PRELIMINARY

Short title, commencement and application

1.—(1) This Ordinance may be cited as the Sarawak Heritage Ordinance, 2019, and shall come into force on such date as the Minister may, by notification in the *Gazette*, appoint.

(2) This Ordinance shall apply to all heritage found within the territory of Sarawak.

Interpretation

2.—(1) In this Ordinance—

“antiquity” means—

(a) any object, whether movable or immovable or a part of the soil or underwater within the territory of Sarawak, which has been constructed, shaped, painted, carved, inscribed, erected or otherwise produced or modified by human, non-human agency and which is or is reasonably believed to be at least fifty years old;

(b) any part of any such object referred to in paragraph (a) which has been excavated, modified, added to, reconstructed or restored,

which may be categorised as follows:

(i) Class I antiquity are items in paragraph (a) that have documented history or records and are one hundred years old or more;

(ii) Class II antiquity are items in paragraph (a) that are deemed to be one hundred years old or more, but do not contain any documented history or records; and

(iii) Class III antiquity are contemporary items in paragraph (a) which may or may not have documented history or records and are at least fifty years old but less than one hundred years old.;

(c) any human, plant or animal remains or impressions which is or is reasonably believed to be at least one hundred years old; and

(d) any other object which in the opinion of the Director is of outstanding historic, artistic, cultural or traditional interest or value and ought to be preserved as a heritage of the people;

“buffer zone” means an area designated as the perimeter of the site identified and used for the purpose of protecting the monument, building or site;

“building” means any building, structure or work (whether above or below the surface of the land or water), monument, commemorative statute or memorial;

“conservation” means the process of looking after and conserving artefacts, documents, heritage site, heritage buildings or a conservation area so as to retain its heritage significance, and includes maintenance, preservation, restoration, reconstruction, adaptation, reuse, rehabilitation, approved for change or any combination thereof;

“conservation area” means an area or site, including its buffer zone, declared as a heritage site under Part VI;

“Controller” has the same meaning assigned to it by the Sarawak Rivers Ordinance, 1993 [*Cap. 4*];

“Council” means the Sarawak Heritage Council established under section 3;

“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 in Sarawak, on or in land or underwater heritage of tangible form but excluding natural heritage;

“dealer” means any person who acquires antiquities or historical objects for resale, trade or other activity carried on for the purpose of gain;

“Director” means the Director of the Sarawak Museum Department appointed by the Minister under section 8;

“District Officer” means an officer appointed to be the District Officer in the State, and includes an officer temporarily discharging the duties of a District Officer;

“enforcement officer” means any officer appointed by the Minister under section 8;

“Fund” means the Sarawak Heritage Trust Fund established under section 7;

“heritage” includes any antiquity, treasure trove, historical object, human remains, buildings, monuments, historical and cultural site, area (whether on land or ship wrecks in the territory of Sarawak), fabric, structure, ethnographic material, work of art, handicraft, manuscript, document, coin, stamps, currency note, medal, badge, insignia, crest, flag, armour, vehicle, ship, plant and animal or part of, which has a significant and special architectural, aesthetic, historical, tangible and intangible cultural heritage, including songs and dances, oral tradition, scientific, economic, environmental (modified landscape) or any other

subject interest or value to the State and its people and has been declared to be subject to preservation, conservation and curation under Parts VII and VIII;

“heritage buildings” means classes of building which are categorised in the First Schedule;

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

“historical monument” means any monument which is or is reasonably believed to be at least one hundred years old and which is declared under section 33 to be a historical monument;

“historical object” means any artefact or other object to which religious, traditional, cultural, artistic or historical interest or value is attached, and includes any—

(a) ethnographic material such as a household, trade or agricultural implement, tool or equipment, decorative article, personal ornament;

(b) work of art or craft 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, armour or any article of symbolic heritage significance and importance; or

(d) vehicle, ship and boat or any other article or object in part or in whole, whose production have ceased,

which in the opinion of the Director is to be preserved by reason of its cultural, religious, traditional, artistic or historic interest or value as a heritage of the people;

“historical site” means any place, site or area which is, in the opinion of the Director, to be preserved by reason of its archaeological, palaeontological, religious, traditional or historic interest or value entered in the Register under section 32(1) and declared under section 33(1) to be a historical site;

“maintenance” means the continuous protection and care of a heritage or conservation area as distinguished from repair which involves restoration or construction;

“Minister” means the Minister charged with the responsibility for heritage;

“monument” means any building, port, earthwork, standing stone, *keramat*, cave or other structure, erection or excavation, and any tomb, tumulus or other place of interment or any other immovable property of a like nature or any part or remains of the same, which ought to be preserved as a heritage of the people by reason of the cultural, architectural, archaeological, religious, historic, traditional interest or value attaching thereto; and includes any part of the site of any monument and such portion of land adjoining such site as may be required for fencing, covering in, cordoning off or otherwise preserving any monument from damage, and also includes the means of access thereto;

“preservation” means the process of maintaining a heritage in its existing state or original form and controlled deterioration without materially changing or modifying any part or parts;

“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;

“Register” means the Sarawak Heritage Register established under section 32;

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

“restoration” means the process of returning the existing heritage or a conservation area to an earlier established state or form by removing accretion or by reassembling the existing repairs with best museum practices and supervision, without the introduction of new materials;

“safeguarding” means the identification, protection, conservation, restoration, renovation, maintenance,

documentation and revitalization of historic or traditional matter, artefact, area and their environment;

“Sarawak Museum Complex” comprises of the following buildings:

- (a) Borneo Cultures Museum;
- (b) Museum Sarawak;
- (c) Kuching Aquarium;
- (d) Islamic Heritage Museum;
- (e) Natural History Museum;
- (f) Taxidermy Building;
- (g) Annex Office Building; and
- (h) Sarawak Arts Museum;

“State Government museums” means those museums under the charge of Sarawak Museum Department;

“territory of Sarawak” means all areas within the boundaries of the State which comprised the territory of Sarawak immediately before Malaysia Day, and includes, by virtue of the Sarawak (Alteration of Boundaries) Order in Council, 1954 [*Vol. VI, p. 1025*], the continental shelf being the seabed and its subsoil which lies beneath the high seas contiguous to the territorial waters of Sarawak;

“traditional cultural expressions” include music, dances, arts, designs, names, signs and symbols, performances, ceremonies, architectural forms, handicrafts and narratives, or any other artistic or cultural expressions;

“traditional knowledge” means knowledge, know-how, skills and practices that are developed, sustained and passed on from generation to generation within a community, forming part of its cultural or spiritual identity, excluding those traditional knowledge defined under the Sarawak Biodiversity Regulations, 2016 [*Swk. L.N. 312/2016*];

“underwater heritage” means all traces of human existence having a cultural, historical or archaeological character which

have been partially or totally underwater, periodically or continuously, for at least fifty 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.

(2) For the purpose of deciding whether any object is or is not an antiquity or a historical object, the Director may examine it and may seek the assistance of any person whom he considers to be competent or qualified to help him with the investigation and examination.

(3) Without prejudice to the provisions for appeal to the Minister under section 50 or 75, the decision of the Director whether any object is or is not an antiquity or a historical object within the meaning of this Ordinance shall be final.

PART II

ADMINISTRATION

Establishment of Sarawak Heritage Council

3.—(1) For the purpose of this Ordinance, there shall be established a body to be known as the “Sarawak Heritage Council” which shall consist of the following members:

- (a) the Minister as Chairman;
- (b) a Deputy Chairman;
- (c) the State Secretary;
- (d) the State Attorney-General;
- (e) the State Financial Secretary;
- (f) the Permanent Secretary of the Ministry responsible for heritage; and

(g) not more than five other persons who have wide and established knowledge, experience and expertise in the field of safeguarding, preservation and conservation of heritage.

(2) The Deputy Chairman and the members referred to in subsection (1)(g) shall be appointed by the Minister with the approval of Majlis Mesyuarat Kerajaan Negeri.

(3) The Director shall be the Secretary of the Council.

(4) The Council may establish committees comprising of members and any other fit and proper persons as it thinks expedient to assist the Council in its functions under this Ordinance.

(5) Subject to this Ordinance and any direction given by the Minister, the Council or any committee established by it may regulate its own procedure.

Functions of Sarawak Heritage Council

4. The functions of the Council shall be to—

(a) advise the Government on matters of policy, strategy or plan of action to be taken, administration and management of heritage and conservation areas in the State;

(b) engage public participation in the identification and protection of heritage and conservation areas and in the preparation, adoption and implementation of management plans under this Ordinance;

(c) advise on the preservation, protection, augmentation and enhancement of historical monuments, historical sites or other conservation areas;

(d) stimulate public interest and support in the preservation or conservation of heritage;

(e) give direction to Director to take appropriate measures to preserve all records, documents and data relating to all forms of heritage registered, approved, declared or published under this Ordinance; and

(f) perform such other functions as may from time to time be assigned to it by the Majlis Mesyuarat Kerajaan Negeri in relation to matters related to heritage in the State.

Tenure of office

5.—(1) Subject to subsection (2), a member appointed under section 3(1)(b) 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.

(2) The appointment of members under section 3(1)(b) or (g) may at any time be revoked by the Minister with the approval of Majlis Mesyuarat Kerajaan Negeri.

(3) A member appointed under section 3(1)(b) or (g) may at any time resign his office by giving a written notice addressed to the Minister.

(4) The office of a member appointed under section 3(1)(b) 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 for which he has been punished with imprisonment (in itself only or in addition to or in lieu of a fine) for more than one year;

(c) he is adjudged a 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;

(f) his resignation is accepted by the Minister; or

(g) his appointment is revoked by the Minister with the approval of Majlis Mesyuarat Kerajaan Negeri.

(5) Where a member appointed under section 3(1)(b) or (g) ceases to be a member of the Council, the Minister may, with the

approval of Majlis Mesyuarat Kerajaan Negeri, appoint another person to fill the vacancy for the remainder of the term for which the vacating member was appointed.

Meetings of Council

6. All meetings of the Council and the regulation of its affairs and proceedings shall be conducted in accordance with the provisions of the Second Schedule.

Sarawak Heritage Trust Fund

7.—(1) There shall be established for the purpose of this Ordinance a fund to be known as the “Sarawak Heritage Trust Fund” under section 4 of the Financial Procedure (Contingencies and Trust Funds) Ordinance, 1963 [*Cap. 37*].

(2) The Director shall cause proper accounts to be kept and maintained in respect of the Fund in compliance with the provisions of the Statutory Bodies (Financial and Accounting Procedure) Ordinance, 1995 [*Cap. 15*].

(3) The Director shall, as soon as the accounts have been audited, submit the report to the Minister for endorsement.

Appointment of Director, etc.

8. This Ordinance shall be administered by a Director, who shall be assisted by such number of Deputy Directors, curators, assistant curators and enforcement officers, all of whom shall be appointed by the Minister, by notification in the *Gazette*.

Direction of Minister

9. The Minister may from time to time give to the Director, general or special directions in writing, not inconsistent with the provisions of this Ordinance, as to the exercise or discharge of the Director’s powers and functions under this Ordinance, and any such direction shall become binding on the Director, who shall forthwith take all steps necessary or expedient to give effect thereto.

Exercise of powers, etc.

10.—(1) The Director shall, subject to the general or special directions of the Minister given pursuant to section 9, exercise the powers conferred and perform the functions and duties imposed on him under this Ordinance.

(2) The Deputy Directors, curators and assistant curators shall assist the Director in the exercise of his powers and the discharge of his functions and duties and shall have such other functions and duties as may be assigned to them by the Director.

(3) The enforcement officers shall have such powers as may be conferred, and duties and functions as may be imposed, upon them by this Ordinance.

Functions and powers of the Director

11.—(1) The Director shall be responsible for the proper administration and management of the functions and affairs of the Sarawak Museum Department and all State Government museums.

(2) The functions of the Director are as follows:

(a) to determine the heritage significance of buildings or sites, and caused it to be entered into the Register and declared;

(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 preserve, conserve, protect and promote traditional knowledge and traditional cultural expression of the communities of Sarawak;

(h) to establish and maintain liaison and co-operation with other related agencies in respect of conservation and preservation of heritage matters;

(i) 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;

(j) to promote and ensure that the best standards and practices are applied in the conservation and preservation of heritage;

(k) to advise the Minister with regard to any matter in respect of conservation and preservation of heritage; and

(l) to do all such things as may be incidental to or consequential upon the discharge of his powers and functions.

(3) Subject to and for the purpose of this Ordinance, the powers of the Director are as follows:

(a) to acquire any antiques or any significant objects or artefacts related to Sarawak;

(b) to identify and issue notice of preservation or preservation order for monuments, buildings or sites;

(c) to appoint any person to manage exhibition and other functions which the Director deemed necessary, subject to the approval by the Minister; and

(d) to do all things reasonably necessary for the performance of his duties under this Ordinance.

Appointment of managing agent

12.—(1) Subject to any directions that may be issued by the Majlis Mesyuarat Kerajaan Negeri, the Director may, with the approval of the Minister, appoint any person as a managing agent—

(a) to build, manage or maintain—

(i) any of the building and facilities of State Government museums; or

(ii) any historical site or historical monument declared under this Ordinance; or

(b) to undertake the provision of services, within State Government museums.

(2) Such appointment shall be regulated by an agreement between the Director on behalf of the Government and the person to be appointed under subsection (1), which shall set out the duties and responsibilities of the managing agent and the terms, conditions and duration of his appointment.

Delegation of powers and duties

13. The Director may, with the written approval of the Minister, by notification in the *Gazette*, delegate to any person, any of the powers and duties conferred on the Director under this Ordinance or any rules made thereunder.

PART III

DISCOVERY OF, AND PROPERTY IN, ANTIQUITIES

Antiquities and historical monuments to be the property of the Government

14.—(1) Every antiquity found within the territory of Sarawak on or in the land or underwater subsequent to the 1st day of October, 1954, shall, subject to the provision of section 20(1)(c), be the property of the Government.

(2) Every historical monument which on or after 1st day of July, 1994, 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 Government.

Discovery of antiquities

15.—(1) Any person who discovers any object or monument which he has reason to believe to be an antiquity shall forthwith give notice of his discovery to the Director or to the District Officer of the District wherein the antiquity was discovered, and shall take all reasonable care and precautions and exercise all due diligence to avoid

or prevent damage or loss to the antiquity and, if it is practicable to do so, shall deliver the antiquity to the Director or the District Officer, who shall issue a receipt therefor.

(2) A District Officer receiving notice under subsection (1) shall communicate the same to the Director.

(3) Upon receipt of the notice under subsection (1), the Director or District Officer shall take such actions as are necessary to protect the integrity of the site where the antiquity was discovered and to prevent damage or loss to the antiquity.

(4) If the District Officer has reason to believe that any object discovered in his District is an antiquity, he may by notice in writing require the person having possession thereof, if it is practicable so to do, to deliver the same forthwith to him and the District Officer on receiving such object shall give a receipt therefor.

(5) Where any object has been delivered to a District Officer under subsection (1) or (4) or where the District Officer has reason to believe that any object discovered in his District is an antiquity, he shall give notice thereof to the Director.

(6) Any person who, being the finder of an antiquity, fails to report the antiquity, or to take action to protect it, or to state the circumstances of the discovery of the origin of the antiquity, or wilfully makes a false statement of such circumstances or such origin, shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding five years or to both.

Antiquities to be registered

16.—(1) Any person, other than a native of Sarawak, who is in possession of any antiquity, shall register such antiquity with the Director or any officer specially authorized by him in such manner and at such time as may be prescribed by rules made under section 80.

(2) Certificates of registration in such form as may be prescribed by rules made under section 80 shall be issued by the Director, or any officer specially authorized by him, in respect of antiquities registered under subsection (1), and such certificates shall, until the contrary is proved, be proof of ownership.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding five years or to both:

Provided that nothing herein shall apply to the owner or occupier of land on which an antiquity has remained undiscovered, if the owner or occupier, reports such antiquity to the Director or his deputy as soon as it is found.

Sale or disposal of antiquities and historical objects

17.—(1) Any person wishing to sell or otherwise dispose of an antiquity shall give notice of the proposed transaction to the Director or, if such person is a native of Sarawak, to a District Officer, who shall forthwith inform the Director thereof.

(2) The Director may, by notice in writing require any person in possession of or lawfully entitled to sell or dispose of any antiquity or any historical object not to sell or otherwise dispose of any such antiquity or historical object without giving notice in writing to him of such proposed transaction.

- (3) No person shall sell or otherwise dispose of—
- (a) any antiquity; or
 - (b) any historical object,

in respect of which a notice under subsection (2) has been given by the Director, until after a lapse of thirty days after the giving of notice by such person of his intention to sell or otherwise dispose of the antiquity or historical object and, in the meanwhile, it shall be lawful for the Director to purchase such antiquity or historical object at a reasonable price, notwithstanding any agreement which the owner may have entered into with another person.

(4) Such price shall be fixed by agreement between the parties or, in default of such agreement, by submission to arbitration under the law relating to arbitration for the time being in force in Sarawak.

(5) In any case where the Director has decided to purchase such antiquity or historical object, he shall be entitled to the custody and possession of the same on behalf of the Government and shall be

responsible for its recording, preservative treatment and ultimate disposal.

(6) Any person who sells or otherwise disposes of an antiquity or historical object contrary to this section shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding five years or to both.

(7) Any person who maliciously or negligently destroys, injures, defaces, displaces, disturbs or disfigures any antiquity in his possession or registered under section 16 or any antiquity or historical object in respect of which a notice under subsection (2) has been given shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding two year or to both.

Compensation to finder of antiquities

18.—(1) Save as provided in subsection (3), the Director shall pay to any person who discovers and gives notice of his discovery of an antiquity under section 15, a compensation equal to the value thereof, or renounce Government ownership in the object and return it to the finder, who shall receive a certificate of discovery in such form as may be prescribed.

(2) Such value shall be fixed by agreement between the parties or, in default of such agreement, by submission to arbitration under the law relating to arbitration for the time being in force in Sarawak.

(3) No compensation shall be payable to the finder of any antiquity if—

(a) the discovery of the antiquity was made in contravention of any provision of this Ordinance;

(b) the Director is of the opinion that the antiquity should be preserved in the place where it was found; or

(c) the land on or in which the antiquity was discovered is State land.

PART IV
EXCAVATION

No search for antiquities or historical objects except under licence

19.—(1) No person shall dig or otherwise search for antiquities or historical objects, using whatever means, whether on his own land or elsewhere, onshore or offshore, unless he is in possession of a valid licence issued by the Director to excavate.

(2) A licence issued under this section shall be for such period and subject to such conditions as the Director may prescribe:

Provided that:

(a) the Director may, at the expiration of any such licence, extend it for such further period as he shall deem fit; and

(b) no licence shall be issued without the consent of the registered proprietor or any person lawfully entitled to the land over which the licence is to be issued.

(3) Nothing herein contained shall be deemed to authorize the infringement of any private right or the contravention of any law in force in Sarawak.

(4) Neither the Director nor the Government shall incur any liability in respect of any loss sustained by the person or of any damage caused to any person in the course of or as a result of any excavation carried on under the authority of a licence issued under this Part by reason merely of the issuance of such licence.

(5) Any person, not being the holder of an licence to excavate issued under subsection (1), who digs for antiquity or historical object, or demolishes any ancient walls or other structures or objects which are antiquities or historical objects within the meaning of this Ordinance, whether above or below the ground, even though these acts are done upon land of which he is the owner or occupier, shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding twenty thousand ringgit or imprisonment for a term not exceeding five years or to both.

Conditions of licences

20.—(1) In addition to any other conditions that may be prescribed, either generally by rules made under section 80 or by the Director in any particular case, every licence issued under section 19 shall be subject to the following conditions:

(a) the licensee shall take all reasonable measures for the preservation of the antiquities or historical objects discovered by him and, if the preservation of the antiquity or historical object be beyond the means of the licensee, he may apply to the Director for assistance, and the Director may, if he thinks the antiquity or historical object merits it and with the approval of the Minister in writing, grant the necessary aid subject to such conditions as he may deem fit to impose;

(b) the licensee shall carry out his excavations in a scientific manner, and to the satisfaction of the Director;

(c) at the close of the excavation, or at such other times as the Director may require, the licensee shall afford an opportunity to the Director to divide the antiquities or historical objects so found in accordance with the provisions of section 21;

(d) the licensee shall, within a reasonable time, deposit with the Director any drawing, photographs, squeezes or other reproductions which the Director may require of antiquities or historical objects falling to the licensee in such division.

(2) In the event of a breach by a licensee of any of the conditions upon which a licence to excavate is issued or of any of the provisions of this Ordinance, the Director may forthwith suspend or cancel such licence.

Division of antiquities and historical objects

21.—(1) In making the division provided for in section 20(1)(c) the Director shall, with the approval of the Minister in writing, retain for the Government all antiquities or historical objects which are in his opinion desirable for the scientific completeness of any State Government Museum or for the purpose of illustrating the history, arts or crafts of Sarawak or of preserving the same as a heritage of the

people, and may with the approval of the Minister in writing, on behalf of the Government, renounce ownership of the remainder.

(2) The Director shall pay to the licensee, as compensation for any antiquity or historical object retained for the Government, a sum equivalent to the reward, other than wages, reasonably disbursed by the excavator to the workers who found them:

Provided that the compensation shall not exceed the value of the antiquity or historical object found.

(3) In the case of disagreement between the Director and the licensee as to the adequacy of the compensation under subsection (2), the matter shall be submitted to arbitration under the law relating to arbitration for the time being in force in Sarawak.

(4) Without prejudice to any compensation payable under subsection (2) the Director may, with the approval of the Minister in writing, transfer to the licensee antiquities or historical objects so found other than those retained by the Government in subsection (1) and shall register such antiquities or historical objects in the name of the licensee.

(5) The Director shall issue to the licensee a certificate of discovery in respect of all those antiquities or historical objects the ownership of which is renounced by him under subsection (1).

(6) If the division takes place on the field of excavation, the cost of transport to any State Government museum of any antiquity or historical object which the Government may retain shall be borne by the licensee, unless the Minister directs that the whole or part of such cost shall be borne by the Fund.

(7) Any person who contravenes this section shall be guilty of an offence.

Usage of detecting device

22.—(1) No person shall search for any antiquity or historical objects in public areas by using a detecting device unless with a permit issued by the Director:

Provided that before a permit is issued, the applicant shall:

(a) declare that the use of the detecting device is in accordance with the best archaeological practice; and

(b) submit a detailed statement setting out the purpose of the search.

(2) Any person who contravenes this section shall be guilty of an offence.

(3) For the purpose of this section, “detecting device” includes a metal detector, ground penetrating radar detecting device or any other detecting device meant for similar purposes.

PART V

PROHIBITION OF EXPORT OR SALE OF ANTIQUITIES OR HISTORICAL OBJECTS

Export of antiquities

23.—(1) No person shall export from Sarawak any antiquity unless he is in possession of a valid licence issued by the Director to export such antiquity.

(2) Every applicant for a licence to export an antiquity shall produce the certificate of registration or discovery of such antiquity.

(3) Any person who, not being the holder of a licence to export issued under subsection (1), exports or attempts to export any antiquity shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding five years or to both.

Production of licence

24. A licence to export any antiquity shall be produced by the holder to the Director, or any enforcement officer, on demand.

Power of Director to prohibit export of antiquities

25. The Director may, with the approval of the Minister, prohibit the exportation from Sarawak of any antiquity, the retention

in Sarawak of which he considers to be necessary or desirable in the interest of preserving the heritage of the people.

Prohibition of export of historical object

26.—(1) Where an enforcement officer, police officer or customs officer has reason to believe that any object which is to be exported is a historical object he may detain such object and forthwith report such detention to the Director.

(2) If the Director is satisfied that the historical object ought to be preserved as a heritage for the people, on account of its artistic, historical, cultural or traditional beauty, interest or value, he may prohibit the export thereof.

(3) Any person who exports or attempts to export an antiquity or historical object, the exportation of which has been prohibited in accordance with subsection (2) or section 25, shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding fifty thousand ringgit or imprisonment for a term not exceeding five years or to both.

Acquisition of antiquity or historical object sought to be exported

27.—(1) Where—

(a) a licence to export any antiquity has been refused; or

(b) a historical object is prohibited from being exported,

on the ground that such antiquity or historical object should be acquired on behalf of the Government, the Director shall pay to the owner thereof a reasonable compensation for such antiquity or historical object and thereupon the said owner shall deliver up the same to the Director who may dispose or deal with it in such manner as he deems fit.

(2) Where there is any dispute between the Director and the owner as to the reasonable compensation for the antiquity or historical object, the matter shall be submitted to arbitration under the law relating to arbitration for the time being in force in Sarawak.

Right to inspect antiquities and historical objects

28. Any person in possession of an antiquity or historical object shall, at the request of the Director, permit the same to be inspected and studied at any reasonable time by any person authorized by the Director in that behalf or enforcement officer, and shall give to him all reasonable facilities to make drawings, photographs, squeezes or other reproductions:

Provided that any such drawing, photograph, squeezes or other reproduction shall not be sold without the prior consent of the person in possession of such antiquity or historical object.

Authorization for sale of antiquity or historical object

29.—(1) The Director may, with the approval of the Minister, authorize the sale of any antiquity or historical object which is the property of the Government and which, in the opinion of the Director, is not required for the State Government museums or is not required to be preserved as a heritage of the people.

(2) A record of each such sale shall be kept by the Director, and every antiquity or historical object so purchased from the Director shall be deemed to have been duly registered under Part III.

Licence to deal in antiquities or historical objects

30.—(1) No person shall deal in antiquities or historical objects without a licence issued by the Director, unless specifically exempted by him.

(2) A dealer of antiquities and historical objects who applies for a licence under subsection (1) shall submit a listing of his present stock inventory to be duly inspected and stamped by the Director or any officer specially authorized by the Director.

(3) Upon compliance with the requirements of subsection (2), a licence under subsection (1) may be issued upon payment of such fee as may be prescribed by rules made under section 80.

(4) Subsequent replenishment of the inventory and sales of stock shall be recorded and open to inspection at any time by the Director or any officer specially authorized by the Director.

(5) Nothing in this section shall exempt any dealer from the requirements under sections 23, 24 and 27 relating to exportation of antiquities or historical objects.

Loan of Government antiquities or historical objects

31.—(1) The Director, with the approval of the Minister, may make loans or exchanges of any antiquities or historical objects belonging to the Government to or with learned societies, museums, or any specialist or expert within a specified time, and may authorize the exportation of such antiquities or historical objects from Sarawak for such purposes.

(2) Any agreement for a loan under subsection (1) shall contain adequate provisions for the preservation, insurance, duration of the agreement and the return to Sarawak of the antiquities or historical objects.

(3) If through any act, neglect or default on account whereof any damage is caused to the antiquities or historical objects during the duration of the loan or exchange, the learned societies, museums, or any specialist or expert shall compensate the Government for an amount to be determined by the Director and which shall be recoverable by the Government as a civil debt.

PART VI

HISTORICAL MONUMENTS, HISTORICAL SITES AND HERITAGE SITES

Sarawak Heritage Register

32.—(1) The Director shall establish and maintain a register, known as the Sarawak Heritage Register, containing the lists of:

(a) buildings situated in Sarawak, which:

(i) were built before the year 1940 and are of such historical significance to warrant their preservation;

(ii) are of special architectural, artistic or cultural interest or beauty; or

(iii) are closely associated or connected with a person or an event important to the history of Sarawak;

(b) underwater heritage objects or sites;

(c) heritage buildings or sites;

(d) historical sites having natural or cultural heritage; or

(e) traditional knowledge or traditional cultural expression,

and is in the opinion of the Director ought to be retained as a heritage.

(2) The Register shall be maintained and updated by the Director in the manner and form as may be prescribed by the rules made under section 80.

(3) The Director shall make the Register available for public inspection subject to such terms or conditions as he deems fit.

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

(a) inspect the Register; and

(b) make a copy of or take extracts from the Register.

Declaration, etc.

33.—(1) Where the Director is of the opinion that a building or site falls within section 32(1), he shall—

(a) declare such building or site to be a building, underwater heritage site, heritage building or site or historical site under this Ordinance;

(b) enter such building or site in the Register; and

(c) publish such entry in the *Gazette*.

(2) Any building entered by the Director in the Register shall be deemed a historical monument and the land upon which the building is situated shall be a historical site.

(3) The Director shall, as soon as practicable after including in the Register an entry relating to any building or site, comply with section 34.

(4) The notice issued under section 34 shall bind all subsequent owners or occupiers of the land upon which the building or site is situated and shall have the effect of a special condition of title.

(5) Any person who contravenes subsection (4) shall be guilty of an offence and shall, upon conviction, be punished with a fine not less than ten thousand ringgit or imprisonment for a term not exceeding two years or to both.

Notice to preserve

34.—(1) Upon entering a building or site into the Register under section 32, the Director shall, as soon as practicable, notify—

(a) the owner and, if the owner is not the occupier, the occupier of the building or site; and

(b) the State Planning Authority;

(c) the Director of Lands and Surveys; and

(d) the local authority having jurisdiction over that building or site,

by notice in writing that the building or site shall not be demolished, dismantled, altered, defaced or interfered with, except in accordance with a permit granted by the Director in accordance with section 36.

(2) The owner or the lawful occupier of any building or site, in respect of which a notice under subsection (1) has been served, who wishes to demolish, dismantle, alter, deface or interfere with, as the case may be, the building or site shall apply for a permit from the Director in accordance with section 36.

Power to acquire

35. Where the Director is desirous of acquiring, for the purposes of this Ordinance, any land, site or monument which is a historical monument or a historical site, the Director may, with the approval of the Minister, acquire such land, site or monument for an undertaking which is of public interest by compulsory acquisition in accordance with the provisions of Part IV of the Land Code [*Cap. 81 (1958 Ed.)*].

Permit to carry out prohibited acts

36.—(1) Any application for a permit to carry out any act which is prohibited under this part shall be made to the Director in a form to be determined by him.

(2) On receipt of the application, the Director may grant or refuse the application subject to such terms or conditions as he may deem fit to impose.

(3) Where the Director refuses to grant the application:

(a) he may, with the consent in writing of the owner or the lawful occupier, carry out the work for the maintenance, preservation or restoration of the building or site:

Provided that if the owner or the lawful occupier agrees to carry out the work for the maintenance, preservation or restoration of the building or site himself, the Director may pay such sum of money, as may be approved by the Minister, for the purpose of assisting the owner or the lawful occupier to carry out such work.

(b) the local authority having jurisdiction over that building or site, the Director of Lands and Surveys and the State Planning Authority shall be informed in writing of such refusal and they shall give effect to such refusal.

(4) Any person who—

(a) carries out or causes or permits to be carried out any act which is prohibited under this part without a permit granted by the Director under this section; or

(b) fails to comply with any term or condition imposed by the Director under subsection (2) or contravenes subsection (3)(a); or

(c) fails to carry out any necessary work for the maintenance, preservation or restoration of a building or site, where the duty to provide for such facilities had been agreed upon and paid in accordance with subsection (3)(a),

shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding twenty thousand ringgit or imprisonment for five years or to both.

Notice of intention to sell the building or site listed in the Register

37. An owner of a building or site listed in the Register who enters into an agreement of sale of the whole or any part of such building or site, shall notify the Director in writing about the existence of that agreement within thirty days from the date of the agreement.

Change of owner of a building or site listed in the Register

38.—(1) Any person who purchases or acquires any building or site listed in the Register shall within thirty days from the date of the completion of the purchase or acquisition, notify the Director in writing of—

(a) his name and address; and

(b) whether he intends to occupy the site.

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

Acts prohibited in regard to buildings or sites listed in the Register

39. No person shall, unless with a permit granted by the Director under section 36, in respect of buildings or sites listed in the Register—

(a) dig, excavate, build, plant or fell trees, quarry, irrigate, burn lime or do similar work, or deposit earth or refuse, on or in the immediate neighbourhood of such building or site or establish or extend a cemetery on the site so listed;

(b) demolish such building or site or disturb, obstruct, modify, mark, pull down or remove, as the case may be, any such building or site or any part thereof;

(c) make alterations, additions or repairs to such building or site; or

(d) erect buildings or walls abutting upon such building or site.

Care of building or site listed in the Register

40. Where any building or site listed in the Register is on a private property, the Director may—

(a) make arrangements with the owner or occupier for its preservation, inspection and maintenance and may, with the approval of the Minister, make a contribution from the Fund towards the cost of carrying out any works of repair or conservation which he deems necessary and which the owner or occupier may be willing to undertake:

Provided that, where the Director so contributes towards the cost of carrying out such works, the works shall be performed subject to any conditions which he may impose;

(b) with the approval of the Minister in writing, purchase or lease the area where the building or site listed in the Register is situated by private treaty; or

(c) in the case of a historical monument, with the approval of the Minister in writing, remove the whole or any part

thereof, making good any damage done to the site or to buildings thereon by such removal, and paying compensation therefore:

Provided that the amount of such compensation shall be fixed by agreement or, in the case of dispute, by arbitration under the law relating to arbitration for the time being in force in Sarawak.

Adjacent and nearby site

41.—(1) Where a site has no heritage significance but the Director is satisfied that it should be declared as a heritage site because of its proximity to and for the protection and enhancement of another site declared as a heritage site under section 33, the Director may so declare such site as a heritage site.

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

(3) The Director shall have the power to determine the limits of any building or site declared under section 33, including the buffer zone surrounding such building or site.

(4) If any land or site (without any building) intended by the Director to be declared as a heritage site under section 33 is or within a private land, the Director shall, prior to the making of the declaration, serve on the owner and any lawful occupier of the private land a notice in writing of his intention to declare the land or site as a heritage site.

(5) In the event that the owner or occupier of the land shall fail to lodge any appeal within the period stipulated under section 50(1) or if there shall be such appeal and the Minister decides to affirm the Director's decision, the Director shall declare the land or site a heritage site and cause the land or site to be published in the *Gazette* under section 51(4).

(6) The declaration by the Director under this section shall bind all subsequent owners or occupiers of the land and shall have the effect of a special condition of title.

(7) Where the Minister makes a decision not to proceed with the proposed declaration of a land or site, the Director shall immediately notify the owner of the land or site, the Director of Lands

and Surveys and the State Planning Authority in writing of such decision.

(8) Where the Director is desirous of acquiring, for the purposes of this Ordinance, any land or site which is declared to be a heritage site under subsection (1), the Director may, with the approval of the Minister in writing, acquire such land by compulsory acquisition in accordance with the provisions of Part IV of the Land Code [*Cap. 81 (1958 Ed.)*].

(9) All provisions in this Ordinance relating to a heritage site declared under section 33 shall apply, *mutatis mutandis*, to a heritage site declared under this section.

Application under Part X of the Land Code in respect of a heritage site

42. No application under Part X of the Land Code [*Cap. 81 (1958 Ed.)*], in respect of a heritage site shall be made without first obtaining a permit in accordance with section 36.

Inspection of buildings or sites listed in the Register

43. The owner or occupier of a building or site listed in the Register shall at all reasonable times permit the Director, or any person or officer authorized either generally or specially by the Director, to enter upon the building or site for inspection or to carry out any study or work necessary for the maintenance or conservation thereof:

Provided that the liability imposed by this section shall arise only if such owner or occupier have received not less than seven days notice in writing from the Director of such proposed entry.

Order to preserve building

44.—(1) Where the Director, with the concurrence of the Minister, is satisfied that any buildings listed in the Register is in a dilapidated state, or in imminent danger of demolition, destruction, damage or alteration, the Director shall serve on the owner an order under this section.

(2) The order issued under subsection (1) shall contain such terms or conditions as may be specified by the Director, and shall come into operation as soon as it is served on the owner of the building.

(3) The order shall remain in operation for a period of ninety days from the date it is served and may be extended by the Director for such period of time as he may deem fit.

(4) Any person who contravenes the order under this section shall be guilty of an offence.

Duty to keep building or site in good repair

45.—(1) The owner of a building or site listed in the Register shall ensure that the building or site is always in a state of good repair.

(2) Where the Director is satisfied that reasonable steps are not being taken for properly preserving the building or site, he may carry out such repairs works, after giving any person appearing to the Director to be the owner of the building or site 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

46.—(1) An owner of a building or site listed in the Register may, for the purpose of carrying out any conservation and preservation works on the building or site apply to the Director for any grant or loan.

(2) The Director may, in consultation with the Minister, make arrangements with the owner of a building or site to carry out any conservation and preservation work as the Director deems appropriate.

(3) The Director may, with the approval of the Minister in writing, give a grant or loan which is to be disbursed from the Fund for such conservation and preservation works, subject to such terms or conditions as he deems appropriate on the owner.

Power to impose entry fee

47.—(1) An owner of a building or site listed in the Register may, with the approval in writing and subject to such terms or conditions as the Director may impose, charge an entrance fee into the building or site.

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

Conservation area and conservation management plan

48.—(1) Where a site is declared as a heritage site under section 33, that site shall, on the date of the declaration, become a conservation area and shall be conserved and preserved according to a conservation management plan as prescribed in the rules made under section 80.

- (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 declared as a heritage site.

Discovery of historical site

49. Sections 14, 15 and 16 shall apply, *mutatis mutandis*, to the discovery of any historical sites within the territory of Sarawak.

Appeal

50.—(1) (a) Notwithstanding section 75, a person aggrieved by any decision of the Director made under this Part may, within fourteen days after the date of being notified of such decision, appeal to the Minister who may confirm, vary, reverse or revoke such decision.

(b) The decision of the Minister on the appeal shall be final.

(2) In the event there is an appeal lodge within the period stipulated in subsection (1) against any decision of the Director under

this Part, the Director shall forthwith send the appeal to the Minister together with the relevant document for determination.

Decision of the Minister

51.—(1) In the event that there is an appeal against the Director's decision under section 34 or 41 and where the Minister is satisfied that the building or site is of heritage significance, he shall with regard to the decision of the Director under section 34 or 41, direct the Director to—

(a) declare the building or site as a historical monument or historical site or heritage site respectively; and

(b) enter the historical monument or historical site or heritage site in the Register.

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

(a) the owner and (if the owner is not the occupier) the occupier of the building or site;

(b) the local authority having jurisdiction over that building or site;

(c) the Director of Lands and Surveys;

(d) the State Planning Authority,

by an order in writing that the building shall not be demolished, dismantled, altered, defaced or interfered with, except in accordance with a permit granted by the Director under section 36.

(3) The order issued under this section shall bind all subsequent owners or occupiers of the land upon which the building is situated and shall have the effect of a special condition of title.

(4) In addition to subsection (2), as soon as possible after the decision in subsection (1)(b), the Director shall cause to be published in the *Gazette*—

(a) a notice that the building or site has been declared as a building or site accordingly; and

(b) any other matters constituting or relating to the historical monument or historical site or heritage site which in his opinion is desirable to be published.

(5) Where the Minister makes a decision not to proceed with the proposed preservation of a building or site, the Director shall immediately notify the owner of the building or site, the local authority having jurisdiction over that building or site, the Director of Lands and Surveys, and the State Planning Authority in writing of such decision, with or without assigning any reason.

PART VII UNDERWATER HERITAGE

Discovery of underwater heritage site

52.—(1) Any person who discovers an underwater heritage site within the territory of Sarawak shall, as soon as practicable, give notice in writing of such discovery to the Director and if the discovery is found in or beneath any river or foreshore of the State, a notice in writing of such discovery shall be given to the Controller.

(2) The Controller upon receiving such notice under subsection (1) shall, as soon as practicable notify and where possible deliver the underwater heritage to the Director.

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

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

Possession, custody or control of moveable underwater heritage

53.—(1) Where it appears to the Director that a person is in or may have had possession, custody or control of any moveable underwater heritage or part of an underwater heritage, the Director

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 heritage.

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

(3) Where the person has transferred such possession, custody or control of the moveable underwater heritage to another person, he shall give to the Director all relevant information relating to such transfer including the name and address of the person to whom such transfer was made.

(4) Any person who contravenes this section shall be guilty of an offence.

Protected zone

54.—(1) The Minister may, on the recommendation of the Director, declare by publication in the *Gazette*, any area within an underwater heritage site, which has special heritage significance, to be a protected zone.

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

(3) Any person who contravenes subsection (2) shall be guilty of an offence.

Salvage and excavation works to be licensed

55.—(1) No person shall carry on any salvage or excavation work in any waters within the territory of Sarawak for the purpose of finding any underwater heritage, except with a licence approved by the Director.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) Section 19(2), (3) and (4) shall apply, *mutatis mutandis*, to the discovery of underwater heritage within the territory of Sarawak.

Ownership of underwater heritage found during survey, salvage or excavation

56.—(1) Any underwater heritage discovered during any survey, salvage or excavation works within the territory of Sarawak shall vest in the Director and shall be listed in the Register.

(2) Where the Director takes possession of any underwater heritage, he shall, as soon as practicable, cause to be posted a list of the underwater heritage in any District Office within the district where the underwater heritage was discovered.

(3) Any owner of the underwater heritage may, upon establishing his claim to the satisfaction of the Director, within one hundred and eighty days from the date the list under subsection (2) is posted, and upon paying the salvage fees and expenses due, be entitled to have the possession of the underwater heritage upon such terms or conditions as may be imposed by the Director.

(4) An owner who fails to comply with any of the terms or conditions imposed under subsection (3) shall be guilty of an offence.

(5) Where no owner establishes a claim within one hundred and eighty days, the underwater heritage shall be the absolute property of the State Government.

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

PART VIII

PENALTIES

Penalties

57.—(1) Any person who fails to give reasonable facilities to an officer of the Government, or any person or officer authorized, by the Director, to inspect, copy, study and make drawings, photographs, squeezes or other reproductions of an antiquity or historical object, or

to enter and carry out any necessary work for the maintenance and conservation thereof, where the duty to give such facilities is imposed under this Ordinance, shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding five thousand ringgit.

(2) When any notice under this Ordinance or any rules made hereunder requires any act to be done or work to be executed by any person and the person fails to comply with the requirements of the notice, he shall be guilty of an offence and shall, upon conviction, where no fine is specially provided, be punished with a fine not exceeding six thousand ringgit and to a further fine of one thousand ringgit for each day that the offence continues.

(3) Where an offence under this Ordinance or any rules made hereunder has been committed by a body corporate, any person who at the time of the commission of such offence was a director, manager, secretary or other similar officer of the body corporate or was purporting to act in such capacity shall, as well as such body corporate, be deemed to be guilty of that offence.

(4) Where an 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 section 58, the costs of the repair, restoration or reconstruction of the heritage item.

General penalty

58. Any person who commits an offence under this Ordinance or any rules made under this Ordinance where no penalty is expressly provided, shall be guilty of an offence and shall, upon conviction, be punished with a fine not exceeding fifty thousand ringgit or 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 imprisonment for a term not exceeding ten years or to both.

PART IX
ENFORCEMENT

Authority card

59.—(1) There shall be issued to each enforcement officer an authority card which shall be signed by the Director.

(2) Whenever an enforcement officer exercises any of the powers under this Ordinance or any rules made under this Ordinance, 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

60.—(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 Ordinance or any rules made under this Ordinance, the Magistrate may issue a warrant authorising the enforcement officer or police officer or custom 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 authorise the enforcement officer or police officer or custom 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 or custom 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

61. Whenever an enforcement officer or public servant authorized by the Director or any police officer or custom officer has reasonable grounds to believe that any object, material, book, document or other thing in respect of which an offence under this Ordinance or any rules made under this Ordinance 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 60 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

62. 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 items, etc.

63. Without prejudice to sections 60(2) and 61, any object, material, book, document or other thing that an enforcement officer or public servant authorized by the Director or any police officer or custom officer reasonably suspects has been used or will be used in the commission of any offence under this Ordinance or any rules made under this Ordinance may be seized and detained by the enforcement officer or public servant authorized by the Director or any police officer or custom officer.

Notice of seizure

64.—(1) Where any seizure is made under this Part, the enforcement officer or public servant authorized by the Director or any police officer or custom 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 public servant authorized by the Director or any police officer or custom 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 public servant authorized by the Director or any police officer or custom 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, book, 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

65.—(1) Any enforcement officer or public servant authorized by the Director or any police officer or custom officer may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under this Ordinance or any regulation made under this Ordinance.

(2) An enforcement officer or public servant authorized by the Director or custom officer making an arrest under subsection (1) shall without unnecessary delay take 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.

Power to investigate

66. The Director or any enforcement officer or public servant authorized by him or any police officer not below the rank of Sergeant or any police officer in charge of a police station or custom officer (referred to in this Part collectively as an “investigating officer”) may carry out investigation into any offence under this Ordinance, and in carrying out such investigation, the investigating officer may exercise all or any of the special powers in relation to police investigation provided in the Criminal Procedure Code [*Act 593*].

Obstruction of search, etc.

67. Any person who—

(a) assaults, obstructs, hinders or delays any enforcement officer or public servant authorized by the Director or any police officer or custom officer in effecting any entrance which he is entitled to effect under this Ordinance, or in the execution of any duty imposed or power conferred by this Ordinance; or

(b) fails to comply with any lawful demand of an enforcement officer or public servant authorized by the Director or any police officer or custom officer in the execution of his duty under section 65,

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

Power to require attendance of persons acquainted with case

68.—(1) The investigating officer making an investigation under this Ordinance or any rules made under this Ordinance 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 investigating 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

69.—(1) An investigating officer making an investigation under this Ordinance or any rules made under this Ordinance 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 investigating 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 investigating 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

70.—(1) In any trial or inquiry by a court into an offence under this Ordinance, 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 public servant authorized by the Director or a police officer or custom 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 Ordinance, 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 Ordinance). 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 until 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 Ordinance 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 Ordinance, 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.

No costs or damages arising from seizure to be recoverable

71. 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 Ordinance be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Forfeiture

72.—(1) In every case where a person is found guilty of an offence against this Ordinance, any antiquity or historical object in respect of which such offence is committed and any other items seized may, by order of the court, be forfeited to Government.

(2) Where anything has been seized under this Ordinance the Director 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) The court may make an order of forfeiture if it is proved to the satisfaction of the court that an offence under this Ordinance or any rules made under this Ordinance 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 antiquity or historical object or other items seized under this Ordinance, such antiquity or historical object or other items shall be taken and deemed to be forfeited at the expiration of a period of thirty days from the date of service of a notice to the last known address of the person from whom the antiquity or historical object or other items was seized indicating that there is no prosecution in respect of such antiquity or historical object or other items, unless before the expiration of that period a claim thereto is made in the manner set out in this section.

(5) Any person asserting that he is the owner of the antiquity or historical object or other items 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 Director in whose

possession such antiquity or historical object or other items 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 Director 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 antiquity or historical object or other items 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 Ordinance or any rules made under this Ordinance has been committed and that antiquity or historical object or other items 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 antiquity or historical object or other items forfeited or deemed to be forfeited shall be delivered to the Director 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 60 or 61 is of a perishable nature or where the custody of such thing involves unreasonable expense and inconvenience, the Director, may direct that such thing be sold by way of tender at any time and the proceeds of the sale be held to abide by the result of any prosecution or claim under this section.

Compounding of offences

73.—(1) The Director or any officer authorized in writing in that behalf by the Director may compound any offence committed under this Ordinance or any rules made hereunder by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding one half of the maximum amount of the fine provided for the offence committed.

(2) The manner of compounding the offences shall be prescribed by rules made under section 80.

Conduct of prosecution

74. Prosecution in respect of an offence committed under this Ordinance may be conducted by any person authorised in writing by the Public Prosecutor pursuant to section 377(b) of the Criminal Procedure Code [Act 593].

PART X

MISCELLANEOUS

Appeal

75.—(1) Whenever any person is dissatisfied with the exercise of any discretion given to the Director by or under this Ordinance, or with any action or decision of the Director either as to the carrying out, or as to the meaning, of any of the provisions of this Ordinance, or whenever any of the provisions of this Ordinance are, owing to special conditions, undesirable, the person so dissatisfied may, unless express provision is made for reference to arbitration, appeal in writing to the Minister within thirty days from the date of notification of the said decision.

(2)(a) 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.

(b) Where the appeal is against the Director's decision under Part III and where the Minister is satisfied that the building or site is of heritage significance, he shall with regard to the decision of the Director under Part III, direct the Director to—

(i) declare the building or site as a historical monument or historical site or heritage site respectively; and

(ii) enter the historical monument or historical site or heritage site in the Register.

(3) As soon as possible after the decision in subsection (1), the Director shall notify—

(a) the owner and, if the owner is not the occupier, the occupier of the building or site;

(b) the local authority having jurisdiction over that building or site;

(c) the Director of Lands and Surveys;

(d) the State Planning Authority,

by an order in writing that the building shall not be demolished, dismantled, altered, defaced or interfered with, except in accordance with a permit granted by the Director under section 36.

(4) The order issued under this section shall bind all subsequent owners or occupiers of the land upon which the building is situated and shall have the effect of a special condition of title.

(5) In addition to subsection (3), as soon as possible after the decision in subsection (2)(b), the Director shall cause to be published in the *Gazette*—

(a) a notice that the building or site has been declared as a building or site accordingly; and

(b) any other matters constituting or relating to the historical monument or historical site or heritage site which in his opinion is desirable to be published.

(6) Where the Minister makes a decision not to proceed with the proposed preservation of a building or site, the Director shall immediately notify the owner of the building or site, the local authority having jurisdiction over that building or site, the Director of Lands and Surveys, and the State Planning Authority in writing of such decision, with or without assigning any reason.

(7) The grounds of such appeal shall be concisely stated in writing and shall be delivered to the Minister who shall determine the matter in the absence of and without further reference to the Director.

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

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

Protection of officers and persons acting under direction, etc.

76. No action or prosecution shall be brought, instituted or maintained in any court against the Director, any person or officer authorized under this Ordinance for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Ordinance, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of the Director, any such person or officer if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Public servants

77. Any person acting for and on behalf of or under the direction of the Director under this Ordinance shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

Exemption

78. The Director may, with the approval of the Minister, by notification published in the Gazette, exempt any person or class or description of persons specified in the Notification from the operation of this Ordinance or any rules made hereunder or any part thereof.

Power of Minister to amend Schedules

79. The Minister may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, by notification in the *Gazette*, amend the Schedules.

Rules

80.—(1) The Minister may, with the approval of the Majlis Mesyuarat Kerajaan Negeri, make rules generally for carrying out the provisions of this Ordinance and, in particular to—

(a) determine the terms and conditions and the fees, if any, upon which licences or permits under this Ordinance may be issued or granted;

(b) govern the registration of antiquities, historical objects, buildings, historical monuments, historical sites, underwater heritage sites and heritage buildings or sites;

(c) prescribe the forms necessary for the implementation of this Ordinance;

(d) govern the grant of licences or permits which are required to be prescribed or which may be prescribed under this Ordinance;

(e) give incentives or due recognition to traditional craftsmen;

(f) develop, preserve, safeguard and perpetuate traditional arts, handicraft, traditional knowledge and traditional cultural expression;

(g) prescribe the procedures for the registration and authorization of the exploitation of the traditional knowledge and traditional cultural expression;

(h) prescribe the conservation management plan for the conservation and preservation of a conservation area;

(i) regulate the demolition, dismantlement, alteration, defacement of, or interference with any building operation approved under sections 36 and 42;

(j) regulate the conduct of excavations, searches for antiquities and surface findings;

(k) provide for the management and control of antiquities, historical objects, buildings, underwater heritage sites, heritage buildings or sites and historical sites, including buffer zones;

(l) impose penalties for the contravention of any rules made under this section;

(*m*) prescribe the forms to be used in and the method and procedure for compounding offences; and

(*n*) prescribe anything which is required to be, or may be, prescribed under this Ordinance.

(2) No rules made under this Ordinance shall—

(*a*) prohibit or restrict the right of access of the owner or lawful occupier of the building, heritage building or site and historical site or of any person beneficially interested therein, or of any person authorized by the owner, occupier or such person; or

(*b*) confer upon a person any right which he would not otherwise have had to enter upon private land.

Repeal and savings

81.—(1) The Sarawak Cultural Heritage Ordinance, 1993 [*Cap. 6*], is repealed.

(2) Notwithstanding subsection (1), all rules, orders, directions, appointments, permits, licences, rights, privileges or other acts or things made or done under or in accordance with the repealed Ordinance, shall continue in force until amended, revoked or replaced pursuant to this Ordinance.

(3) Any prosecution, action, suit, claim, proceeding or inquiry which has been instituted, filed, commenced or made under the repealed Ordinance and is still pending and not finally disposed of or existing immediately before the date of commencement of this Ordinance shall be continued and be determined or completed or disposed of in all respects under the provisions of the repealed Ordinance as if this Ordinance had not been enacted.

FIRST SCHEDULE

CLASSIFICATION OF HERITAGE BUILDINGS

(Section 2)

Class I: Historical buildings which are over one hundred years old, have well documented history either public or private, and are declared as such before the date of coming into force of this Ordinance amendment. The subsequent conservation and use of such building can only be approved by Dewan Undangan Negeri.

Class II: Historical buildings which are over one hundred years old, have documented records, been in continuous use, either public or private, and are not declared as such on the date of this amendment. The conservation and use of such building shall be decided by Majlis Mesyuarat Kerajaan Negeri on the recommendation of the Sarawak Museum Department.

Class III: Historical buildings which are less than one hundred years old, have documented history and of great significance.

SECOND SCHEDULE

MEETINGS

(Section 6)

Meetings

1.—(1) All meetings of the Council shall be presided over by the Chairman or in his absence, by any member appointed for that purpose by the Chairman.

(2) The quorum of any meeting of the Council shall be five including the Chairman.

(3) If for any question to be determined by the Council there is an equality of votes, the Chairman shall have a casting vote.

(4) Subject to subparagraphs (1), (2), (3) and paragraph 2, the Council shall regulate its own procedures.

Frequency of meeting

2.—(1) Except with the written approval of the Minister, the Council shall hold at least two meetings in every calendar year.

(2) Meetings of the Council shall be called by the Chairman and notice of such meetings shall be issued and signed by the Secretary or any person specifically authorized by the Secretary.

Council may invite others to meetings

3. The Council may request any person (not being a member of the Council) to attend any meeting or deliberation of the Council for the purpose of advising it on any matter under discussion, but any person so attending shall have no right to vote at the said meeting or deliberation.

Minutes

4.—(1) The Council shall cause minutes of all its meetings to be maintained and kept in a proper form.

(2) Any minutes of meetings of the Council shall, if duly signed by the Chairman or by the member presiding in his absence, as the case may be, be admissible in evidence in all legal proceedings without further proof and every meeting of the Council in respect of the proceedings of which minutes have been so made shall be deemed to have been duly convened and held and all members thereof to have been duly qualified to act.

(3) Members are entitled to copies of such minutes but shall not, without the permission of the Chairman, transmit, distribute or permit access thereto, to any person who is not a member of the Council.

(4) The minutes of the Council, its common seal and all its statutory and accounting records shall be kept at the principal office.

Disclosure of interests

5. A member of the Council whether directly or indirectly, by himself or his spouse or children, having any interest in any company or undertaking with which the Council proposes to make any contract or whether directly or indirectly having any interest in any such contract or in any matter under discussion by the Council shall disclose to the Council the fact of his interest and the nature thereof, and such disclosure shall be recorded in the minutes of the meetings of the Council and, unless specifically authorized thereto by the Chairman, such member shall take no part in any deliberation or decision of the Council relating to the contract or matter.

Sarawak LawNet



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BAGI PIHAK DAN DENGAN KUASA PERINTAH KERAJAAN SARAWAK