

THE JAMAICA NATIONAL HERITAGE TRUST ACT (Act 8 of 1985)

ARRANGEMENT OF SECTIONS

Preliminary

1. Short title and commencement.
2. Interpretation.

The Jamaica National Heritage Trust

3. Establishment and constitution of Trust
4. Functions of Trust.
5. Funds of Trust.
6. Travelling expenses, etc.
7. Borrowing powers.
8. Accounts and audit.
9. Annual report.
10. Appointment of officers and servants.
11. Protection of members of Trust.

Protection of national monuments and national heritage

12. Duty of Trust to declare and publish list of monuments.
13. Designation of protected national heritage.
14. Compensation,
15. Protection from disrepair.
16. Owner of national monument or protected national heritage not to alter without approval.
17. Destroying monuments, mark, etc.

Control and development of national monument and protected national heritage

18. Gifts, devise or bequest of protected national heritage or national monument to Trust.
19. Preservation notice.
20. Effect of and compensation for preservation notices.

Developments of national monuments and places designated to be protected national heritage

21. Preservation schemes.
22. Trust may grant permission for development works.
23. Power of Trust to enter on lands.

Miscellaneous

24. Service of documents.
25. Exemption from stamp duties, taxes, etc.
26. Treatment of amount spent by owner of protected national heritage for purposes of income tax.
27. Capital allowances in respect of national monument.
28. Regulations.
29. Savings.
30. Amendment of Institute of Jamaica Act.

SCHEDULES.

THE JAMAICA NATIONAL HERITAGE TRUST ACT

Act 8 of 1985

[28th June, 1985.]

Preliminary

1. This Act may be cited as the Jamaica National Heritage Trust Act. Short title.
- 2.- (1) In this Act unless the context otherwise requires- Interpretation.

"development" means-

 - (a) the alteration, removal, repair, restoration or demolition of or addition to, any national monument; or
 - (b) the carrying out of building, engineering or other operations in, on, over or under any national monument or the making of any material change in the structure, appearance or use of any such national monument;

"functions" includes powers and duties;

"local authority" means-

 - (a) in relation to the parishes of Kingston and St. Andrew, the Council of the Kingston and St. Andrew Corporation; and
 - (b) in relation to any other parish, the Parish Council of such parish;

"maintenance" includes the fencing, repairing and covering of a national monument and the doing of any other act or thing which may be required for the purpose of repairing the national monument or protecting it from decay or injury, and the expression "maintain" shall be construed accordingly;

"national monument" means-

 - (a) any building, structure, object or other work of man or of nature or any part or remains thereof whether above or below the surface of the land or the floor of the sea within the territorial waters of the Island or within an area declared in an order made under subsection (2) to be within the maritime resource jurisdiction of the Island;
 - (b) any site, cave or excavation, or any part or remains thereof, declared by the Trust to be a national monument;

"occupier" includes any person engaged in any development or maintenance works in, on, over or under any national monument;

"owner" means the person in whom is vested the free-hold interest in the site of the protected national heritage;

"protected national heritage" means-

 - (a) any place name;
 - (b) any species of animal or plant life;
 - (c) any place or object (not declared by the Trust to be a national monument), designated by the Trust to be a protected national heritage;

"the Trust" means the Jamaica National Heritage Trust established under section 3.

(2) Subject to any relevant international Convention to which Jamaica is a party, the Minister may by order declare any area of the sea defined in the order, not being an area included in the territorial sea of Jamaica or its continental shelf, to be within the sovereign jurisdiction of Jamaica for the purposes of this Act.

(3) Nothing in subsection (2) shall be construed as limiting in any way the sovereign rights of Jamaica under general international law including the United Nations Convention on the Law of the Sea.

The Jamaica National Heritage Trust

- 3.- (1) There shall be established a Trust to be known as the Jamaica National Heritage Trust which shall be a body corporate with perpetual succession and a constitution of Establishment and

common seal and with power to purchase, hold, deal with and dispose of land and other property whether real or personal:

Provided that the Trust shall not transfer, mortgage, charge or dispose of any land without the approval of the Minister.

(2) The Trust shall consist of fifteen members of whom-

- (a) three members shall be the Government Town Planner, the Commissioner of Lands and the Chief Executive Officer of the Trust who shall be ex-officio members;
- (b) one member shall be a representative of the Institute of Jamaica and shall be appointed by the Minister from a panel of three persons nominated by the Board of Governors of that Institute;
- (c) one member shall be a representative of the Jamaica Historical Society and shall be appointed by the Minister from a panel of three persons nominated by that Society;
- (d) one member shall be a representative of the Jamaica Archaeological Society and shall be appointed by the Minister from a panel of three persons nominated by that Society;
- (e) one member shall be a representative of the University of the West Indies and shall be appointed by the Minister from a panel of three persons nominated by that body;
- (f) one member shall be a representative of the Jamaica Institute of Architects and shall be appointed by the Minister from a panel of three persons nominated by that Institute; and
- (g) seven members shall be appointed by the Minister from among persons appearing to the Minister to be suitably qualified for such appointment.

(3) The appointment of every member of the Trust other than the ex officio members shall be evidence by instrument in writing, and such instrument shall state the period of office of the member which shall not exceed three years.

(4) Every member of the Trust shall be eligible for reappointment.

(5) The Minister shall appoint one of the members of the Trust to be chairman, and in the case of the absence or inability to act of the chairman the Minister may appoint any other member to perform the function of the chairman.

(6) The seal of the Trust shall be authenticated by the signatures of the chairman and any other one member of the Trust authorized to act in that behalf and such seal shall be officially and judicially noticed.

(7) All documents, other than those required by law to be under seal, made by, and all decisions of, the Trust may be signified under the hand of the chairman or any other member of the Trust authorized in that behalf.

(8) The Trust may sue and be sued in its corporate name and may for all purposes be described by such name.

(9) No act or proceeding of the Trust shall be questioned on account of any vacancy in the membership thereof; and no defect in the appointment of any member of the Trust shall vitiate any proceedings thereof.

(10) The Trust shall have power to regulate its own proceedings.

(11) The chairman shall preside at meetings of the Trust, and if the chairman and the person appointed to perform the function of chairman pursuant to subsection (5) are absent from a meeting the members of the Trust present shall elect one of their number to preside at the meeting.

(12) The names of all members of the Trust as first constituted and every change in the membership thereof shall be published in the Gazette.

4.- (1) The functions of the Trust shall be-

- (a) to promote the preservation of national monuments and anything designated as protected national heritage for the benefit of the Island;
- (b) to conduct such research as it thinks necessary or desirable for the purposes of the performance of its functions under this Act;

Functions of
Trust

- (c) to carry out such development as it considers necessary for the preservation of any national monument or anything designated as protected national heritage;
 - (d) to record any precious objects or works of art to be preserved and to identify and record any species of botanical or animal life to be protected.
- (2) The Trust shall, for the purposes of the discharge of its functions under subsection (1) (d), keep a register which shall be open for inspection by the public upon payment of such fee as may be prescribed.
- (3) For the purpose of the discharge of its functions under this Act the Trust may, subject to the provisions of this Act, do anything and enter into any transaction which, in the opinion of the Trust, is necessary to ensure the proper performance of its functions and, without prejudice to the generality of the foregoing, may make such grants or loans (whether with or without security) as the Trust considers necessary.

5.- (1) The funds and resources of the Trust shall consist of-

Funds of Trust

- (a) such sums as may be provided annually for the purpose in the Estimates of Revenue and Expenditure of the Island;
 - (b) all other sums or property which may in any manner become payable to or vested in the Trust in respect of any matter incidental to its powers and duties.
- (2) The expenses of the Trust (including any remuneration of the members and staff thereof) shall be paid out of the funds and resources of the Trust.

6.- (1) Travelling expenses actually incurred by members of the Trust and a subsistence allowance when attending meetings of the Trust or when travelling on official tours of inspection approved by the Trust may be reimbursed from the funds of the Trust.

Travelling expenses, etc.

(2) The rates of travelling allowance and subsistence allowance shall be such rates as the Minister may approve.

(3) The Trust may with the approval of the Minister enter into arrangements with any member of the Trust for the payment of an allowance to such member for giving technical advice on or for supervising repairs to or preserving or treating national monuments or protected national heritage.

7.- (1) Subject to the provisions of this section, the Trust may borrow sums required by it for meeting any of its obligations or discharging any of its functions.

Borrowings powers.

(2) The power of the Trust to borrow shall be exercisable only with the approval of the Minister responsible for finance, as to the amount, as to the sources of the borrowing and as to the terms on which the borrowing may be effected, and an approval given in any respect for the purposes of this subsection may be either general or limited to a particular borrowing or otherwise, and may be either unconditional or subject to conditions.

8.- (1) The Trust shall keep proper accounts and other records in relation to the business of the Trust and shall prepare annually a statement of accounts in a form satisfactory to the Minister, being a form which shall conform with the best commercial standards.

Accounts and audit.

(2) The accounts of the Trust shall be audited annually under such arrangements and in such manner as may be approved by the Auditor-General and the members, officers and servants of the Trust shall grant to the person conducting such audit access to all the books, documents, cash and securities of the Trust and shall give to him on request all such information as shall be within their knowledge in relation to the operation of the Trust.

(3) The auditor's fees and any expenses of the audit shall be paid by the Trust.

(4) Within three months after the expiration of each financial year or within such further time as may be allowed by the Minister, the Trust shall send the statement of its accounts referred to in subsection (1) to the Minister, together with a copy of any report made by the auditor on that statement and on the accounts of the Trust.

(5) The Auditor-General shall be entitled, on the direction of the Minister, at all reasonable times to examine the accounts and other records in relation to the business of the Trust.

9.- (1) The Trust shall, within three months after the expiration of each financial year or within such further time as may be allowed by the Minister, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Trust during that financial year. Annual report.

(2) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditor's report thereon and on the accounts to be laid on the Table of the House of Representatives and of the Senate.

10.- (1) The Trust may appoint and employ at such remuneration and on such terms and conditions as it thinks fit, a Chief Executive Officer, a Secretary and such officers, agents and servants as it deems necessary for the proper carrying out of the provisions of this Act: Appointment of officers and servants.

(a) no salary in excess of the prescribes rate per annum shall be assigned to any post without the prior approval of the Minister, and

(b) no appointment shall be made to any post to which a salary in excess of the prescribes rate is assigned without the prior approval of the Minister.

(2) In subsection (1) the prescribes rate means a rate of fifteen thousand dollars per annum or such higher rate as the Minister may, by order, prescribe.

(3) The Governor-General may, subject to such conditions as he may impose, approve the appointment of any officer in the service of the Government to any office with the Trust and any officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance, and in relation to other rights as a public officer, be treated as continuing in the service of the Government.

(4) It shall be lawful for the Trust, with the approval of the Minister-

(a) to enter into arrangements respecting schemes whether by way of insurance policies or not;

(b) to make regulations, for pensions, gratuities and other retiring or disability or death benefits relating to members and employees of the Trust and such arrangements or regulations may include provisions for the grant of benefits to the dependants and the legal personal representatives of such members or employees.

11.- (1) No action, suit or other proceedings shall be brought or instituted personally against any member of the Trust in respect of any act done bona fide in pursuance or execution or intended execution of this Act. Protection of members of Trust.

(2) Where any member of the Trust is exempt from liability by reason only of the provisions of this section the Trust shall be liable to the extent that they would be if the said member was a servant or agent of the Trust.

Protection of national monuments and national heritage

12.- (1) The Trust may in accordance with the First Schedule from time to time declare to be a national monument any structure the preservation of which is, in the opinion of the Trust, a matter of public interest by reason of the historic, architectural, traditional, artistic, aesthetic, scientific or archaeological interest attaching thereto. Duty of Trust to declare and publish list of monuments. First Schedule.

(2) The Trust shall, in each year, cause to be published in the *Gazette* a list (hereinafter referred to as "the list") of all national monuments in the Island for the time being declared by the Trust pursuant to subsection (1).

(3) The Trust shall cause to be placed on a conspicuous part of each national monument included in the list a mark identifying the monument.

(4) Where any structure is declared a national monument the Trust shall notify the Registrar of Titles of any registered titles known to the Trust to be affected by the

declaration and shall cause a copy of the declaration to be served on the Registrar of Titles who shall forthwith note on those registered titles the fact of the declaration having been made.

(5) The Trust shall notify the Deputy Keeper of the Records of any national monument the title to which is not under the Registration of Titles Act.

(6) In this section and in sections 19 and 20 structure includes any building, structure, object or other work of man or nature whether above or below the surface of the land or the floor of the sea within the territorial waters of the Island, or any area declared in any order made under section 2 (2) to be within the maritime resource jurisdiction, and any site, cave or excavation.

13.- (1) The Trust may, for the purposes of this Act, designate-

- (a) any place name, thing or any species of animal or plant life; or
- (b) any place or object which has not been declared a national monument,

to be a protected national heritage.

(2) The Trust shall, in relation to anything which is designated protected national heritage pursuant to subsection (1)-

- (a) in the case of a species of animal or plant life, publish annually in a daily newspaper published in the Island, a list of such animal or plant life;
- (b) where appropriate in the case of a place or object, cause to be placed on a conspicuous part of the place or object a mark identifying the place or object as protected national heritage;
- (c) in the case of any moveable objects-
 - (i) notify the owner thereof of the designation of the object as protected national heritage and the time and manner in which the owner may object to such designation;
 - (ii) publish annually in a daily newspaper published in the Island a list of such objects.

(3) The provisions of the First Schedule shall *mutatis mutandis* apply to any objections made to the designation of any object referred to in subsection (2) (c).

14.- (1) Where the owner of-

- (a) a national monument declared as such pursuant to section 12 (1); or
- (b) a protected national heritage designated as such pursuant to section 13 (1),

suffers financial loss (whether actual or by diminution in value) as a result of such declaration or designation, such owner shall be entitled to receive such compensation as may be appropriate in the circumstances.

(2) The provisions of subsection (3) of section 20 shall, *mutatis mutandis*, apply to compensation under this section.

15. Where the Trust is of the opinion that action should be taken to prevent a national monument or protected national heritage from falling into a state of disrepair, it shall be lawful for the Trust-

- (a) to notify the owner or person in possession that the protected national heritage or national monument is in need of repair;
- (b) to provide such assistance as may be necessary (whether financial or otherwise) to the owner or person in possession for the purpose of maintaining it; or
- (c) to maintain the protected national heritage or national monument.

16.- (1) An owner or person in possession of-

- (a) a national monument shall not demolish, remove or alter any such monument or carry out any development thereof without the prior written approval of the Trust;
- (b) a protected national heritage shall not demolish, remove or alter it without the prior written approval of the Trust.

(2) Any owner of a national monument or protected national heritage who contravenes

Designation of protected national heritage.

Compensation

Protection from disrepair.

Owner of national monument or protected national heritage not to alter without approval.

subsection (1) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding twenty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and in addition, the Court may order him to pay the costs of restoring such monument or protected national heritage and in default of payment of such costs, he may be imprisoned for a term not exceeding twelve months.

17. Every person who-

- (a) wilfully defaces, damages or destroys any national monument or protected national heritage;
- (b) wilfully defaces, destroys, conceals or removes any mark or notice affixed thereto or connected therewith;
- (c) alters any national monument or mark without the written permission of the Trust;
- (d) removes any national monument or protected national heritage to a place outside of Jamaica or causes it to be so removed,

Destroying monuments, mark, etc.

shall be guilty of an offence and on summary conviction before a Resident Magistrate be liable to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, and in addition, such person may be ordered to pay the cost of replacement of any such monument, mark or notice and in default of payment of such cost, to be imprisoned with hard labour for a further term not exceeding twelve months.

Control and development of national monument and protected national heritage

18. Any person may, by deed or will, give, devise, or bequeath to the Trust all such estate or interest in any protected national heritage or any national monument as he may be seized or possessed of, and the Trust may accept such gift, devise or bequest if it thinks it expedient to do so.

Gifts, devise or bequest of protected national heritage or national monument to trust.

19.- (1) Where the Minister is satisfied in relation to any structure-

- (a) that it is of such a nature that, although not declared a national monument the Trust has reasonable grounds for believing that it could be so declared. And
- (b) that it is in danger of destruction or removal or damage from neglect or injudicious treatment,

Preservation notice.

the Minister may, upon the advice of the Trust, serve a notice (in this Act referred to as a "preservation notice") on the owner and, if the owner is not the occupier, on the occupier of the structure, stating that it will be under the protection of the Minister under this Act while the notice is in force.

(2) Where the Minister serves a preservation notice he shall specify the period (not exceeding six months) during which the notice is to remain in force and shall cause a copy thereof to be fixed on some conspicuous part of the structure.

(3) Where a notice is served under subsection (1), the Trust may, by written authorization signed on its behalf by a member of the Trust, authorize any person (including a member of the Trust) to inspect the structure, and any person so authorized may at any reasonable time, on production by him of the authorization if so required, enter any premises for the purpose of inspecting the structure:

Provided that, unless the Trust considers that the inspection of the structure is a matter of urgent necessity, it shall give reasonable notice in writing of the proposed inspection to the occupier of the premises which are to be entered.

(4) The Minister may revoke a preservation notice-

- (a) at any time by notice served on the owner and, if the owner is not the occupier, on the occupier of the structure to which the notice relates; or
- (b) upon being satisfied on written representations made by the owner that such owner is likely to suffer financial loss if the notice is not revoked.

20.- (1) While a preservation notice is in force with respect to any structure, that structure shall not be demolished or removed, nor shall any additions or alterations be made thereto or any work carried out in connection therewith, except with the written consent of the Minister granted either unconditionally or subject to such conditions as the Minister may think fit.

Effect of and compensation for preservation notices.

(2) Where a person has an interest in the whole or apart of any structure and he suffers financial loss or incurs expenditure in respect of that interest in consequence of the refusal, or the granting subject to conditions, of any consent required under subsection (1), he shall be entitled to receive such compensation as may be appropriate in the circumstances.

(3) Any question as to a person's right to compensation under subsection (2), or as to the amount of any such compensation which is appropriate in the circumstances shall in default of agreement be determined by the Resident Magistrate in the manner provided in the Lands Clauses Act for settling cases of disputed compensation, and in construing that Act for the purpose of this Act, this Act shall be deemed to be the special Statute and the Trust shall be deemed to be the promoters of the undertaking.

(4) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding forty thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment and, in addition, may be ordered by the Court by whom he is tried to pay such sum as the Court thinks just for the purpose of repairing or restoring the monument.

(5) While a preservation notice is in force the Trust may with a view to the maintenance of the structure to which it relates, have access by itself, its inspectors, agents or workmen to such structure for the purpose of inspecting it and of bringing such materials and doing such acts and things as may be required for the maintenance thereof.

*Development of national monuments and places
designated to be protected national heritage*

21.- (1) For the purpose of preserving the amenities of any national monument, or any place designated to be a protected national heritage, the Trust may, subject to the provisions of this section, prepare and confirm a scheme (hereafter in this Act referred to as a "preservation scheme") for any area comprising or adjacent to the site of the monument or the place aforesaid, being an area to which, in the opinion of the Trust, it is necessary or expedient for that purpose that the scheme should apply.

Preservation schemes.

(2) Every preservation scheme shall define by reference to a map annexed thereto the area to which the scheme is applicable (hereafter in this Act referred to as "the controlled area") and may provide for all or any of the following matters, that is to say-

- (a) for prohibiting or restricting the construction, erection or execution of buildings, structures and other works above ground within the controlled area, or the alteration or extension of any such buildings, structures or works in such manner as materially to affect their external appearance;
- (b) for prescribing the position, height, size, design, materials, colour and screening and otherwise regulating the external appearance, of buildings, structures and other works above ground within the controlled area;
- (c) for prohibiting or restricting the felling of trees, quarrying and excavations within the controlled area;
- (d) for otherwise restricting the user of land within the controlled area to such extent as may appear to the Trust to be expedient for the purpose of preserving the amenities of the monument or place;
- (e) for such other matters as appear to the Trust to be incidental to or consequential on the foregoing provisions of this section or to be necessary for giving effect to those provisions.

(3) The provisions of the Second Schedule shall have effect with respect to the Second Schedule.

confirmation, variation and revocation of preservation schemes.

(4) Nothing in any preservation schemes shall affect any building, structure or other works above ground or any alteration or extension thereof, if it was constructed, created or executed before the date when notice of intention to confirm the scheme was published in the Gazette under the Second Schedule, and for the purpose of this provision a building, structure or other work and any alteration or extension thereof shall be deemed to have been constructed, erected or executed before that date-

- (a) if its construction, creation or execution was begun before that date; or
- (b) if and so far as its construction, erection or execution was necessary for the purpose of performing a contract made before that date.

(5) Any person whose property is injuriously affected by the coming into force of a preservation scheme shall be entitled to obtain compensation in respect thereof from the Trust subject to the provisions of the Third Schedule.

(6) If any person contravenes any provision of a preservation scheme for the time being in force, he shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five hundred dollars for every day on which the contravention occurs or continues.

(7) If, after any person has been convicted of a contravention of a preservation scheme by reason that any building, structure or other work is not in conformity with the scheme, the contravention continues after the expiration of such period as the Court before whom he was convicted may determine, the Trust shall have power to do all such acts as, in its opinion, are necessary for removing so much of the building, structure or work as is not in conformity with the scheme, or for making it conform with the scheme, and any expenses incurred by the Trust in so doing shall be recoverable in a Resident Magistrate's Court as a civil debt from the person convicted.

22.- (1) The owner of any national monument who intends to carry out any development works in relation to that monument shall, before commencing such work, apply to the Trust for permission, giving details of the proposed works. Trust may grant permission for development works.

(2) The Trust may, upon receipt of such application as aforesaid, grant permission for the works specified therein to be carried out under the supervision of the Trust.

(3) For the purposes of this Act the expression "development works" includes the restoring, altering, repairing or excavating of a monument or demolishing of any part thereof and the doing of any act or thing which may be required for the purpose of restoring, altering, repairing or excavating the monument.

23.- (1) Subject as hereinafter provided, any person specially authorized in writing in that behalf by the Trust, after giving reasonable notice in writing to the occupier of his intention so to do and on production of his authority if so required by or on behalf of the occupier, may enter for the purpose of investigation, inspection or maintenance, at all reasonable times upon any land or building- Power of Trust to enter on lands.

- (a) which is a national monument or contains a protected national heritage; or
- (b) for the purpose of determining whether it should be declared a national monument.

(2) Where any person enters any land or building for the purpose of investigation, inspection or maintenance in accordance with subsection (1) he shall have power to do all such things as he considers necessary for the purpose of such investigation, inspection or maintenance, and, without prejudice to the generality of the foregoing, may make excavations on the land.

(3) Where any excavation is made on land pursuant to this section the Trust shall, within a reasonable time after the completion of such excavation take such steps as may be necessary to restore the land to the condition which existed immediately before the excavation was made, unless-

- (a) the land is declared pursuant to this Act to be a national monument; and
- (b) the Trust is satisfied that the excavation forms part of the national monument.

(4) If any person wilfully obstruct or hinders any person duly authorized by the Trust in

the exercise of the powers conferred by this section, he shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding five thousand dollars.

Miscellaneous

24.- (1) Every document required or authorized to be served under this Act upon the owner or occupier of a national monument may be served either by delivering it or leaving it at the usual or last-known place of abode of the person on whom it is to be served, or by sending it by post as a registered letter addressed to him at his last-known place of abode or, if that cannot be found, by fixing it on some conspicuous part of the monument.

Service of Documents.

(2) Any such document may, as the case requires, be addressed to the "owner" or "occupier" of the monument (describing it) without further name or description.

25. Notwithstanding anything contained in any other enactment-

- (a) any instrument necessary for transferring or vesting any land to or in the Trust upon which or in respect of which stamp duties, registration or recording fees are payable, shall be exempt from the payment of such stamp duties, registration or recording fees;
- (b) the Trust shall, in relation to all property whatsoever held or dealt with by it for the purpose of this Act, be exempt from the payment of property tax and income tax.

Exemption from stamps duties, taxes, etc.

26. For the purposes of section 13 of the Income Tax Act, any amount expended by the owner of a national monument or protected national heritage for the maintenance or development thereof and certified by the Trust as required for the preservation of the monument or protected national heritage shall be treated as expenses wholly and exclusively incurred in acquiring income.

Treatment of amount spent by owner of Protected national heritage for purposes of income tax.

27.- (1) Notwithstanding anything to the contrary, where the owner of a national monument incurs capital expenditure in developing that monument, an allowance (in this section referred to as an "investment allowance") equal to seventy-five *per centum* of such capital expenditure shall, in lieu of an initial allowance or any other similar allowance under the Income Tax Act, be made to that owner for the year of assessment in the basis period for which such expenditure is incurred.

Capital allowances in respect of national monument.

(2) Subject to the provisions of this Act, where an investment allowance is made under this section in respect of national monuments the provisions of the First Schedule to the Income Tax Act or any other provisions of that Act applicable to initial allowances granted pursuant to paragraph 1 of Part 1 of that Schedule shall apply, with the necessary adaptations to the investment allowance made under this Act as they apply to initial allowances aforesaid except that-

- (a) the amount of an investment allowance shall not be treated as written off by virtue of sub-paragraph (2) of paragraph 4 of Part 1 of that Schedule; and
- (b) the amount of an investment allowance shall not be written off in ascertaining the written down value of the national monument or taken into account for the purposes of sub-paragraph (4) of paragraph 3 of Part 1 of that Schedule.

(3) Notwithstanding anything to the contrary, an owner of a national monument shall, in respect of any capital expenditure, be entitled to claim, as such owner thinks fit, the amount of any investment allowance or annual allowance in the year of assessment in which the expenditure is incurred or, in so far as not previously claimed, in any subsequent year of assessment:

Provided that where income is derived from a national monument in any year, the investment allowance or annual allowance shall be claimed against that income in priority to any other income of the owner, and accordingly, the owner shall adopt such accounting procedures as are appropriate to identify the amount of investment allowance remaining to be written off.

(4) Subject to the provisions of this Act, where an investment allowance is made under this section in respect of machinery, the provisions of the First Schedule aforesaid or any other provisions of the Income Tax Act applicable to initial allowances granted pursuant to paragraph 1 of Part III of that Schedule shall apply with the necessary adaptations to the investment allowance made under this section as they apply to initial allowances aforesaid except that the amount of an investment allowance shall not be written off in ascertaining the written down value of the machinery or taken into account for the purposes of paragraph 3, paragraph 4 or paragraph 5 of Part III of that Schedule.

(5) Notwithstanding the provisions of paragraph 6 of Part 1 of the Schedule aforesaid, the making of an investment allowance pursuant to this section in respect of any expenditure shall not preclude the grant of annual allowances or balancing allowances in respect of that expenditure in accordance with the provisions of Part 1 of the Schedule aforesaid.

(6) In this section capital expenditure incurred in the development of a national monument means-

- (a) sums expended on the purchase, construction, excavation, major repair or alteration of the monument; and includes, where relevant, sums expended on labour, architectural and other engineering services; and
- (b) sums expended for materials, equipment, machinery, plans and other items used in the development of the national monument.

28. The Minister may make such regulations as may be necessary or expedient-

Regulations.

- (a) for securing the full and effectual performance of any duty imposed and the exercise of any power conferred upon the Trust by or under this Act;
- (b) for regulating the hours during which, the means whereby, the purposes for which and the conditions subject to which members of the public may have access to any national monument or protected national heritage vested in the Trust;
- (c) for regulating inquiries under the First or Second Schedule;
- (d) for prescribing anything required to be prescribed under this Act.

First or Second
Schedule

29.- (1) Any property-

Savings

- (a) purchased by, belonging to or vested in the Jamaica National Trust Commission established by the repealed Act;
- (b) which is subject to a preservation notice or preservation order made under the repealed Act;
- (c) in relation to which the Jamaica National Trust Commission were constituted guardian pursuant to the repealed Act,

and all interests, rights and easements into or out of the said property which belong to or are vested in the said Commission shall, without any conveyance, assignment or transfer, belong to and be vested in the Trust established under this Act, subject to all and any trusts and to all debts, liabilities and obligations affecting the same and of all enactments, or rules made under this Act or any enactment, regulating the management, maintenance, control, supervision and dealing with such property.

(2) In this section "the repealed Act" refers to the Jamaica National Trust Act.

30.- The Institute of Jamaica Act is hereby amended-

Amendment of
Institute of
Jamaica Act.

- (a) by deleting from section 2 the definition of "monument" and "national monument"; and
- (b) by deleting paragraph (b) of subsection (1) of section 4.

FIRST SCHEDULE

(Section 12)

Procedure for declaration of National Monuments

1. Before declaring any monuments to be a national monument, the Trust shall-
 - (a) cause a draft of the proposed declaration to be published in the Gazette;
 - (b) send a copy of the draft to each local authority in whose area the monument is;
 - (c) publish once in a daily newspaper published in Kingston a notice stating that the declaration is proposed to be made and the effect of the declaration and specifying the time (not being less than twenty-eight days from the first publication of the notice in such a newspaper) within which and the manner in which objections to the proposed declaration can be made;
 - (d) serve on the owner of the national monument and (if the owner is not the occupier) on the occupier a copy of the draft of the proposed declaration, together with a notice stating the effect thereof and specifying the time (not being less than twenty-eight days from the service of the notice) within which and the manner in which objections to the proposed declaration can be made;
 - (e) cause a copy of the draft of the proposed declaration to be fixed on some conspicuous part of the national monument.

2.- (1) The Trust, after considering any representations and objections duly made to the declaration by the owner or occupier of the monument or by any other person appearing to the Trust to have any interest in the national monument, may make the declaration either in the terms of the draft or with modifications thereof:

Provided that where an objection has been duly made as aforesaid and has not been withdrawn, the Trust, unless it considers the objection to be frivolous or has modified the declaration as required by the objection, shall, before making the declaration, direct a public inquiry to be held as hereinafter provided and consider the report of the person who held the inquiry.

(2) An inquiry under this Schedule shall be held in accordance with regulations made by the Minister for the purpose, and such regulations may contain provisions as to the costs of the inquiry.

3.- (1) A copy of the report of the person who held the inquiry referred to in paragraph 2 shall be sent to any person who made an objection.

(2) Any person, being a person who has made an objection pursuant to paragraph 1 (d), who is aggrieved by the report referred to in sub-paragraph (1) or by the failure of the Trust to direct an inquiry to be held in accordance with paragraph 2 may, within thirty days after the date on which the objection was made or within thirty days after the receipt by him of a copy of the report as aforesaid, appeal to the Minister.

(3) On the determination of an appeal by him the Minister may make such order as he thinks fit.

4.- (1) As soon as may be after the declaration has been made, the Trust shall publish in the Gazette and in a daily newspaper published in Kingston a notice stating that the declaration has been made and the effect thereof, and shall serve a like notice and a copy of the declaration on every person on whom a copy of the draft declaration was required to be served under paragraph 1 and on any other person appearing to the Trust to have an interest in the national monument who duly made an objection which has not been withdrawn, and the declaration shall come into operation on the date on which the notice is published as aforesaid in the Gazette.

(2) The Trust shall also, as soon as may be after the declaration has been made, cause a copy of the declaration to be fixed on some conspicuous part of the national monument.

SECOND SCHEDULE

(Section 21 (3))

Provisions as to Confirmation, Variation and Revocation of Preservation Schemes

1. Before confirming a preservation scheme (hereinafter in this Schedule referred to as a "scheme") the Trust shall cause to be published in the Gazette, and in such other manner as it thinks best for informing persons affected, notice of its intention to confirm the scheme, of the place where copies thereof may be inspected, and of the time (which shall not be less than three months) within which and the manner in which representations with respect to the scheme may be made, and shall cause such notice as aforesaid to be given to every local authority in whose area any part of the controlled area is comprised.
2. Any person affected by the scheme may, within the time appointed under paragraph 1 for making representations, send to the Trust written objection to the scheme stating the specific grounds of objection and the specific modifications required.
3. The Trust, after considering any representations and objections duly made with respect to a scheme, may, by order, confirm the scheme either with or without modifications:
Provided that-
 - (a) where an objection has been duly made to the scheme by any person affected thereby and has not been withdrawn, the Trust, unless it considers the objection to be frivolous or has modified the scheme, as required by the objection shall, before confirming the scheme, direct a public inquiry to be held as hereinafter provided and consider the report of the person who held the inquiry; and
 - (b) a scheme as so confirmed shall not apply to any area to which it would not have applied if it had been confirmed without modification.
4. An inquiry under this Schedule shall be held in accordance with regulations made by the Minister for the purpose, and such regulations may contain provisions as to the cost of the inquiry.
5. A scheme when confirmed shall come into force on such date as may be specified in the order confirming it.
6. As soon as may be after the making of an order under this Schedule, the order shall be published in the Gazette, and in such other manner as the Trust thinks best for informing persons affected, and a copy of the order shall be sent to every local authority in whose area any part of the controlled area is comprised.

THIRD SCHEDULE

(Section 21 (5))

Provisions as to Compensation

1. A person shall not be entitled to compensation by reason of the fact that any act or thing done or caused to be done by him has been rendered abortive by a preservation scheme, it or so far as the act or thing was done after the date on which the Trust published in the Gazette notice of its intention to confirm the scheme, or by reason of the fact that the performance of any contract made by him after that date is prohibited by the scheme.
2. Where any provision of a preservation scheme was, immediately before the scheme came into force, already in force by virtue of this or any other enactment, no compensation shall be payable by reason of any financial loss (whether actual or by diminution in value) suffered as a result of that provision of the preservation scheme if compensation has been paid, or could have been claimed, or was not payable, by reason of that financial loss (whether actual or by diminution in value) having been suffered as a result of the provision already in force.
3. Where any provision of a preservation scheme could, immediately before the scheme came into force, have been validly included in a scheme, order, regulation or by-law by virtue of any other enactment, then-
 - (a) if no compensation would have been payable by reason of the inclusion of that provision in that scheme, order, regulation or by-law, no compensation shall be payable in respect of that provision of the preservation scheme, and
 - (b) if compensation would have been so payable, the compensation payable in respect of that provision of the preservation scheme shall not be greater than the compensation which would have been so payable.
4. Any dispute as to whether any person suffered financial loss (whether actual or by diminution in value) as a result of a preservation scheme, or as to the amount of the sum which is to be paid as compensation in respect of such a scheme, shall be determined by the Resident Magistrate in the manner provided in the Lands Clauses Act for settling cases of disputed compensation, and in construing that Act for the purpose of this Act, this Act shall be deemed to be the special Statute and the Trust shall be deemed to be the promoters of the undertaking.

THE JAMAICA NATIONAL HERITAGE TRUST ACT

REGULATIONS

(under section 28)

THE JAMAICA NATIONAL HERITAGE TRUST (PUBLIC INQUIRY) REGULATIONS, 1990

(Made by the Minister on the 12th day of September, 1990)

L.N. 461/90

1. These Regulations may be cited as the Jamaica National Heritage Trust (Public Inquiry) Regulations, 1990. Citation
2. In these Regulations-
"objector" means a person who pursuant to paragraph (1) (d) of the First Schedule to the Act has made an objection to the proposed declaration of a national monument;
"Tribunal" means such person or persons appointed by the Trust pursuant to regulation 3. Interpretation
- 3.- (1) Where, pursuant to paragraph 2 of the First Schedule to the Act, the Trust directs that a public inquiry be held with respect to the proposed declaration of a national monument, the Trust shall appoint a Tribunal consisting of one or more persons to hold the inquiry. Constitution of Tribunal.
(2) Where the Tribunal consists of more than one person-
(a) the Trust shall appoint one of such persons to be Chairman of the Tribunal; and
(b) the decisions of the Tribunal shall be by a majority of votes of the members, and in addition to an original vote, the Chairman shall have a casting vote in any case in which the voting is equally divided.
4. The Tribunal may exclude from the inquiry any particular person for the preservation of order, for the due conduct of the inquiry, or for any other reason. Preservation of order.
- 5.- (1) The Trust shall send to an objector a written notice informing him of- Notification of objectors.
(a) the time and place of the inquiry;
(b) his right to be represented at the inquiry;
(c) the fact that if he fails to attend at the inquiry either personally or by a representative, and the Tribunal is satisfied that the notice has been properly served, the Tribunal may, in its discretion, proceed to hear and determine the inquiry in his absence.
(2) A notice under paragraph (1) may be served on an objector-
(a) by personal delivery at least fourteen clear days before date of the inquiry; or
(b) by sending it by registered post to his last known address at least twenty-one days before the date of the inquiry.
6. Subject to the provisions of these Regulations, the Tribunal shall regulate its own proceedings. Tribunal to regulate its proceedings.
- 7.- (1) The Tribunal shall have power to summon any person to attend at the inquiry and to give evidence or to produce any paper, book, record or document in the possession or under the control of such person. Evidence
(2) A summons under this regulation shall be in the form prescribed in the Schedule and may be served either personally or by registered post. Schedule
(3) The Tribunal shall have power to administer oaths to or take the affirmation of any

witness appearing before the Tribunal.

8.- (1) Any person summoned to attend and give evidence or to produce any paper, book, record or document before the Tribunal shall- Witnesses.

- (a) be bound to obey the summons served upon him;
- (b) be entitled, in respect of such evidence or the disclosure of any communication or the production of any such paper, book, record or document, to the same right or privilege as he would have before a court;
- (c) be entitled to be paid, from public funds, his expenses, including travelling expenses, at the rates prescribes by the Witnesses Expenses Act for the witnesses who are entitled to have their expenses paid from public funds:

Provided that the Tribunal may disallow the whole or any part of such expenses in any case if it think fit

(2) Any person who-

- (a) without sufficient cause, fails or refuses to attend at the inquiry in obedience to a summons under these Regulation, or fails or refuses to produce any paper, book, record or document which he was required by that summons to produce;
 - (b) being a witness, leaves the inquiry without the permission of the Tribunal,
 - (c) being a witness, refuses, without sufficient cause, to answer any question put to him by or with the permission of the Tribunal; or
 - (d) wilfully obstructs or interrupts the proceedings of the Tribunal,
- shall be guilty of an offence and shall be liable on summary conviction before a Resident Magistrate to a fine not exceeding four hundred dollars.

9.- (1) There shall be paid to the members of the Tribunal such remuneration, whether by way of honorarium, salary or fees, and such allowances as the Minister may determine. Remuneration and protection of members.

(2) No action, suit or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of any act done *bona fide* in the execution or intended execution of the Tribunal's functions.

10. At the inquiry the Trust and any objector shall each be entitled-

- (a) to be heard;
- (b) to submit written representations, call witnesses and cross-examine witnesses;
- (c) to produce documents in support of their respective positions, and
- (d) to ask the Tribunal to order production of such document in the possession of an opposing party as are relevant to the inquiry.

Rights of parties.

11.- (1) The Tribunal shall make or cause to be made notes of the proceedings of the inquiry and shall record in writing its findings with respect thereto. Record keeping And costs.

(2) Upon conclusion of the inquiry the Tribunal may make such order in respect of costs as it thinks just.

SCHEDULE

(Regulation 7)

SUMMONS TO WITNESS

To: (Name, address, etc.)

You are hereby summoned to appear at (place)
upon the day , 19 , at
o'clock before a Tribunal constituted to hold a public inquiry into the proposal to
declare (state nature and location of structure) to be a national monument and to give
evidence respecting the proposal.

(If the person summoned is to produce any documents, add):

And you are required to bring with you (specify documents required)

Therefore fail not at your peril.

Given under the hand of

Sole Inquirer/Chairman this day of , 199 .