



JAMAICA NATIONAL HERITAGE TRUST ACT – A REVIEW

A document to guide the discussions on the proposed amendments to the Act

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THE JAMAICA NATIONAL HERITAGE TRUST ACT

A Review

1. Background

The Jamaica National Heritage Trust Act has been in operation since 1985 with the overarching objective of preserving and protecting our national heritage. Over time, several factors have made it necessary to review this piece of legislation. The objective of the process is threefold: (1) to rationalize the act which contains several lacunae and inconsistencies in the treatment of National Monuments and Protected National Heritage, our two arms of permanent legal protection; (2) to modernize the act by addressing the outdated fines it prescribes for breaches (3) to strengthen the JNHT's powers and its enforcement capabilities; and (4) to incorporate modern methods of cultural resource management in the legislation.

This document, as accompanied by the text of the Act and will be the main document for discussion. Although a previous round of public consultations had been held, due to changes in the field particularly at the international level, and heightened interest in the economic value of heritage, a new round will be held. This is envisioned to involve nine sessions: (1) Trelawny & St. James, (2) Hanover & Westmoreland (3) St. Ann and St. Mary, (4) Portland, (5) St. Elizabeth & Manchester, (6) Kingston & St. Andrew (7) St. Thomas, (8) Clarendon and (9) St. Catherine.

2. Issues identified

The following issues have been identified for resolution in the revised Act:

- Inconsistencies in the treatment of Protected National Heritage and National Monuments in Sections 2, 13, 16, 17(c), 19, 22, 23(1)(b), (3)(b), 24 and 27.
- Limitation of financial incentives which fail to assist certain categories of persons/entities seeking to undertake works on protected sites, namely occupiers and investors.
- Fines for breaches of the Act are outdated and therefore not sufficiently prohibitive.
- No provisions for injunctive relief are included in the Act to put a stop to illegal works while the matter is being resolved either through negotiation or the Resident Magistrate's Court e.g stop orders.
- No interim legal protection is provided for a site during the period between the Notice of Intention and Final Declaration

- Need for inclusion of requirements for use of modern cultural resource management tools and techniques such as archaeological and heritage impact assessments.

3. Proposed Amendments

	Section	Issue	Suggested Amendment
General			
1	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 <i>it</i> without the prior written approval of the Trust.	Subsections (a) and (b) prescribe differently for national monuments and protected national heritage	Subsection (b) should include 'carry out of any development' as provided for in subsection(a)

	Section	Issue	Suggested Amendment
General			
2	<p>17 (c) alters any national monument or mark without the written permission of the Trust;</p> <p>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.</p>	(c) Speaks only to national monuments	Extend to protected national heritage
3	<p>19 Preservation Notice Where the Minister is satisfied in relation to any structure.</p> <p>(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</p>	Only contemplates potential national monument sites	Should also contemplate potential protected national heritage sites.

	Section	Issue	Suggested Amendment
General			
4	<p>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.</p> <p>...</p> <p>(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.</p>	Speak only to national monuments	Extend to protected national heritage sites
5	<p>23(1)(b) Subject as hereinafter provided, any person to 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 -</p> <p>(a) which is a national monument or contains a protected national heritage; or</p> <p>(b) for the purpose of determining whether it should be declared a national monument.</p>	Refers only to national monuments	Extend to protected national heritage

	Section	Issue	Suggested Amendment
General			
6	23(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	Refers only to national monuments	Extend to protected national heritage
	NEW	No application fees are presently charged for applications to develop protected sites	Fees to be introduced similar to the structure employed by the Parish Councils and the National Environmental and Planning agency
Procedural			
7	3 (2)	Does not provide for termination of appointment of Trustees No quorum for meetings set, therefore minority of Trustees can conceivably make decisions for the JNHT	Provide for termination of appointment of Trustees on the grounds of: <ul style="list-style-type: none"> • Involvement in an activity which may bring the integrity of the board into question Set quorum at 8 trustees which represents the smallest possible majority

	Section	Issue	Suggested Amendment
Procedural			
8	<p>19. (1) Where the Minister is satisfied in relation to any structure.</p> <p>(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</p> <p>(b) that it is in danger of destruction or removal or damage from neglect or injudicious treatment, 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.</p>	<p>Preservation notices are with the political directorate while the declaration and designation of sites is with the agency, this should be rationalized as the processes are generated by similar objectives.</p>	<p>Chairman to sign Preservation Notice rather than Minister</p>

	Section	Issue	Suggested Amendment
Procedural			
9	22 (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.	Does not allow for appeal of decision of JNHT	Allow for appeal to be made to Minister with responsibility for the agency within 28 days of being advised of decision.
10	NEW	<p>The spirit of section 17 of the Public Bodies Management and Accountability Act is not included in the Act as it is in comparable legislation.</p> <p><i>17. Duty of care.</i></p> <p><i>17. (1) Every director and officer of a public body shall, in the exercise of his powers and the performance of his duties-</i></p> <p><i>(a) act honestly and in good faith in the best interests of the public body; and</i></p> <p><i>(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances including, but not limited to the general knowledge, skill and experience of the director or officer.</i></p> <p><i>(2) A director who is directly or indirectly interested in any matter which is being dealt with by the board-</i></p> <p><i>(a) shall disclose the nature of his interest at a board meeting;</i></p> <p><i>(b) shall not take part in any deliberation of the board with respect to that matter.</i></p>	Incorporate suitable variation of section 17 of the Public Bodies Management and Accountability Act

	Section	Issue	Suggested Amendment
Procedural			
11	NEW	No automatic exemption from stamp duties for JNHT provided.	Provision for exemption of JNHT from payment of stamp duties and other government duties as provided for in other similar agencies legislation.
12	NEW	No appeal provided for from decision made by JNHT regarding granting of permission to develop National Monuments and Protected National Heritage sites.	Provision for appeal to portfolio Minister against decisions made by the JNHT regarding granting permission to develop protected sites. Alternatively, appeal could be made to a specially established tribunal.
13	Schedule 1 1. Before declaring any monuments to be a national monument, the Trust shall - ... (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;	There is no provision for interim protection of a site while it is the process of being declared	Provide for the site's automatic legal protection from development during the period between the service of the notice of intention and the final declaration or designation. Should the site not be declared or designated within the 28 day period, due to an objection being submitted, the JNHT can extend the interim protection for a period not exceeding 60 days while the matter is resolved.

	Section	Issue	Suggested Amendment
Substantive			
14	NEW	There is no explicit provision for devolution, i.e. the delegation of the powers under the Act to other entities	Provisions allowing for other local authorities, or specified entities to carry out certain functions under the Act such as investigations, serving of notices of breach, carrying out watching briefs, monitor sites.
15	NEW	The UNESCO Convention on the Protection of the Underwater Cultural Heritage needs to be enshrined in domestic legislation to facilitate its ratification	Incorporate the Convention into the Act
16	NEW	Whereas artifacts can be declared or listed under the law there are no accompanying regulations which ensures that the proper authorities are advised and that these artifacts are properly registered.	Require registration of all artifacts ¹ with the JNHT
17	NEW	The conservation, exportation and importation of cultural property is not regulated by any legislation	Incorporate provisions which regulate the conservation, exportation and importation of cultural property ²
18	NEW	Only National Monuments and Protected national Heritage are recognized in the Act, and the JNHT's mandate is limited to these sites, even while there are sites which fall outside these categories which the JNHT should have the jurisdiction to promote and preserve.	Categories of places of interest and heritage districts to be included. The term heritage district is already in common usage for collective sites. Also include category of 'places of interest' which would have a lower level of protection than national monuments and protected national heritage.

¹ An artifact is something created by humans, especially objects from a particular historic period.

² The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 can be used as a guideline, and be incorporated as fully as possible to facilitate the ratification of this instrument by Jamaica. According to the Convention, cultural property includes products of archaeological excavations, elements of historic monuments and other antiquities such as coins and engravings.

	Section	Issue	Suggested Amendment
Substantive			
19	NEW	Existing categories do not indicate levels of significance.	Stratification or categorization of National Monuments and Protected National Heritage according to significance using a priority rating system. The highest category will have the most stringent rules concerning development, accordingly the lowest category will have the most lenient rules.
20	NEW	There is no provision by which a National Monument of Protected national heritage can lose its status, even if facts are disproved or the site's heritage value is somehow destroyed or invalidated. ³	Makes provision for rescinding national monument or protected national heritage status
Incentives			
21	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.	Tax incentive applies only to owners	Incentive to apply to legitimate occupiers such as lessees with permission of owner

³ The provision gives person interested in the property a reasonable opportunity to comment in writing whether the declaration or designation should be removed, and considers that the place no longer meets the required criteria. It will also allow the JNHT to rescind the declaration or designation where it is no longer applicable, e.g. where new information emerges which negates the justification for declaration or designation, where the site is degraded and loses its value by virtue of the degradation.

	Section	Issue	Suggested Amendment
Incentive			
22	NEW	More incentives are needed for owners and developers of heritage sites	To be discussed
23	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 <i>per centum</i> 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.	Tax incentives applies only to owners of national monuments	To apply to owners and legitimate occupiers (with permission of the land owner) of national monuments and protected national heritage
Enforcement			
24	NEW	There is no authority to stop unauthorized works without court order. This compromises the site as work can proceed until same is obtained.	JNHT to be given authority to place stop orders on unapproved works.

	Section	Issue	Suggested Amendment
Enforcement			
25	17 (c) alters any national monument or mark without the written permission of the Trust; 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.	Fines are outdated	Fine to be increased, and included in regulations to make future amendments simpler as the process to amend regulations is simpler than that to amend the Act. Expand Judge's discretion to apply sanctions.
Cultural Resource Management Tools			
26	NEW	There is no legally prescribed regulation of archaeological work which takes place on sites not within the jurisdiction of the JNHT.	JNHT to licence all archaeological exploration whether on a declared/ designated site or otherwise
27	NEW	The JNHT is not explicitly permitted to use the image or information of any National Monument or Protected National Heritage to fulfil its mandate to protect, preserve and promote as is provided in comparable legislation	To allow the JNHT to use any intellectual property, or any intangible asset relating to national monuments and protected national heritage in fulfillment of its explicit mandate to promote , protect and preserve.

	Section	Issue	Suggested Amendment
Cultural Resource Management Tools			
28	NEW	Artifacts remain property of owner of site who can dispose of cultural material at will.	All artifacts belong to the GOJ
29	NEW	<p>No authority under Act to require an archaeological impact assessment or heritage impact assessment</p> <p>The use of cultural resource management tools are not specifically provided for outside of the preservation scheme allowed for under section 10.</p>	<p>JNHT to have authority to require an archaeological impact assessment or heritage impact assessment on any land whether or not declared or designated before development can be approved where it is shown that there is some reasonable likelihood that the site may contain heritage assets</p> <p>Require that all planning authorities consult with the JNHT before granting development approval on sites in sensitive areas of which a list shall be provided to all such agencies.</p> <ul style="list-style-type: none"> • The site is recorded at the JNHT • The site only becomes known through development work taking place • The activity is permitted under a local or other development plan, or a resource or building consent has been granted. It also applies to sites on land of all tenure, including public, private and designated land.

The following are to be included in JNHT regulations:

1. Management mechanisms for heritage sites which provide for identification, provision of information, protection from unwarranted change, positive management to safeguard historic fabric and integrity, maintenance of economic viability-including sustainable change, promotion of understanding appreciation and enjoyment, generation of economic prosperity.
2. Revised fine schedule for ease of future revisions.
3. Guidelines for the treatment of movable cultural property which have been declared/designated under the Act pursuant to sections 12 or 13.
4. Guidelines for the treatment of underwater cultural heritage.