



*At the Court at Buckingham Palace*

THE 14th DAY OF DECEMBER 2006

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas Gibraltar is part of Her Majesty's dominions and Her Majesty's Government have given assurances to the people of Gibraltar that Gibraltar will remain part of Her Majesty's dominions unless and until an Act of Parliament otherwise provides, and furthermore that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes:

And whereas the people of Gibraltar have in a referendum held on 30th November 2006 freely approved and accepted the Constitution annexed to this Order which gives the people of Gibraltar that degree of self-government which is compatible with British sovereignty of Gibraltar and with the fact that the United Kingdom remains fully responsible for Gibraltar's external relations:

Now, therefore, Her Majesty, by virtue and in exercise of all the powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:-

**Citation, commencement and interpretation**

- 1.-(1) This Order may be cited as the Gibraltar Constitution Order 2006.
- (2) This Order shall be published in the Gazette and shall come into force on the day it is so published.
- (3) In this Order –  
“the appointed day” means such day as may be prescribed by the Governor by proclamation in the Gazette;  
“the Constitution” means the Constitution set out in Annex 1 to this Order;

“the existing Order” means the Gibraltar Constitution Order 1969<sup>(a)</sup>.

(4) Section 78 of the Constitution shall apply for the purposes of interpreting this section, section 2 and Annex 2 to this Order and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to the Constitution.

### **Commencement of Constitution and revocation of existing Order**

2. With effect from the appointed day –

(a) the Constitution set out in Annex 1 to this Order shall (subject to the transitional and other provisions set out in Annex 2 to this Order) have effect in Gibraltar, a part of Her Majesty’s dominions, known as the City of Gibraltar;

(b) the existing Order shall be revoked.

*A.K.Galloway*

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<sup>(a)</sup> S.I. 1969, II p.3602

## ANNEX 1 TO THE ORDER

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5. Protection from inhuman treatment.
6. Protection from deprivation of property.
7. Protection for privacy of home and other property.
8. Provisions to secure protection of law.
9. Protection of freedom of conscience.
10. Protection of freedom of expression.
11. Protection of freedom of assembly and association.
12. Protection of freedom to establish schools.
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SCHEDULE TO THE CONSTITUTION

OATHS

## **CHAPTER I**

### **PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS**

Whereas all peoples have the right of self-determination and by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit and international law;

And whereas the realisation of that right must be promoted and respected in conformity with the provisions of the Charter of the United Nations and any other applicable international treaties;

#### **Fundamental rights and freedoms of the individual**

1. It is hereby recognised and declared that in Gibraltar there have existed and shall continue to exist without discrimination by reason of any ground referred to in section 14(3), but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely –

- (a) the right of the individual to life, liberty, security of the person, the enjoyment of property and the protection of the law;
- (b) freedom of conscience, of expression, of assembly, of association and freedom to establish schools; and
- (c) the right of the individual to protection for his personal privacy, for the privacy of his home and other property and from deprivation of property without adequate compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

#### **Protection of right to life**

2.-(1) No person shall be deprived of his life intentionally.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is no more than absolutely necessary –

- (a) for the defence of any person from violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny,

or if he dies as the result of a lawful act of war.

### **Protection of right to personal liberty**

**3.-(1)** No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say –

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Gibraltar or elsewhere, in respect of a criminal offence of which he has been convicted;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court or of a tribunal;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law;
- (d) for the purpose of bringing him before a court in execution of the order of a court;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence under any law;
- (f) in the case of a person who is a minor as prescribed by law, for the purpose of his education or welfare;
- (g) for the purpose of preventing the spread of an infectious or contagious disease;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol or a vagrant, for the purpose of his care or treatment or the protection of the community;
- (i) for the purpose of preventing the unlawful entry of that person into Gibraltar, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Gibraltar or for the purpose of restricting that person while he is being conveyed through Gibraltar in the course of his extradition or removal as a convicted prisoner from one country to another or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention. Any person who is arrested or detained shall have the right, at any stage



and at his own expense, to retain and instruct without delay a legal practitioner of his own choice, and to hold private communication with him, and in the case of a minor as prescribed by law he shall also be afforded a reasonable opportunity for communication with his parent or guardian, provided that when the person arrested or detained is unable to retain a legal practitioner of his own choice or be represented by a legal practitioner at the public expense as may be prescribed by any law, he may be represented, and hold private communication with, such person as the court may approve.

- (3) Any person who is arrested or detained –
- (a) for the purpose of bringing him before a court in execution of the order of a court; or
  - (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court; and if any person arrested or detained as mentioned in paragraph (b) is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial, and without prejudice to the generality of the foregoing such conditions may include bail.

(4) Any person who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

(5) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

### **Protection from slavery and forced or compulsory labour**

4.-(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced or compulsory labour.

(3) For the purposes of this section, the expression “forced or compulsory labour” does not include –

- (a) any work required to be done in the ordinary course of detention imposed in accordance with section 3 or during conditional release from such detention or as an alternative to such detention;
- (b) any work or service required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any work or

service that that person is required by law to perform in place of such service;  
or

- (c) any work or service required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such work or service is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

### **Protection from inhuman treatment**

5. No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

### **Protection from deprivation of property**

6.-(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say –

- (a) the taking of possession or acquisition is necessary or expedient in the public interest in accordance with Article 1 of the First Protocol to the European Convention on Human Rights;
- (b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property; and
- (c) provision is made by a law applicable to that taking of possession or acquisition –
  - (i) for the prompt payment of adequate compensation; and
  - (ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax imposed in respect of its remission) to any country of his choice outside Gibraltar.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (2) to the extent that the law in question authorises –

- (a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party;
- (b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted;
- (c) the imposition of –
  - (i) any deduction, charge or tax; or
  - (ii) any obligation or restriction relating to exchange control,

that is imposed generally in respect of the remission of moneys from Gibraltar and that is not discriminatory within the meaning of section 14(3).

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) –

- (a) to the extent that the law in question makes provision for the taking of possession or acquisition of property –
  - (i) in satisfaction of any tax, rate or due;
  - (ii) by way of penalty for breach of the law or forfeiture or seizure in consequence of a breach of the law;
  - (iii) as an incident of a lease, tenancy, mortgage, charge, sale, pledge or contract;
  - (iv) in the execution of the judgment or order of a court;
  - (v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants;
  - (vi) in consequence of any law with respect to the limitation of actions or acquisitive prescription;
  - (vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or enquiry or, in the case of land, the carrying out thereon –
    - (A) of work of soil conservation or the conservation of other natural resources; or
    - (B) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out;

- (viii) by way of the taking of any sample for the purposes of any law;
  - or
  - (ix) where the property consists of an animal upon its being found trespassing or straying;
- (b) to the extent that the law in question makes provision for the taking of possession or acquisition of –
- (i) enemy property;
  - (ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein;
  - (iii) the property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property; or
  - (iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall affect the making or operation of any law so far as it provides for vesting in the Crown the ownership of underground water or unextracted minerals.

(6) Nothing in this section shall affect the making or operation of any law for the compulsory taking of possession or the compulsory acquisition in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

### **Protection for privacy of home and other property**

7.-(1) Every person has the right to respect for his private and family life, his home and his correspondence.

(2) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) in the interests of defence, the economic well-being of Gibraltar, public safety, public order, public morality, public health, town planning, the development

or utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

- (b) for the purpose of protecting the rights or freedoms of other persons;
- (c) to enable an officer or agent of the Government, a local government authority, or a body corporate established by law for public purposes, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, that local government authority or that body corporate, as the case may be;
- (d) to authorise, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order; or
- (e) for the prevention of disorder or crime,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **Provisions to secure protection of law**

**8.-(1)** If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law; and, except with his own consent or as may be prescribed by law, the trial shall not take place in his absence.

(2) Every person who is charged with a criminal offence –

- (a) shall be presumed to be innocent until he is proved or has pleaded guilty;
- (b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence;
- (c) shall be given adequate time and facilities for the preparation of his defence;
- (d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, when the interests of justice so require, by a legal representative provided at the public expense;
- (e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution;

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for a criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by a competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in subsection (9) shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority –

(a) may by law be empowered to do so and may consider necessary or expedient either in circumstances where publicity would prejudice the interest of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of minors as prescribed by law or the

protection of the private lives of persons concerned in the proceedings;  
or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of –

(a) subsection (2)(a), to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e), to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(c) subsection (5), to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section –

“criminal offence” means a crime, misdemeanour or contravention punishable under the law of Gibraltar;

“legal representative” means a person lawfully in or entitled to be in Gibraltar and entitled to practise in Gibraltar as a barrister or, except in relation to proceedings before a court in which a solicitor has no right of audience, as a solicitor.

### **Protection of freedom of conscience**

**9.**-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is a minor as prescribed by law, with the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from or hindered in making provision for the giving, by persons lawfully in Gibraltar, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (3) to the extent that the law in question makes provision –

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(6) References in this section to a religion shall be construed as including references to a religious denomination and cognate expressions shall be construed accordingly.

### **Protection of freedom of expression**

**10.**-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings and proceedings before statutory tribunals, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, other methods of telecommunication or electronic communication transmission systems, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or



(c) for the imposition of restrictions on public officers,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **Protection of freedom of assembly and association**

**11.**-(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision –

- (a) in the interests of defence, public safety, public order, public morality or public health;
- (b) for the purpose of protecting the rights and freedoms of other persons;
- (c) for the imposition of restrictions upon public officers; or
- (d) for the registration of trade unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register (including conditions as to the minimum number and qualifications of persons necessary to constitute a trade union qualified for registration),

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **Protection of freedom to establish schools**

**12.**-(1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that the law in question makes provision –

- (a) in the interests of defence, public safety, public order, public morality or public health; or
- (b) for regulating such schools in the interests of the persons receiving instruction therein,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) No person shall be prevented from sending his child (including a person of whom he is the guardian) to any such school by reason only that the school is not established or maintained by the Government.

### **Protection of freedom of movement**

**13.-(1)** No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Gibraltar, the right to reside in any part of Gibraltar, the right to enter Gibraltar, the right to leave Gibraltar and immunity from expulsion from Gibraltar.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -

- (a) for the imposition of restrictions, by order of a court, on the movement or residence within Gibraltar of any person either in consequence of his having been found guilty of a criminal offence under the law of Gibraltar or for the purpose of ensuring that he appears before a court at a later date for trial in respect of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Gibraltar;
- (b) for the imposition of restrictions on the movement or residence within Gibraltar of any person who does not belong to Gibraltar, provided it is reasonably justifiable in a democratic society, or the exclusion or expulsion from Gibraltar of any such person;
- (c) for the imposition of restrictions on the acquisition or use by any person of land or other property in Gibraltar;
- (d) for the imposition of restrictions on the movement or residence in Gibraltar or on the right to leave Gibraltar of persons generally or any class of persons that are reasonably required –
  - (i) in the interests of defence, public safety, public order, public morality or public health; or
  - (ii) for the purpose of protecting the rights and freedoms of other persons,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society;

- (e) for the removal of a person from Gibraltar to be tried outside Gibraltar for a criminal offence or to undergo imprisonment outside Gibraltar in execution of the sentence of a court in respect of a criminal offence of which he has been convicted; or
- (f) for the imposition of restrictions on the right of any person to leave Gibraltar in order to secure the fulfilment of any obligations imposed upon that person by law, except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

### **Protection from discrimination on the grounds of race, etc**

**14.-(1)** Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section, the expression “discriminatory” means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of or social origin, political or other opinions or affiliations, colour, language, sex, creed, property, birth or other status, or such other grounds as the European Court of Human Rights may, from time to time, determine to be discriminatory, whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) shall not apply to any law so far as that law makes provision –

- (a) for the appropriation of revenues or other funds of Gibraltar;
- (b) with respect to persons who do not belong to Gibraltar;
- (c) for the application, in the case of persons of any such description as is referred to in subsection (3) (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description;

- (d) for conferring the status of a Gibraltarian for the purposes of the Gibraltarian Status Ordinance upon any person or for withdrawing that status from any person; or
  - (e) whereby persons of any such description as is mentioned in subsection (3) may be subjected to any disability or restriction or may be accorded any privilege or advantage that, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is consistent with the provisions of the European Convention on Human Rights.
- (5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) to the extent that –
- (a) it requires a person to belong to Gibraltar or to possess any other qualification (not being a qualification specifically relating to any of the descriptions or grounds referred to in subsection (3)) in order to be eligible for appointment to any office in the public service or in a disciplined force or in the service of a local government authority or in a body corporate established by law for public purposes; or
  - (b) it makes reasonable provision for ensuring that persons holding office as aforesaid and giving instruction in schools maintained by the Government and attended wholly or mainly by pupils of a particular religious community or denomination are acceptable on moral and religious grounds to that religious community or denomination, or to the authorities of that community or denomination.
- (6) Subsection (2) shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5).
- (7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11, 12 and 13, being such a restriction as is authorised by section 7(3), 9(5), 10(2), 11(2), 12(2) or 13(3), as the case may be.
- (8) Subsection (2) shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

### **Right to marry and found a family**

**15.** Men and women of marriageable age have the right to marry and to found a family as prescribed by any law governing the exercise of this right.

## **Enforcement of protective provisions**

**16.**-(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of subsection (1), and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The Supreme Court shall have such powers in addition to those conferred by subsection (2) as may be prescribed for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which applications to that court may be made).

## **Provisions for periods of public emergency**

**17.**-(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939<sup>(a)</sup> or any law enacted by the Legislature to like effect shall be held to be inconsistent with or in contravention of section 3, section 4(2) or any provision of sections 7, 9, 10, 11 or 12, section 13(1) or (3) or section 14 to the extent that the regulation or law in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, to the extent strictly required by the exigencies of the situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance only of such a regulation or law as is referred to in subsection (1) so requests at any time during the period of that detention (but if he has already made such a request during that period not earlier than six months after he last made such a request during that period), his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, entitled to practise as a barrister in Gibraltar, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise prescribed, that authority shall not be obliged to act in accordance with any such recommendations.

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<sup>(a)</sup> See S.I. 1952/2031 (1952 I. p.620). The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759.

## **Interpretation and savings**

**18.-(1)** In this Chapter, unless the context otherwise requires –

“child” includes a stepchild and a child adopted in a manner recognised by law;

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in Gibraltar, including Her Majesty in Council, but excepting, save in sections 2 and 4 and this section, a court established by a disciplinary law;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter “a period of public emergency” means any period during which –

(a) Her Majesty is at war;

(b) the provisions of Part II of the Emergency Powers Order in Council 1939 are in operation in Gibraltar, or any emergency has been declared under any law enacted by the Legislature to like effect.

(3) For the purposes of this Chapter a person shall be deemed to belong to Gibraltar if that person is a Gibraltarian for the purposes of the Gibraltarian Status Ordinance.

(4) In relation to any person who is a member of a disciplined force raised in accordance with such provisions as may be prescribed by the Legislature, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Gibraltar, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) Nothing contained in section 10, 11 or 13 shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(7) References in this Chapter to any Ordinance are references to that Ordinance as from time to time amended and include references to any law replacing that Ordinance.

(8) (a) A court or tribunal determining a question which has arisen in connection with a right or limitation thereof set out in this Chapter must take into account any –

(i) judgment, decision, declaration or advisory opinion of the European Court of Human Rights;

(ii) opinion of the European Commission of Human Rights (“the Commission”) given in a report adopted under Article 31 of the European Convention on Human Rights (“the Convention”);

(iii) decision of the Commission in connection with Article 26 or 27(2) of the Convention; or

(iv) decision of the Committee of Ministers taken under Article 46 of the Convention,

whenever made or given, so far as, in the opinion of the court or tribunal, it is relevant to the proceedings in which that question has arisen.

(b) Evidence of any judgment, decision, declaration or opinion of which account may have to be taken under this subsection is to be given in proceedings before any court or tribunal in such manner as may be provided by rules.

(c) In this subsection “rules” means rules of court or, in the case of proceedings before a tribunal, rules made for the purposes of this subsection by the Attorney-General.

(9) Any right or limitation thereof set out in sections 1 to 15 may be amended if –

(a) a motion proposing that amendment is carried by a majority of at least three-quarters of the total number of Members of the Parliament; and

(b) the Parliament’s vote on such motion is thereafter supported by a simple majority of the votes cast in a referendum of all persons entitled to vote in elections to the Parliament; and

(c) the consent of Her Majesty signified through a Secretary of State has been obtained before any such motion or referendum.

(10) Subsection (9) is without prejudice to the power of Her Majesty to amend or revoke any provision of this Chapter by Order in Council.

## CHAPTER II

### THE GOVERNOR

#### Office of the Governor

**19.** There shall be a Governor and Commander-in-Chief for Gibraltar who shall be appointed by Her Majesty and shall hold office during Her Majesty’s pleasure and who shall be Her Majesty’s representative in Gibraltar.

### **Powers and duties of Governor**

**20.**-(1) The Governor shall have such functions as may be prescribed by this Constitution and any other law, and such other functions as Her Majesty may be pleased to assign to him in the exercise of the Royal prerogative.

(2) The Governor shall exercise his functions in accordance with this Constitution and any other law, and, subject thereto, shall do or execute all things that belong to his office (including the exercise of any functions that are expressed to be exercisable in his discretion) according to such instructions (if any) as Her Majesty may see fit to address to him.

(3) Notwithstanding the jurisdiction of the courts in respect of functions exercised by the Governor, the question of whether or not the Governor has in any matter complied with any instructions addressed to him by Her Majesty shall not be enquired into in any court of law.

### **Governor's taking of oaths**

**21.** Every person appointed to the office of Governor shall, before entering upon that office, take and subscribe oaths of allegiance and for the due execution of the office in the forms set out in the Schedule to this Constitution.

### **Vacancy in the office of Governor**

**22.**-(1) During any period when the office of Governor is vacant or the Governor is absent from Gibraltar or is for any other reason unable to discharge the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and discharged by such person as Her Majesty may have designated in that behalf by instructions given through a Secretary of State.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths directed by section 21 to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions.

(4) The Governor or any other person as aforesaid shall not for the purposes of this section be regarded as absent from Gibraltar or as unable to perform the functions of the office of Governor at any time when there is a subsisting appointment of a deputy under section 23.



## **Deputy to Governor**

**23.**-(1) Whenever the Governor –

- (a) has occasion to be absent from Gibraltar for a period which he has reason to believe will be of short duration; or
- (b) is suffering from an illness which he has reason to believe will be of short duration,

he may by writing under his hand appoint any person in Gibraltar to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor as may be so specified.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor may from time to time address to him:

Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into in any court of law.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor.

(4) In this section “the Governor” means any person holding the office of Governor and includes any person discharging the functions of that office under section 22.

(5) The powers of the Governor under this section shall be exercised by him acting in his discretion.

## **CHAPTER III**

### **The Legislature**

#### *Part I – The Gibraltar Parliament*

### **Legislature of Gibraltar**

**24.** There shall be a Legislature for Gibraltar, which, subject to this Chapter, shall consist of Her Majesty and the Gibraltar Parliament.

## **Gibraltar Parliament**

**25.**-(1) There shall be a Parliament for Gibraltar, which shall be styled the Gibraltar Parliament.

(2) The Parliament shall consist of –

- (a) the Speaker; and
- (b) at least seventeen Elected Members elected in such manner and in such number as may be prescribed by any law which may prescribe a number in excess of seventeen Members if such increase or reduction has been approved by a motion supported by a two-thirds majority of the Members of the Parliament.

(3) The following shall be officers of the Parliament –

- (a) the Principal Auditor;
- (b) the Ombudsman;
- (c) the Clerk to the Parliament;
- (d) any other officer prescribed by Act.

(4) The officers of the Parliament shall have such powers as may be prescribed by Act.

## **Speaker**

**26.**-(1) The Speaker of the Parliament shall be appointed by the Parliament by resolution passed by a simple majority of its Members and presented by the Chief Minister acting after consultation with the Leader of the Opposition.

(2) The Chief Minister shall in consultation with the Leader of the Opposition and before the meeting of the Parliament at which the resolution under subsection (1) is to be debated appoint a Member of the Parliament for the sole purpose of presiding over the resolution.

(3) No person shall be qualified for appointment as Speaker if –

- (a) he is an Elected Member of the Parliament;
- (b) he is not a British citizen or a British overseas territories citizen by virtue of a connection with Gibraltar who has attained the age of eighteen years; or
- (c) he is a person disqualified for election as an Elected Member of the Parliament under section 28.

- (4) A person shall vacate the office of Speaker –
- (a) if a motion of no confidence in him is passed in the Parliament by a majority of two-thirds of the Members;
  - (b) if any circumstances arise that would cause him to be disqualified for election as an Elected Member of the Parliament by virtue of section 28(1);
  - (c) if he is nominated for election as an Elected Member of the Parliament; or
  - (d) on a dissolution of the Parliament.
- (5) If the office of the Speaker is vacant or if the person holding the office of Speaker is absent from Gibraltar or is for any other reason at any time unable to perform the functions of his office, those functions may be performed by such person (being a person qualified for appointment as Speaker) as may from time to time be designated in that behalf by the Parliament upon motion being presented by the Chief Minister acting after consultation with the Leader of the Opposition.
- (6) No business shall be transacted in the Parliament at any time when the office of Speaker is vacant save a motion under subsection (5) for which purpose the Parliament may be convened by the Chief Minister notwithstanding the absence of the Speaker.

### **Qualifications for Elected Members**

**27.** Subject to section 28, a person shall be qualified to be elected as an Elected Member of the Parliament if, and shall not be qualified to be so elected unless, at the date of his nomination as a candidate for election, he is a British citizen or a British overseas territories citizen by virtue of a connection with Gibraltar who has attained the age of eighteen years.

### **Disqualifications for Elected Members**

**28.-(1)** No person shall be qualified to be elected as an Elected Member of the Parliament who –

- (a) is, by virtue of his own act, under any acknowledgement of allegiance, obedience or adherence to a foreign power or state; or
- (b) is a member of the regular armed forces of Her Majesty; or
- (c) holds, or is acting in, a public office; or
- (d) has been adjudged or otherwise declared bankrupt under any law in force in or outside Gibraltar and has not been discharged; or

- (e) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Gibraltar; or
  - (f) is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by a court of law or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended; or
  - (g) is not qualified to be registered as a voter at elections of Elected Members of the Parliament or, being so qualified, is not so registered; or
  - (h) is disqualified for election by any law for the time being in force in Gibraltar by reason of his holding, or acting in, any office the functions of which involve –
    - (i) any responsibility for, or in connection with, the conduct of any election; or
    - (ii) any responsibility for the compilation or revision of any electoral register; or
  - (i) is disqualified for election by any law in force in Gibraltar relating to offences connected with elections.
- (2) For the purpose of subsection (1)(f) –
- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms;
  - (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.
- (3) The reference in subsection (1)(b) to a member of the regular armed forces of Her Majesty shall not include a reference to an officer of the Reserve of Officers of the Royal Gibraltar Regiment or to a member of the Reserve of that Regiment or other Reserve of Officers except while he is called out for actual military or naval service.
- (4) If it is so prescribed by the Legislature –
- (a) a person shall not be disqualified for election as an Elected Member of the Parliament by virtue of his holding or acting in any public office specified (either individually or by reference to a class of office) by the Legislature;
  - (b) a person may stand as a candidate as such notwithstanding that he holds or is acting in any public office specified (in the manner aforesaid) by the Legislature if he undertakes to relinquish or, as the case may be, to cease to act in that office if he is elected as an Elected Member of the Parliament; or

- (c) any office specified (in the manner aforesaid) by the Legislature being an office the emoluments of which are paid, directly or indirectly, out of public funds, but which would not otherwise be a public office for the purposes of this section, shall be deemed to be a public office for those purposes.
- (5) Any law made in pursuance of subsection (4)(b) may contain incidental and consequential provisions, including provision that an Elected Member who has given such an undertaking as is referred to in that subsection shall be incapable of taking his seat in the Parliament until he has fulfilled that undertaking and shall vacate his seat if he has not fulfilled it within such time as is specified by such law; and for the avoidance of doubts it is hereby declared that, where a provision is made in pursuance of subsection (4)(c) in respect of any office, provision may also be made in pursuance of subsection (4)(b) in respect of that office.

### **Tenure of office of Elected Members**

**29.**-(1) An Elected Member of the Parliament shall vacate his seat therein –

- (a) on a dissolution of the Parliament;
  - (b) if he is absent from six consecutive meetings of the Parliament without having obtained before the termination of any of such meetings from the Speaker permission to be or remain absent therefrom;
  - (c) if he ceases to be a British citizen or a British overseas territories citizen by virtue of a connection with Gibraltar; or
  - (d) subject to section 30, if any other circumstances arise that, if he were not an Elected Member of the Parliament, would cause him to be disqualified for election as such by virtue of section 28(1).
- (2) Subsection (1) shall be without prejudice to any provision contained in any law made in pursuance of section 28(4)(b) for the vacation by an Elected Member of the Parliament of his seat.
- (3) An Elected Member of the Parliament may resign his seat therein by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker (or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by such other person as may be specified in the rules of procedure of the Parliament).
- (4) If the seat in the Parliament of an Elected Member becomes vacant otherwise than by reason of a dissolution of the Parliament, the writ for an election to fill the vacancy shall, unless the Parliament is sooner dissolved, be issued within ninety days of the occurrence of the vacancy.

### **Vacation of seat on sentence, etc.**

**30.**-(1) If circumstances such as are referred to in section 29(1)(d) arise because an Elected Member of the Parliament is under sentence of imprisonment, declared bankrupt, adjudged to be of unsound mind or convicted of an offence relating to elections and it is open to the Member to appeal against the decision (either with the leave of the court or other authority or without such leave), he shall forthwith cease to perform his functions as a Member of the Parliament but, subject to subsection (3), he shall not vacate his seat until the expiration of thirty days thereafter:

Provided that the Speaker may, at the request of the Elected Member, from time to time extend that period for thirty days to enable the Member to pursue any appeal so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Parliament signified by resolution.

(2) If, on the determination of any appeal, such circumstances as aforesaid continue to exist and no further appeal is open to the Member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Elected Member to appeal, he shall forthwith vacate his seat.

(3) If at any time before the Elected Member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in subsection (1) and he may resume the performance of his functions as an Elected Member.

### **Determination of questions as to membership**

**31.**-(1) The Supreme Court shall have jurisdiction to hear and determine any question whether –

- (a) any person has been validly elected as an Elected Member of the Parliament;
- (b) any person who has been appointed as Speaker was qualified to be so appointed or has vacated the office of Speaker; or
- (c) any Elected Member of the Parliament has vacated his seat or is required, under section 30, to cease to perform his functions as such.

(2) An application to the Supreme Court for the determination of any question under subsection (1)(a) may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the Supreme Court for the determination of any question under subsection (1)(b) may be made by any Elected Member of the Parliament or by the Attorney-General and, if it is made by a person other than the Attorney-General, the

Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the Supreme Court for the determination of any question under subsection (1)(c) may be made –

(a) by any Elected Member of the Parliament or by the Attorney-General; or

(b) by any person registered as a voter at elections of Elected Members of the Parliament,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) The Legislature may make provision with respect to –

(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and

(b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(6) A determination by the Supreme Court in proceedings under this section shall not be subject to appeal.

(7) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

## *Part II – Legislation and Procedure in the Gibraltar Parliament*

### **Power to make laws**

**32.** Subject to this Constitution, the Legislature may make laws for the peace, order and good government of Gibraltar.

### **Mode of exercise of legislative power**

**33.**-(1) Subject to section 34, the power of the Legislature to make laws shall be exercisable by bills passed by the Parliament and assented to by Her Majesty or by the Governor on behalf of Her Majesty.

(2) When a bill is submitted to the Governor for assent in accordance with this Constitution he shall signify that he assents, or withholds assent, thereto, or that he reserves the bill for the signification of Her Majesty's pleasure; provided that the Governor –

- (a) may only reserve for the signification of Her Majesty's pleasure any bill which appears to him, acting in his discretion, to be in any way repugnant to or inconsistent with this Constitution;
- (b) may only withhold assent to any bill which appears to him, acting in his discretion, to be in any way repugnant to good government or incompatible with any international legal obligation,

unless he has been authorised by a Secretary of State to assent to it.

- (3) When a bill has been reserved for the signification of Her Majesty's pleasure and the Governor is informed by a Secretary of State that Her Majesty is pleased to assent, the Governor shall signify such assent by Proclamation published in the Gazette.
- (4) No law made by the Legislature shall come into operation until it has been published in the Gazette but the Legislature may postpone the coming into operation of any such law and may make laws with retrospective effect.
- (5) All laws made by the Legislature shall be styled "Acts" and the words of enactment shall be "Enacted by the Legislature of Gibraltar".

### **Governor's special legislative powers**

**34.** If the Governor considers that the enactment of legislation is necessary or desirable with respect to or in the interests of any matter for which he is responsible under section 47(1) but, after consultation with the Chief Minister, it appears to him that the Government is unwilling to support the introduction into the Parliament of a bill for the purpose or that the Parliament is unlikely to pass a bill introduced therein for the purpose, the Governor may, with the prior approval of a Secretary of State, cause a bill for the purpose to be published in the Gazette and may (notwithstanding that the bill has not been passed by the Parliament) assent thereto on behalf of Her Majesty:

Provided that the bill shall be published in the Gazette for at least twenty-one days prior to assent unless the Governor certifies by writing under his hand that the matter is too urgent to permit such a delay in the giving of assent and so informs a Secretary of State.

### **Bills and motions**

**35.-(1)** Except on the recommendation of the Minister with responsibility for finance, the Parliament shall not –

- (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding in the Parliament, makes provision for imposing or increasing any tax, rate or duty, for imposing or increasing any charge on the revenues or other funds of Gibraltar, or for altering any such charge otherwise



than by reducing it, or for compounding or remitting any debt due to Gibraltar;  
or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Parliament, would be to make provision for any of the purposes aforesaid.

(2) Except with the consent of the Governor, acting in his discretion, signified by the Chief Minister, the Parliament shall not proceed upon any bill (including any amendment to a bill) that, in the opinion of the Governor, acting in his discretion, signified as aforesaid, concerns a matter for which he is responsible under section 47(1).

(3) Every bill shall be published in the Gazette, and the Parliament shall not proceed upon any bill until the expiration of six weeks after the date on which the bill was so published, unless the Chief Minister certifies by writing under his hand that consideration of the bill is too urgent to permit such a delay.

### **Privileges of the Gibraltar Parliament and Members**

**36.** The Legislature may prescribe the privileges, immunities and powers of the Parliament and its Members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members thereof.

### **Meetings and general elections**

**37.**-(1) Writs for a general election of Elected Members of the Parliament shall be issued within thirty days of the date of any dissolution of the Parliament. A general election shall be held not later than three months after the issue of a writ for a general election and a meeting of the Parliament shall be appointed to commence within thirty days of the date prescribed for polling at any such general election.

(2) Subject to subsection (1), the meetings of the Parliament shall be held at such place and begin at such time as the Chief Minister may from time to time by Notice published in the Gazette appoint; but a period of three months shall not elapse between the date of an election and the second meeting.

(3) There shall be at least three meetings of the Parliament in any calendar year except a calendar year in which a general election is held when there shall be at least two meetings of the Parliament.

### **Dissolution**

**38.**-(1) Subject to subsection (3), the Governor, acting in accordance with the advice of the Chief Minister, shall at any time by Proclamation published in the Gazette dissolve the Parliament.

(2) The Governor shall in any case dissolve the Parliament at the expiration of four years from the date when the Parliament first meets after any general election of Elected Members unless it has been sooner dissolved.

(3) The Governor may only act contrary to the advice given to him by the Chief Minister under subsection (1), or may act in the absence of such advice, if he considers that the good government of Gibraltar requires him to do so.

### **Rules of procedure**

**39.** The Parliament may from time to time make, amend and revoke rules of procedure for the regulation and orderly conduct of its proceedings and the despatch of business, and for the passing, intituling and numbering of bills and for the presentation thereof to the Governor for assent.

### **Oath of allegiance**

**40.** No member of the Parliament shall be permitted to take part in the proceedings of the Parliament (other than proceedings necessary for the purpose of this section) until he has made before the Parliament an oath of allegiance in the form set out in the Schedule to this Constitution.

### **Presiding in the Parliament**

**41.** Subject to section 26(6), there shall preside at any sitting of the Parliament the Speaker, or in his absence a Member of the Parliament elected by the Parliament for the sitting.

### **Quorum**

**42.-(1)** A quorum of the Parliament shall consist of such number of persons as equates to thirty percent of the number of Elected Members comprising the Parliament (rounded up to the nearest full number) besides the Speaker or other person presiding at the sitting.

(2) If at any sitting of the Parliament any Member who is present draws the attention of the Speaker or other person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the rules of procedure of the Parliament, the Speaker or other person presiding at the sitting ascertains that a quorum of the Parliament is still not present, the Parliament shall be adjourned.

(3) Subject to section 26(6), the Parliament shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof including any vacancy not filled when the Parliament first sits after any general election of Elected Members; and any proceedings therein shall be valid notwithstanding that

some person who was not entitled to do so sat or voted in the Parliament or otherwise took part in those proceedings.

### **Voting**

43.-(1) Save as otherwise provided in this Constitution or any other law, all questions proposed for decision in the Parliament shall be determined by a majority of the votes of the Members present and voting.

(2) The Speaker shall have neither an original nor a casting vote.

(3) A Member of the Parliament who is presiding in the Parliament in the absence of the Speaker shall have no casting vote but may exercise an original vote that he would be entitled to exercise if he were not presiding.

(4) If upon any question before the Parliament the votes are equally divided, the motion shall be declared lost.

## **CHAPTER IV**

### **THE EXECUTIVE**

#### **Executive authority of Gibraltar**

44.-(1) The executive authority of Gibraltar shall vest in Her Majesty; and, save as otherwise provided in this Constitution, that authority may be exercised by the Government of Gibraltar, either directly or through public officers as prescribed by this Constitution or by any other law.

(2) Nothing in this section shall preclude persons or authorities other than the Government of Gibraltar from exercising such functions as may be conferred upon them by any law.

#### **Council of Ministers and Government of Gibraltar**

45.-(1) There shall be for Gibraltar a Council of Ministers, which shall consist of a Chief Minister and such number of other Ministers (not being less than four) as may, subject to subsection (2), be prescribed by the Chief Minister; and such Council of Ministers, together with Her Majesty who is represented in Gibraltar by the Governor, shall constitute the Government of Gibraltar.

(2) The Chief Minister shall not prescribe such number of Ministers as exceeds –

(a) ten, if the number of Elected Members comprising the Parliament does not exceed seventeen;

(b) such number as equates to half the number of Elected Members comprising the Parliament, plus one, if the number of Elected Members comprising the

Parliament exceeds seventeen, provided that if there shall be an odd number of Elected Members then for the purposes of this calculation the number of Elected Members shall be regarded as increased by one, and provided also that the number of Ministers prescribed shall not exceed fifteen.

(3) The Governor, acting in his discretion, shall appoint as Chief Minister the Elected Member of the Parliament who in his judgement is most likely to command the greatest measure of confidence among the Elected Members of the Parliament.

(4) The Ministers other than the Chief Minister shall be appointed by the Governor, acting in accordance with the advice of the Chief Minister, from among the Elected Members of the Parliament.

(5) If occasion arises for making an appointment under this section while the Parliament is dissolved, a person who was an Elected Member of the Parliament immediately before the dissolution may be appointed as if he were still an Elected Member of the Parliament.

(6) The Chief Minister shall vacate his office –

(a) when a motion of no confidence is passed in the Parliament and is not reversed within seven days; or

(b) if for any reason other than a dissolution of the Parliament he ceases to be an Elected Member of the Parliament.

(7) A Minister other than the Chief Minister shall vacate his office –

(a) whenever the Governor appoints or re-appoints any person to be Chief Minister;

(b) when a motion of no confidence in the Government is passed in the Parliament and is not reversed within seven days;

(c) if for any reason other than a dissolution of the Parliament he ceases to be an Elected Member of the Parliament; or

(d) if the Governor, acting in accordance with the advice of the Chief Minister, so directs in writing.

(8) Whenever the office of Chief Minister is vacant or the Chief Minister is absent from Gibraltar or is unable, by reason of illness or for any other cause, to perform the functions of his office, the Governor may authorise any other Minister to perform the functions of the Chief Minister, and any Minister so authorised may perform those functions until his authority is revoked by the Governor:

Provided that the Governor shall, so far as is practicable, act in accordance with the advice of the Chief Minister before exercising his powers under this subsection.

(9) Upon the dissolution of the Parliament the Chief Minister and Ministers in office at the time of such dissolution shall remain in office and shall discharge their functions until new elections are held and a Chief Minister appointed in accordance with this Constitution following such elections; but such executive authority may not be exercised, save in the event of public emergency (including public order or safety), to commit or bind the next successor Government of Gibraltar to public funding or liability except in the ordinary course of the day to day affairs of Gibraltar.

### **Assignment of business to Ministers**

**46.**-(1) The Governor, acting in accordance with the advice of the Chief Minister, shall, by directions in writing, charge any Minister with responsibility for any business of the Government of Gibraltar (including the administration of any department of government).

(2) A Minister may not be charged under this section with responsibility for -

(a) those matters referred to in section 47(1);

(b) any function which this Constitution or any other law stipulates is to be exercised by the Governor, acting in his discretion.

(3) Ministers shall be collectively responsible to the Parliament with respect to any matter for which a Minister is responsible under this section.

### **Governor's special responsibilities**

**47.**-(1) The Governor, acting in his discretion, shall be responsible in Gibraltar for the conduct (subject to this Constitution and any other law) of the following matters -

(a) external affairs;

(b) defence;

(c) internal security, including (subject to section 48) the police;

(d) such functions in relation to appointments to public offices and related matters as are conferred on him by this Constitution:

Provided that the Governor shall in respect of external affairs as far as practicable act in consultation with the Chief Minister.

(2) For the avoidance of doubt it is declared that any matter which falls outside the special responsibilities of the Governor set out in subsection (1), or which is not a function which this Constitution or any other law requires the Governor to exercise in his discretion, is the responsibility of Ministers.

(3) Without prejudice to the United Kingdom's responsibility for Gibraltar's compliance with European Union law, matters which under this Constitution are the responsibility of Ministers shall not cease to be so even though they arise in the context of the European Union.

(4) The exercise by the Governor of his responsibility for external affairs and defence is without prejudice to the overall responsibility of Her Majesty's Government in the United Kingdom for these matters.

### **Gibraltar Police Authority**

**48.**-(1) There shall be a Police Authority for Gibraltar, composed in such manner and having such functions as may be prescribed by a law enacted by the Legislature consistent with this Constitution; and subject to the provisions of any such law such Authority shall be independent in the exercise of its functions.

(2) The Police Authority established under this section shall be a body corporate to be known as the Gibraltar Police Authority.

(3) The Commissioner of Police shall be appointed by the Governor acting in accordance with the advice of the Gibraltar Police Authority, provided that the Governor may disregard the advice of the Gibraltar Police Authority in relation to any person where he judges that accepting that advice would prejudice Her Majesty's service.

### **Governor to keep Chief Minister informed**

**49.** The Governor shall keep the Chief Minister fully informed concerning the general conduct of those matters for which he is responsible.

### **Consultation with Council of Ministers**

**50.**-(1) Subject to subsection (2), the Governor shall act in accordance with the advice of the Council of Ministers as signified to him by the Chief Minister in the exercise of any power conferred upon him by this Constitution or any other law other than a power in respect of an area within his special responsibility as defined in section 47(1).

(2) The Governor shall not be obliged to consult with, or act in accordance with the advice of, the Council of Ministers or the Chief Minister in the exercise of –

- (a) any power conferred upon him by this Constitution or by any other law that he is empowered to exercise in pursuance of instructions from Her Majesty; or
- (b) any power conferred upon him by this Constitution or by any other law that he is directed or empowered by this Constitution or by any other law to exercise

in his discretion or after consultation with any person or authority other than the Council or the Chief Minister.

### **Proceedings in Council of Ministers**

**51.**-(1) The Council of Ministers shall not be summoned except by the authority of the Chief Minister.

(2) The Chief Minister or, in the absence of the Chief Minister, such other Minister as may have been designated in that behalf by the Chief Minister, shall determine what business shall be transacted, and shall preside, at meetings of the Council of Ministers.

(3) No business shall be transacted in the Council of Ministers if objection is taken by any Minister present that there are less than two Ministers present besides the Minister presiding.

(4) Subject to subsection (3), the Council of Ministers shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy when the Council is first constituted or is reconstituted at any time); and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

### **Governor to be kept informed**

**52.** The Governor and the Chief Minister shall confer on a regular basis and the Chief Minister shall brief and keep the Governor informed about the policies of the Government and the public affairs of Gibraltar.

### **Oaths of members of Council of Ministers**

**53.** Before assuming the functions of his office a member of the Council of Ministers shall make before the Governor, or some person authorised in that behalf by the Governor, oaths of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.

## **CHAPTER V**

### **THE PUBLIC SERVICE, INCLUDING JUDICIAL AND SPECIFIED APPOINTMENTS**

#### **Public service**

**54.**-(1) Subject to this section the Government may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for Gibraltar.

(2) Subject to this Constitution, the Governor, acting in accordance with the advice of the Public Service Commission, may, in Her Majesty's name and on Her Majesty's behalf –

(a) make, confirm and terminate appointments to any public office;

(b) exercise disciplinary control over public officers;

(c) except as otherwise prescribed, make and terminate appointments to any other office under the Crown in right of the Government of Gibraltar.

(3) Subsection (2) shall not apply to any office to which, by virtue of this Constitution or any other law, appointments are to be made otherwise than in accordance with the advice of the Public Service Commission.

(4) The Governor, with the prior approval of a Secretary of State, may disregard the advice of the Public Service Commission in any case where he judges that compliance with that advice would prejudice Her Majesty's service.

(5) Except as otherwise prescribed, all such appointments made pursuant to this section shall be held during Her Majesty's pleasure.

### **Public Service Commission**

**55.**-(1) There shall be a Public Service Commission for Gibraltar, which shall consist of a chairman and four other members appointed by the Governor, acting in accordance with the advice of the Specified Appointments Commission.

(2) No person shall be qualified for appointment as a member of the Public Service Commission if he is an Elected Member of the Parliament or a candidate for election as such.

(3) Whenever the office of chairman of the Public Service Commission is vacant or the chairman is absent from Gibraltar or is for any other reason unable to discharge the functions of his office, those functions shall be discharged by such one of the other members of the Commission as the Governor, acting in accordance with the advice of the Specified Appointments Commission, may appoint.

(4) If at any time there are less than three members of the Public Service Commission besides the chairman or if any such member is acting as chairman or is absent from Gibraltar or is for any other reason unable to discharge the functions of his office, the Governor, acting in accordance with the advice of the Specified Appointments Commission, may appoint a person qualified for appointment as a member of the Commission to sit as an additional member.

(5) The Governor, acting in accordance with the advice of the Specified Appointments Commission, may terminate the appointment of any member of the



Public Service Commission at any time and, subject as aforesaid, any such member shall vacate his office –

- (a) at the expiration of three years from the date of his appointment; or
- (b) in the case of an additional member, at such time or in such circumstances as may be specified in the instrument of his appointment.

### **Specified Appointments Commission**

**56.**-(1) There shall be a Specified Appointments Commission for Gibraltar, which shall consist of –

- (a) two members appointed by the Governor, acting in accordance with the advice of the Chief Minister following consultation with the Governor; and
- (b) two members appointed by the Governor, acting after consultation with the Chief Minister, one of whom shall chair and have a second and casting vote.

(2) The Governor, acting in accordance with the advice of the Specified Appointments Commission, shall make, confirm and terminate appointments to the offices of Attorney-General, Principal Auditor, and any other public office appointment to which is by virtue of any other law to be made in accordance with the advice of the Specified Appointments Commission.

(3) The Governor, acting in accordance with the advice of the Specified Appointments Commission, shall exercise disciplinary control over any public officer appointed under this section.

(4) The Governor, with the prior approval of a Secretary of State, may disregard the advice of the Specified Appointments Commission in any case where he judges that compliance with that advice would prejudice Her Majesty's service.

(5) Except as otherwise prescribed, all such appointments made pursuant to this section shall be held during Her Majesty's pleasure.

### **Judicial Service Commission**

**57.**-(1) There shall be a Judicial Service Commission for Gibraltar, which shall consist of –

- (a) the President of the Court of Appeal, who shall be chairman;
- (b) the Chief Justice;
- (c) the Stipendiary Magistrate;

- (d) two members appointed by the Governor, acting in accordance with the advice of the Chief Minister; and
  - (e) two members appointed by the Governor, acting in his discretion.
- (2) The Governor, acting in accordance with the advice of the Judicial Service Commission, shall –
- (a) make and confirm appointments to the offices of Chief Justice, Puisne Judge, President of the Court of Appeal and Justice of Appeal;
  - (b) make, confirm and terminate appointments to the offices of Stipendiary Magistrate, Justice of the Peace, Registrar of the Supreme Court, and any other office appointment to which is by virtue of any other law to be made in accordance with the advice of the Judicial Service Commission; and
  - (c) exercise disciplinary control over any person appointed to an office referred to in paragraph (b).
- (3) The Governor, with the prior approval of a Secretary of State, may disregard the advice of the Judicial Service Commission in any case where he judges that compliance with that advice would prejudice Her Majesty's service.
- (4) No member of the Judicial Service Commission shall participate in any proceeding of the Commission which affects him personally.

**Procedure of Commissions**

- 58.**-(1) Any decision of the Public Service Commission, the Specified Appointments Commission or the Judicial Service Commission shall be taken by majority vote, and each Commission may act notwithstanding the absence of any member.
- (2) No meeting of any such Commission shall take place unless such notice of the meeting as may be prescribed by law has been given.
- (3) In the exercise of its functions under this Constitution, no such Commission shall be subject to the direction or control of any other person or authority.
- (4) Subject to this Constitution –
- (a) further provision may be made by law regarding the powers and procedure of any such Commission;
  - (b) subject to any such law, any such Commission may regulate its own procedure.

## **Attorney-General**

**59.**-(1) There shall be an Attorney-General for Gibraltar whose office shall be a public office.

(2) The Attorney-General shall have power in any case in which he considers it desirable so to do –

(a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);

(b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and

(c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(3) The powers of the Attorney-General under subsection (2) may be exercised by him in person or through other persons acting in accordance with his general or special instructions.

(4) The powers conferred upon the Attorney-General by subsection (2)(b) and (c) shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(5) In the exercise of the powers conferred upon him by this section the Attorney-General shall not be subject to the direction or control of any other person or authority.

(6) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court of law, or any case stated or question of law reserved for the purposes of any such proceedings to any other court of law, shall be deemed to be part of those proceedings.

## **CHAPTER VI**

### **THE JUDICATURE**

#### **Supreme Court**

**60.**-(1) There shall be a Supreme Court for Gibraltar which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and

such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Supreme Court shall, subject to section 62, consist of the Chief Justice and such number of Puisne Judges as may be prescribed by law.

(3) The office of a Puisne Judge shall not without his consent be abolished during his continuance in office.

### **Court of Appeal**

**61.**-(1) There shall be a Court of Appeal for Gibraltar which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

(2) The Court of Appeal shall, subject to section 62, consist of –

(a) a President and two Justices of Appeal or such greater number of Justices of Appeal as the Governor, acting after consultation with the Chief Minister, may prescribe; and

(b) the Chief Justice of the Supreme Court as an *ex officio* member of the Court of Appeal for all purposes except for the purpose of constituting the Court of Appeal for the hearing and determination of an appeal from his own decision.

(3) The office of a Justice of Appeal shall not without his consent be abolished during his continuance in office.

(4) Save as may be otherwise prescribed by any other law, for the purposes of any determination of the Court of Appeal –

(a) an uneven number of judges shall sit, which, in the case of any final determination by the court other than the summary dismissal of an appeal, shall be not less than three; and

(b) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit to determine that matter.

### **Appointment of judges**

**62.**-(1) The Chief Justice, any Puisne Judge, the President of the Court of Appeal and the Justices of Appeal shall be appointed in accordance with section 57 on behalf of Her Majesty.

(2) No person shall be qualified for appointment as Chief Justice, Puisne Judge, President of the Court of Appeal or Justice of Appeal unless –

- (a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in Ireland, or of a court having jurisdiction in appeals from any such court; or
  - (b) he is entitled to practise as an advocate in such a court and has been entitled for not less than ten years to practise as an advocate or as a solicitor in such a court.
- (3) For the purposes of this section, a person shall be regarded as entitled to practise as an advocate or, as the case may be, as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or, as the case may be, of solicitors) notwithstanding that –
- (a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court; or
  - (b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

### **Acting judges**

**63.-**(1) If the office of Chief Justice is vacant, or if the holder thereof is for any reason unable to perform the functions of his office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the Puisne Judges or such other person qualified for appointment as a Puisne Judge as the Governor, acting in accordance with the advice of the Judicial Service Commission, may appoint for that purpose shall act in the office of Chief Justice.

(2) If –

- (a) the office of a Puisne Judge is vacant, or if any such judge is acting as Chief Justice or is for any reason unable to perform the functions of his office; or
- (b) it appears to the Governor, acting in accordance with the advice of the Judicial Service Commission and after consultation with the Chief Justice and with the consent of the Chief Minister, that the state of business in the Supreme Court so requires,

the Governor, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Puisne Judge to act as a Puisne Judge.

(3) If the office of the President of the Court of Appeal is vacant, or if the holder thereof is absent from Gibraltar or is for any other reason unable to perform the functions of his office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder of that office has resumed those functions, as the case may be, such one of the Justices of Appeal as the

Governor, acting in accordance with the advice of the Judicial Service Commission, may appoint for that purpose shall act in the office of the President.

(4) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is acting as the President or is absent from Gibraltar or is for any other reason unable to perform the functions of his office, the Governor, acting in accordance with the advice of the Judicial Service Commission, may appoint a person qualified for appointment as a Justice of Appeal to act as a Justice of Appeal.

(5) Any person appointed under this section to act as a judge of the Supreme Court or the Court of Appeal shall, unless he is removed from office under section 64, continue to act for such period as may be specified in the instrument of his appointment or, if no such period is specified, until his appointment is revoked by the Governor, acting in accordance with the advice of the Judicial Service Commission:

Provided that a person whose appointment so to act has expired or been revoked may, unless he has been removed from office as aforesaid, continue so to act for such period and on such terms as the Judicial Service Commission may consider necessary to enable him to deliver judgment or to do any other thing in relation to any proceeding commenced before him before the expiration or revocation of his appointment.

### **Tenure of office of judges**

**64.**-(1) Subject to the provisions of this section, a person holding the office of Chief Justice or of Puisne Judge shall vacate that office when he attains the age of 67 years and a person holding the office of President of the Court of Appeal or of Justice of Appeal shall vacate his office upon the expiration of such period as may be specified in the instrument of his appointment to that office:

Provided that –

- (a) the Governor may permit a Chief Justice or a Puisne Judge who has attained that age to remain in office for such period not exceeding three years as may have been agreed between that Chief Justice or that Puisne Judge, as the case may be, and the Governor;
- (b) the Governor, being satisfied that it is desirable so to do because of exceptional circumstances, may permit a Chief Justice or a Puisne Judge to remain in office for such a further period as may have been agreed between that Chief Justice or that Puisne Judge, as the case may be, and the Governor but so that in any event the Chief Justice and any Puisne Judge shall not hold office after attaining the age of 72 years;
- (c) a Chief Justice, a Puisne Judge, a President of the Court of Appeal or a Justice of Appeal may, unless he has been removed from office under subsection (3), sit after the date on which he vacates his office under this subsection for such period and on such terms as the Judicial Service Commission may consider

necessary to enable him to give judgment or to do any other thing in relation to any proceeding commenced before him before that date.

(2) The Chief Justice, a Puisne Judge, the President of the Court of Appeal or a Justice of Appeal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be removed except in accordance with subsection (3).

(3) The Chief Justice, a Puisne Judge, the President of the Court of Appeal or a Justice of Appeal shall be removed from office by the Governor if the question of the removal of that judge from office has, at the request of the Governor made in pursuance of subsection (4), been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833<sup>(a)</sup> or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing the Chief Justice, a Puisne Judge, the President of the Court of Appeal or a Justice of Appeal from office for inability as aforesaid or for misbehaviour ought to be investigated, then –

- (a) the Governor shall appoint a tribunal, which shall consist of a chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and
- (c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(5) The provisions of sections 4, 7, 8, 9, 10, 11, 12, 13 and 14 of the Commissions of Inquiry Ordinance shall apply in relation to a tribunal appointed under subsection (4) as they apply in relation to the Commissions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this section.

(6) If the question of removing the Chief Justice, a Puisne Judge, the President of the Court of Appeal or a Justice of Appeal from his office has been referred to a tribunal under subsection (4), the Governor may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect –

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<sup>(a)</sup> 1833 c.41.

(a) if the tribunal advises that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(7) Notwithstanding subsection (1), a person may be appointed to the office of Chief Justice or Puisne Judge for such term as may be specified in the instrument of his appointment, and the office of a person so appointed shall become vacant on the day on which the specified term expires.

(8) The powers of the Governor under this section shall be exercised by him in accordance with the advice of the Judicial Service Commission.

### **Oaths to be taken by judges**

**65.** Before entering upon the functions of his office every person appointed to hold or act in the office of judge of the Supreme Court or judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorised in that behalf by the Governor, oaths of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.

### **Appeals to Court of Appeal and to Her Majesty in Council**

**66.-(1)** In the following cases, an appeal shall lie from decisions of the Supreme Court to the Court of Appeal and thence to Her Majesty in Council as of right, that is to say –

(a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;

(b) where the matter in dispute on the appeal is of the value prescribed by law or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value prescribed by law or upwards, final decisions in any civil proceedings;

(c) final decisions in proceedings under section 16;

(d) final decisions in proceedings for dissolution or nullity of marriage; and

(e) in such other cases as may be prescribed by the Legislature.

(2) In the following cases, an appeal shall lie from decisions of the Supreme Court to the Court of Appeal with the leave of the Supreme Court or of the Court of Appeal and thence to Her Majesty in Council with the leave of the Court of Appeal, that is to say –



- (a) where the decision appealed against is a final decision in civil proceedings and, in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to Her Majesty in Council, as the case may be; and
  - (b) in such other cases as may be prescribed by the Legislature.
- (3) Subsections (1) and (2) shall be subject to section 31(6).
- (4) In this section references to final decisions of a court do not include any determination thereof that any application made thereto is frivolous or vexatious.
- (5) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter.

## **CHAPTER VII**

### **FINANCE**

#### **Consolidated Fund**

**67.** All revenues or other moneys raised or received for the purposes of the Government of Gibraltar (not being revenues or other moneys that are payable by or under any Act into some other fund established for a specific purpose or that may by or under any such law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

#### **Withdrawals from Consolidated Fund or other public funds**

- 68.**-(1) No moneys shall be withdrawn from the Consolidated Fund except –
- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Gibraltar; or
  - (b) where the issue of those moneys has been authorised by an appropriation law or in such manner, and subject to such conditions, as may be prescribed in pursuance of section 70.
- (2) No moneys shall be withdrawn from any public fund of Gibraltar other than the Consolidated Fund unless the issue of those moneys has been authorised by or under an Act.
- (3) No moneys shall be withdrawn from the Consolidated Fund except in such manner as may be prescribed by the Legislature.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with any other banking institution or the investment of any such moneys in such securities as may be prescribed by the Legislature shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

### **Authorisation of expenditure**

**69.**-(1) The Minister with responsibility for finance shall cause to be prepared and laid before the Parliament, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Gibraltar for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill, to be known as an appropriation bill, introduced into the Parliament to provide for the issue from the Consolidated Fund and other public funds of Gibraltar of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found –

- (a) that the amount appropriated by the appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the appropriation law; or
- (b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the appropriation law or for a purpose for which no amount has been appropriated by the appropriation law,

the Minister with responsibility for finance shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Parliament and the heads of expenditure shall be included in a supplementary appropriation bill introduced in the Parliament to provide for the appropriation of those sums.

### **Authorisation of expenditure in advance of appropriation**

**70.** If the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister with responsibility for finance may, to such extent and subject to such conditions as may be prescribed by the Legislature, authorise the withdrawal of moneys from the Consolidated Fund and other public funds of Gibraltar for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the appropriation law, whichever is the earlier.

## **Contingencies Fund**

**71.**-(1) There shall be such provision as may be prescribed by the Legislature for the establishment of a Contingencies Fund and for authorising the Minister with responsibility for finance, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Parliament, and an appropriation bill shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

## **Remuneration of certain officers**

**72.**-(1) There shall be paid to the holders of the offices to which this subsection applies such salaries and such allowances as may be prescribed by the Legislature.

(2) The salaries and any allowances payable to the holders of the offices to which subsection (1) applies and the remuneration and allowances payable to any judge of the Court of Appeal shall be a charge on the Consolidated Fund.

(3) Any alteration to the salary or remuneration payable to any person holding any office to which subsection (1) applies or to his terms of office, other than allowances, that is to his disadvantage shall not have effect in relation to that person after his appointment unless he consents to its having effect.

(4) Where a person's salary, remuneration or terms of office depend upon his option, the salary, remuneration or terms for which he opts shall, for the purposes of subsection (3), be deemed to be more advantageous to him than any others for which he might have opted.

(5) Subsection (1) applies to the offices of Governor, Chief Justice, Puisne Judge, Attorney-General, Commissioner of Police and Principal Auditor.

## **Public debt**

**73.**-(1) All debt charges for which Gibraltar is liable shall be a charge on the Consolidated Fund.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Gibraltar or the Consolidated Fund and the service and redemption of debt thereby created.

## **Audit**

**74.**-(1) The public accounts of Gibraltar and of all courts of law and all authorities and offices of the Government shall be audited and reported on by the Principal Auditor and for that purpose the Principal Auditor or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts.

(2) The Principal Auditor shall submit and lay his reports before the Parliament.

(3) In the exercise of his functions under this Constitution the Principal Auditor shall not be subject to the direction or control of any other person or authority.

## **CHAPTER VIII**

### **LAND**

#### **Crown Lands**

**75.**-(1) Subject to subsection (2), the Governor may, in Her Majesty's name and on Her Majesty's behalf, make grants and dispositions of any lands or other immoveable property in Gibraltar that may lawfully be granted or disposed of by Her Majesty (hereinafter called "Crown Lands"). The Governor shall exercise this power in accordance with the advice of the Chief Minister.

(2) The Governor may make grants and dispositions of any Crown Lands which are at any time in the possession, occupation, use or control of the Ministry of Defence or the Secretary of State for Defence or any other authority of Her Majesty's Government in the United Kingdom. The Governor shall exercise this power acting on the instructions of a Secretary of State and with the consent of the Chief Minister.

## **CHAPTER IX**

### **MISCELLANEOUS**

#### **Powers of pardon, etc.**

**76.**-(1) The Governor, acting after consultation with the Chief Minister, may in Her Majesty's name and on Her Majesty's behalf –

- (a) grant to any person concerned in or convicted of an offence a pardon, either free or subject to lawful conditions;

- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for any offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) This section shall not apply in relation to any conviction by a court-martial established under any Act of Parliament of the United Kingdom, any punishment imposed in respect of any such conviction or any penalty or forfeiture due under any such Act.

### **Mayor of Gibraltar**

77.-(1) There shall be a Mayor of Gibraltar, who shall be elected by the Elected Members of the Parliament.

(2) A person elected to the office of Mayor shall hold office upon such terms and conditions, and shall perform such functions (being ceremonial functions of a civic character), as may be determined by the Parliament.

### **Interpretation**

78.-(1) In this Constitution, unless the context otherwise requires –

“the Court of Appeal” means the Court of Appeal for Gibraltar;

“disciplinary law” means a law regulating the discipline –

- (a) of any disciplined force; or
- (b) of persons serving prison sentences;

“disciplined force” means –

- (a) a naval, military or air force;
- (b) the Royal Gibraltar Police Force or any other police force established by any law in force in Gibraltar;
- (c) a fire service established by any such law;

“financial year” means the period of twelve months ending on the thirty-first day of March in any year or such other day as may be prescribed by the Parliament;

“the Gazette” means the Gibraltar Gazette;

“Government” means the Government of Gibraltar as defined in section 45(1);

“the Governor” means the Governor and Commander-in-Chief of Gibraltar;

“law” includes any rule of law, whether written or unwritten;

“the Legislature” means the Legislature established by this Constitution;

“meeting”, in relation to the Parliament, means all sittings of the Parliament commencing when the Parliament first meets after being summoned at any time and terminating when the Parliament is adjourned *sine die*;

“oath” includes affirmation;

“the Parliament” means the Gibraltar Parliament;

“prescribed” means prescribed in a law in force in Gibraltar:

Provided that –

(a) in relation to anything that may be prescribed only by the Legislature, it means prescribed in an Act; and

(b) in relation to anything that may be prescribed only by the Governor, it means prescribed in an order made by the Governor;

“public office” means, subject to section 79, any civil office of emolument under the Crown in Gibraltar;

“public officer” means the holder of a public office or a person appointed to act in a public office;

“sitting”, in relation to the Parliament, means a period during which the Parliament is sitting continuously without adjournment, and includes any period during which the Parliament is in committee.

(2) Where any power is conferred by this Constitution to make any Proclamation, order, regulation or rule, or give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such Proclamation, order, regulation, rule or direction.

(3) Where the Governor is directed by any provision of this Constitution to exercise any power after consultation with any person or authority he shall not be obliged to exercise that power in accordance with the advice of that person or authority.

(4) Save for the words and expressions defined in Schedule 1 thereto, the Interpretation Act 1978<sup>(a)</sup> shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

(5) References in this Constitution to the Emergency Powers Order in Council 1939<sup>(b)</sup> are references to that Order as from time to time amended and include references to any Order or other law replacing that Order in relation to Gibraltar.

### **References to public office, etc.**

**79.**-(1) In this Constitution, unless the context otherwise requires, the expression “public office” –

(a) shall be construed as including the offices of the judges of the Supreme Court and of the Court of Appeal, the offices of members of all other courts of law in Gibraltar (other than courts-martial), the offices of members of the Royal Gibraltar Police Force or any other police force established by any law in force in Gibraltar and any offices on the Governor’s personal staff; and

(b) shall not be construed as including the offices of Speaker of the Parliament, Minister, Elected Member of the Parliament, member of the Public Service Commission, member of the Specified Appointments Commission, member of the Judicial Service Commission, member of any tribunal appointed under section 64, or Mayor of Gibraltar.

(2) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Crown or under a local government authority.

### **Acting appointments**

**80.**-(1) In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

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<sup>(a)</sup> 1978 c.30.

<sup>(b)</sup> See S.I. 1952/2031 (1952 I. p.620). The relevant amending instruments are S.I. 1956/731, 1963/88, 1633, 1964/267, 1199, 1965/131, 1968/724, 1973/759.

### **Re-appointments and concurrent appointments**

**81.**-(1) Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with this Constitution.

(2) Where any power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

### **Resignations**

**82.** Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect, and the office shall accordingly become vacant –

(a) at such time or on such date (if any) as may be specified in the writing; or

(b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

### **Saving for jurisdiction of courts**

**83.** No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

### **Removal from office**

**84.**-(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power



or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

(3) If any circumstances arise that, under this Constitution, require the Governor to remove a judge from office for inability to discharge the functions of his office, the Governor, acting in accordance with the advice of the Judicial Service Commission, may carry out such removal either by dismissing that officer or by requiring him to retire.

(4) Any power conferred by any law to permit a judge to retire before the date on which, under this Constitution, he is required to vacate his office shall vest in the Governor, acting in accordance with the advice of the Judicial Service Commission.

## SCHEDULE TO THE CONSTITUTION

### OATHS

#### *Oath of Allegiance*

I, \_\_\_\_\_, do swear [*or* solemnly affirm] that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors, according to law. [So help me God.]

#### *Oath for the due execution of the office of Governor*

I, \_\_\_\_\_, do swear [*or* solemnly affirm] that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of Governor and Commander-in-Chief of the City of Gibraltar. [So help me God.]

#### *Oath for the due execution of the office of member of the Council of Ministers of the City of Gibraltar*

I, \_\_\_\_\_, do swear [*or* solemnly affirm] that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, and Gibraltar and its people, in the office of [Chief Minister] [Minister] of the Government of Gibraltar. [So help me God.]

#### *Judicial Oath*

I, \_\_\_\_\_, do swear [*or* solemnly affirm] that I will well and truly serve Our Sovereign Lady Queen Elizabeth II, Her Heirs and Successors, in the office of Chief Justice/Puisne Judge/President of the Court of Appeal/Justice of Appeal of the City of Gibraltar and will do right to all manner of people after the laws and usages of the City of Gibraltar without fear or favour, affection or ill will. [So help me God.]

## ANNEX 2 TO THE ORDER

Section 2

### TRANSITIONAL AND OTHER PROVISIONS

#### **Interpretation**

1. In this Annex “the existing laws” means any Ordinances, rules, regulations, orders or other instruments made, or having effect as if they had been made, in pursuance of the existing Order and having effect as part of the law of Gibraltar and includes any Order of Her Majesty in Council (other than the existing Order or any Order made under an Act of Parliament of the United Kingdom) having effect as part of the law of Gibraltar.

#### **Existing laws**

2.-(1) Subject to this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

(2) Where any matter that falls to be prescribed or otherwise provided for for the purposes of the Constitution by the Legislature or by any other person or authority is prescribed or provided for by or under any existing law or is otherwise prescribed or provided for by or under the existing Order, that prescription or provision shall have effect as if it had been made for those purposes by the Legislature or, as the case may be, by the other person or authority.

(3) This section shall be without prejudice to any powers conferred by the Constitution or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

#### **Existing offices**

3.-(1) Where any office has been provided for by or under the existing Order or any existing law and any provision of the Constitution provides for a similar or an equivalent office, any person who, immediately before the appointed day, holds or is acting in the former office shall, so far as is consistent with the Constitution, be deemed to have been appointed on the day on which that provision of the Constitution came into force to hold or to act in the latter office in accordance with the Constitution and to have taken any necessary oaths under the Constitution.

(2) This section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and the removal from office of persons holding or acting in any office.

## **The Gibraltar Parliament**

4.-(1) Any person (except the Financial and Development Secretary and the Attorney-General) who immediately before the appointed day is a member of the House of Assembly shall on that day become a Member of the Parliament and shall be deemed to have complied with section 40 of the Constitution and shall hold his seat in accordance with the Constitution.

(2) The Governor shall dissolve the Parliament not later than the expiration of four years from the date when the House of Assembly first met after the last general election before the appointed day.

(3) The Legislature shall enact a law providing for the election of seventeen or more Elected Members of the Parliament at the next general election after the appointed day, and until that election section 25(2)(b) of the Constitution shall have effect as if the reference therein to seventeen Elected Members were a reference to fifteen Elected Members.

(4) In this section “the House of Assembly” means the House of Assembly established by the existing Order, and “the Parliament” means the Gibraltar Parliament established by the Constitution.

## **Procedure of Gibraltar Parliament**

5. The rules and orders of the House of Assembly established by the existing Order, as those rules and orders were in force immediately before the appointed day, shall, except as may be otherwise provided under section 39 of the Constitution, have effect on and after the appointed day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

## **Pending legal proceedings**

6.-(1) Any proceedings, matter or appeal pending before the Supreme Court or any appeal or application pending before the Court of Appeal immediately before the appointed day may, on and after that day, be continued, determined or appealed against as if such proceedings, matter or appeal had been instituted or were pending before the Supreme Court, or such appeal or application made to the Court of Appeal, as the case may be, as those courts are respectively established by the Constitution.

(2) Any judgment or order of the Supreme Court or the Court of Appeal given or made before the appointed day, in so far as it has not been fully executed or enforced, may be executed or enforced on and after that day as if it were a judgment or order of the Supreme Court or the Court of Appeal, as the case may be, as those courts are respectively established by the Constitution.

### **Remuneration of certain officers**

7. Until such time, after the day on which section 72 of the Constitution comes into force, as a salary and allowances are prescribed by the Legislature, there shall be paid to the holder of any office to which that section applies a salary and allowances calculated at the same rate as the salary and allowances paid immediately before that day to the holder of the office corresponding thereto.

### **Power of Her Majesty**

8. There is retained by Her Majesty full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking the Constitution).

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## **EXPLANATORY NOTE**

(This note is not part of the Order)

This Order establishes a new Constitution for Gibraltar. The new Constitution includes an updated Chapter on the fundamental rights and freedoms of the individual. It provides for a Governor as Her Majesty's representative in Gibraltar. It establishes a legislature for Gibraltar consisting of Her Majesty and an elected Parliament, and a Council of Ministers appointed from among the elected members of the Parliament. It provides for a Supreme Court and a Court of Appeal for Gibraltar, and for appeals to Her Majesty in Council, and makes provision for public finance and for the public service of Gibraltar. It establishes a Public Service Commission, a Specified Appointments Commission and a Judicial Service Commission, each with executive powers subject only to an exceptional power of veto by the Governor. It also establishes a Gibraltar Police Authority, provides for an elected Mayor of Gibraltar, and makes provision regarding Crown lands in Gibraltar.

This Order revokes the Gibraltar Constitution Order 1969, which established the previous Constitution of Gibraltar.