

## THE GIBRALTAR CONSTITUTION – 1969

The 1969 Constitution was the outcome of the Constitutional Conference chaired by Lord Shepherd which lasted from 16<sup>th</sup> to 24<sup>th</sup> July. The uniqueness of the agreed constitution lay in its division of powers. In most British colonial constitutions the powers of the Governor are defined: the local government is responsible for all else. The reverse was to be the case in Gibraltar. The local government's powers were defined in a 'List of Defined Domestic Matters' for which it was to be responsible but which excluded anything that might have a conceivable impact on the security of the fortress.

### PREAMBLE

For the Gibraltarians, the most important aspect of the Shepherd Constitution was the crucial preamble...

**'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'.**

Members of the constitutional conference chaired by Lord Shepherd were as follows: Joshua Hassan, Aurelio Montegriffo and Abraham Serfaty for the Association for the Advancement of Civil Rights; Bob Peliza, Maurice Xiberras and legal advisor Sir Frederick Bennet for the Integration With Britain Party; and Peter Isola representing the Isola group of independents.

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## GIBRALTAR CONSTITUTION ORDER 1969.

*Made 23 May 1969  
Commencement 30 May 1969*

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 Her Majesty is pleased to make provision for a new Constitution for Gibraltar:

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

### **Citation and interpretation.**

1.(1) This Order may be cited as the Gibraltar Constitution Order 1969.

(2) *Omitted.*

(3) In this Order-

"the appointed day" means such day (being later than the day prescribed for polling at the general election of Elected Members of the Assembly next following the commencement of this Order) as may be prescribed by the Governor;\*

"the Constitution" means the Constitution set out in Annex 1 to this Order;

"the existing Order" means the Gibraltar (Constitution) Order 1964.

\* *11th August 1969.*

(4) The provisions of sections 79 and 86 of the Constitution shall apply for the purposes of interpreting this section, the next following section and Annex 2 to this Order and otherwise » in relation thereto as they apply for the purpose of interpreting « and in relation to the Constitution.

**Establishment of Constitution.**

2. With effect from the appointed day–

- (a) Gibraltar shall be known as the City of Gibraltar;
- (b) the Constitution set out in Annex 1 of this Order shall (subject to the transitional provisions set out in Annex 2 to this Order) have effect in Gibraltar.

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## ANNEX I TO THE ORDER

### THE CONSTITUTION OF GIBRALTAR

#### ARRANGEMENT OF SECTIONS.

Section 2.

#### CHAPTER I

#### PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Section

1. Fundamental rights and freedoms of the individual.
2. Protection of right to life.
3. Protection of right to personal liberty.
4. Protection from slavery and forced labour.
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.
13. Protection of freedom of movement.
14. Protection from discrimination on the grounds of race, etc.
15. Enforcement of protective provisions.
16. Provisions for periods of public emergency.
17. Interpretation and savings.

#### CHAPTER II

#### THE GOVERNOR AND THE DEPUTY GOVERNOR

18. Office of Governor.
19. Powers and duties of Governor.
20. Governor's taking of oath.
21. Office of Deputy Governor.
22. Succession to government.
23. Deputy to Governor.

## CHAPTER III

### THE LEGISLATURE

#### *Part I*

#### *The Gibraltar House of Assembly*

##### Section

24. Legislature of Gibraltar.
25. Gibraltar House of Assembly.
26. Speaker.
27. Qualifications for Elected Members.
28. Disqualifications for Elected Members.
29. Tenure of office of Elected Members.
30. Vacation of seat on sentence, etc.
31. Determination of questions as to membership.

#### *Part II*

#### *Legislation and Procedure in the Gibraltar House of Assembly*

32. Power to make laws.
33. Mode of exercise of legislative power.
34. Governor's special legislative powers.
35. Bills and motions.
36. Privileges of Assembly and members.
37. Disallowance of laws.
38. Sessions.
39. Prorogation and dissolution.
40. Rules of procedure.
41. Oath of allegiance.
42. Presiding in Assembly.
43. Quorum etc.
44. Voting.

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### THE EXECUTIVE

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47. Council of Ministers.
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49. Consultation with Gibraltar Council.
50. Consultation with Council of Ministers.
51. Proceedings in Gibraltar Council.
52. Proceedings in Council of Ministers.

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## Section

- 53. Governor to be kept informed.
- 54. Oaths of members of Gibraltar Council and Council of Ministers.
- 55. Defined domestic matters.

## **CHAPTER V**

### **THE JUDICATURE**

- 56. Supreme Court.
- 57. Court of Appeal.
- 58. Appointment of judges.
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- 65. Authorisation of expenditure.
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- 72. Public Service Commission.
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Section

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**SCHEDULE TO THE CONSTITUTION**

**OATHS**

**CHAPTER I.**

**PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE  
INDIVIDUAL.**

**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 race, place of origin, political opinions, colour, creed or sex, 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 and the protection of the law;
- (b) freedom of conscience, of expression, of assembly and association and of freedom to establish schools; and
- (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without 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,

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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 save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

(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 reasonably justifiable—

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

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;
- (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;
- (f) in the case of a person who has not attained the age of eighteen years, 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 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 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.

(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) of this subsection 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.

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(4) 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 labour.**

- 4.(1) No person shall be held in slavery or servitude.
- (2) No person shall be required to perform forced labour.
- (3) For the purposes of this section, the expression “forced labour” does not include—
- (a) any labour required in consequence of the sentence or order of a court;
  - (b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained;
  - (c) any labour 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 labour that that person is required by law to perform in place of such service; or
  - (d) any labour 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 labour 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.(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(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 authorises the infliction of any description of punishment that was lawful in Gibraltar immediately before this section came into force.

**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 interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit; and
- (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.

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(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last preceding subsection 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(2) of this Constitution.

(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) of this section—

- (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 inquiry 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 a 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) 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

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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 the 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 in the public interest of any property, 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) 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.

(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, public health, town and country 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; or

- (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,

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.

- (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, where so prescribed, 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; and

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- (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,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(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 any 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 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 other 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 the last foregoing subsection 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 so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years 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) of this section, 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) of this section, 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) of this section, 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.

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(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 under the age of eighteen years, 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 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) 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; 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.

**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, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or
- (c) for the imposition of restrictions upon 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.

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(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 or freedoms of other persons;
- (c) for the imposition of restrictions upon public officers ;
- (d) for the registration of trades 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); or
- (e) for the imposition of restrictions upon persons who are not resident in Gibraltar with respect to the holding of office in a trade union or membership of the general committee of management of a trade union or with respect to voting in any proceedings of a trade union relating to or connected with the calling or financing of a strike,

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 the preceding subsection 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 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 »a school« 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 movements 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 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;

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- (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 the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, 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 origin, political opinions, colour or creed 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) of this section 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 mentioned in the last preceding subsection (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; or
- (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 for deeming a firm or company to be under non-Gibraltarian control for the purposes of the Trade Restriction Ordinance.\*

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section 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 race, caste, place of origin, political opinions, colour or creed) 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 of Gibraltar

\* *Repealed by Ord. 1972 No. 22.*

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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) of this section 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) of this section.

(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) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11, 12 and 13 of this Constitution, being such a restriction as is authorised by section 7(2), 9(5), 10(2), 11(2), 12(2) or 13(3) of this Constitution, as the case may be.

(8) Subsection (2) of this section 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.

## **Enforcement of protective provisions.**

15. (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 the preceding subsection, 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 the preceding subsection 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.**

16. (1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939,\* 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 of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any 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 as is referred to in the preceding subsection 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.

**Interpretation and savings.**

17. (1) In this Chapter, unless the context otherwise requires—

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

\* *See under Foreign Jurisdiction Act 1890.*

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“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 of this Constitution 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; or
  - (b) the provisions of Part II of the Emergency Powers Order in Council 1939 are in operation in Gibraltar.

(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:

Provided that a company or firm shall be deemed not to belong to Gibraltar if (but only if) it is deemed to be under non-Gibraltarian control for the purposes of the Trade Restriction 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 of this Constitution 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.

## **CHAPTER II.**

### **THE GOVERNOR AND THE DEPUTY GOVERNOR.**

#### **Office of Governor.**

18. 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.**

19. The Governor shall have such functions as may be prescribed and such other functions as Her Majesty may be pleased to assign to him and, subject to the provisions of this Constitution and any law by which any such functions are prescribed, shall do or execute all things that belong to his office (including the exercise of any functions that are expressed to be exercisable by him in his discretion) according to such instructions (if any) as Her Majesty may see fit to address to him:

Provided that the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into in any court of law.

#### **Governor's taking of oath.**

20. 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.

#### **Office of Deputy Governor.**

21. (1) There shall be a Deputy Governor who shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

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(2) If the office of Deputy Governor is vacant or the person holding that office is administering the government of Gibraltar or is absent from Gibraltar or is for any other reason unable to discharge the functions of the office, then the Governor, acting in his discretion, may appoint a person to act as Deputy Governor and any such person shall continue to act until his appointment is revoked by the Governor, acting in his discretion.

## **Succession to government.**

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 the last foregoing section to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of the 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 the next following section.

## **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 the last foregoing section.

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

(6) In subsection (1) of this section the reference to any functions of the office of Governor does not include a reference to any functions conferred upon the Governor by any Act of the Parliament of the United Kingdom or by any Order of Her Majesty in Council or other instrument made in relation to Gibraltar under any such Act.

### **CHAPTER III.**

#### **THE LEGISLATURE.**

##### *Part I*

##### *The Gibraltar House of Assembly.*

#### **Legislature of Gibraltar.**

24. There shall be a Legislature for Gibraltar, which, subject to the provisions of this Chapter, shall consist of the Governor and the Assembly.

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## **Gibraltar House of Assembly.**

25. (1) There shall be a House of Assembly for Gibraltar, which shall be styled the Gibraltar House of Assembly.

- (2) The Assembly shall consist of—
  - (a) the Speaker;
  - (b) the Attorney-General and the Financial and Development Secretary, who shall be ex-officio members of the Assembly; and
  - (c) fifteen Elected Members elected in such manner as may be prescribed.

## **Speaker.**

26. (1) The Speaker of the Assembly shall be appointed by the Governor, acting after consultation with the Chief Minister and with the Leader of the Opposition (if any).

- (2) No person shall be qualified for appointment as Speaker if—
  - (a) he is an Elected Member of the Assembly;
  - (b) he is not a British subject who has attained the age of twenty-one years; or
  - (c) he is a person disqualified for election as an Elected Member of the Assembly under section 28 of this Constitution.
- (3) A person shall vacate the office of Speaker—
  - (a) if, at the sitting of the Assembly next following his appointment, his appointment is not confirmed by resolution of the Assembly;
  - (b) if the Governor, acting after consultation with the Chief Minister and with the Leader of the Opposition (if any), so directs;
  - (c) if any circumstances arise that would cause him to be disqualified for election as an Elected Member of the Assembly by virtue of section 28 (1) of this Constitution;

(d) if he is nominated for election as an Elected Member of the Assembly; or

(e) when the Assembly first sits after any general election of Elected Members.

(4) If the person holding the office of Speaker is absent from Gibraltar or is for any other reason 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 Governor, acting after consultation with the Chief Minister and with the Leader of the Opposition (if any).

(5) No business shall be transacted in the Assembly at any time when the office of Speaker is vacant.

#### **Qualifications for Elected Members.**

27. Subject to the provisions of the next following section of this Constitution, a person shall be qualified to be elected an Elected Member of the Assembly 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 subject who has attained the age of twenty- one years.

#### **Disqualifications for Elected Members.**

28. (1) No person shall be qualified to be elected as an Elected Member of the Assembly who—

(a) is, by virtue of his own act, under any acknowledgment 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) is a minister of religion; or

(d) holds, or is acting in, a public office; or

(e) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged; or

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- (f) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Gibraltar; or
  - (g) is under sentence of death imposed on him by a court of law in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court 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
  - (h) is not qualified to be registered as a voter at elections of Elected Members of the Assembly or, being so qualified, is not so registered: or
  - (i) 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
  - »(j)« is disqualified for election by any law in force in Gibraltar relating to offences connected with elections.
- (2) For the purpose of paragraph (g) of the last foregoing subsection—
- (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) of this section 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 Gibraltar Regiment or to a member of the Reserve of that Regiment or the Royal Naval Reserve 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 Assembly 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 for election 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 Assembly; 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 paragraph (b) of the last foregoing subsection 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 Assembly 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 provision is made in pursuance of paragraph (c) of that subsection in respect of any office, provision may also be made in pursuance of paragraph (b) of that subsection in respect of that office.

**Tenure of office of Elected Members.**

29. (1) An Elected Member of the Assembly shall vacate his seat therein—

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- (a) on a dissolution of the Assembly;
- (b) if he is absent from six consecutive meetings of the Assembly without having obtained before the termination of any of such meetings from the Speaker permission to be or to remain absent therefrom;
- (c) if he ceases to be a British subject; or
- (d) subject to the provisions of the next following section, if any other circumstances arise that, if he were not an Elected Member of the Assembly, would cause him to be disqualified for election as such by virtue of subsection (1) of the last foregoing section.

(2) The provisions of subsection (1) of this section shall be without prejudice to any provision contained in any law made in pursuance of subsection (4) (b) of the last foregoing section for the vacation by an Elected Member of the Assembly of his seat.

(3) An Elected Member of the Assembly 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 Assembly).

(4) If the seat in the Assembly of an Elected Member becomes vacant otherwise than by reason of a dissolution of the Assembly, the writ for an election to fill the vacancy shall, unless the Assembly 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 subsection (1)(d) of the last foregoing section arise because an Elected Member of the Assembly is under sentence of death or 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 a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the Assembly but, subject to subsection (3) of this section, he shall not vacate his seat until the expiration of a period 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 in respect of his conviction or sentence so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Assembly 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) of this section 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 Assembly;
- (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 Assembly has vacated his seat or is required, under the provisions of the last foregoing section, to cease to perform his functions as such.

(2) An application to the Supreme Court for the determination of any question under paragraph (a) of the foregoing subsection 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.

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(3) An application to the Supreme Court for the determination of any question under subsection (1) (b) of this section may be made by any Elected Member of the Assembly 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) of this section may be made—

- (a) by any Elected Member of the Assembly or by the Attorney-General; or
- (b) by any person registered as a voter at elections of Elected Members of the Assembly,

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* *House of Assembly.*

### **Power to make laws.**

32. Subject to the provisions of 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 the provisions of the next following section, the power of the Legislature to make laws shall be exercisable by bills passed by the Assembly 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 the provisions of 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 shall reserve for the signification of Her Majesty's pleasure any bill—

- (a) that appears to him, acting in his discretion, to be in any way repugnant to or inconsistent with the provisions of this Constitution; or
- (b) that determines or regulates the privileges, immunities or powers of the Assembly or of its members,

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 "Ordinances" and the words of enactment shall be "Enacted by the Legislature of Gibraltar".

**Governor's special legislative powers.**

34.(1) If the Governor considers that the enactment of legislation is necessary or desirable with respect to or in the interests of any matter other than a defined domestic matter, but, after consultation with the Gibraltar Council, it appears to him that Ministers are unwilling to support the introduction into the Assembly of a bill for the purpose

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or that the Assembly 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 Assembly) 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.

(2) If the Governor considers that the enactment of legislation is necessary or desirable with respect to any defined domestic matter in the interests of maintaining the financial and economic stability of Gibraltar, but, after consultation with the Gibraltar Council, it appears to him that Ministers are unwilling to support the introduction into the Assembly of a bill for the purpose or that the Assembly is unlikely to pass a bill introduced therein for the purpose, the Governor may, with the prior approval of a Secretary of State, introduce a bill for the purpose into the Assembly by means of a message addressed to the Speaker, in which case—

- (a) the Assembly shall have power to debate and pass the bill, but shall not have power to amend the bill without the consent of the Governor, signified by the Attorney-General or by the Financial and Development Secretary;
- (b) if the bill is not passed by the Assembly within one month of introduction the Governor may (notwithstanding that the bill has not been passed by the Assembly), with the prior approval of a Secretary of State, assent thereto (either without amendments or with amendments to which the Governor has signified his consent) on behalf of Her Majesty.

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

## **Bills and motions.**

35. (1) Except on the recommendation of the Governor signified by the Financial and Development Secretary or by a Minister, the Assembly shall not—

- (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding in the Assembly 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 Assembly, 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 Attorney-General or by the Financial and Development Secretary, the Assembly 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, relates to or closely concerns a matter that is not a defined domestic matter.

**Privileges of Assembly and members.**

36. The Legislature may prescribe the privileges, immunities and powers of the Assembly 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.

**Disallowance of laws.**

37. (1) Any law to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever such a law has been disallowed by Her Majesty the Governor shall cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of the publication of the notice.

(3) Section 38(2) of the Interpretation Act 1889 shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament of the United Kingdom, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

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## **Sessions.**

38. (1) The sessions of the Assembly shall be held at such place and begin at such time as the Governor, acting after consultation with the Gibraltar Council, may from time to time by Proclamation published in the Gazette appoint; but a period of twelve months shall not elapse between the date when the Assembly last sat in one session and the date appointed for its first sitting in the next session.

(2) Writs for a general election of Elected Members of the Assembly shall be issued within sixty days of the date of any dissolution of the Assembly and a session of the Assembly shall be appointed to commence within thirty days of the date prescribed for polling at any such general election.

## **Prorogation and dissolution.**

39. (1) The Governor, acting after consultation with the Chief Minister, may at any time by Proclamation published in the Gazette prorogue or dissolve the Assembly.

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

## **Rules of procedure.**

40. The Assembly may from time to time make, amend and revoke rules of procedure for the regulation and orderly conduct of their 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.**

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

## **Presiding in Assembly.**

42. There shall preside at any sitting of the Assembly the Speaker, or in his absence a member of the Assembly elected by the Assembly for the sitting.



**Quorum.**

43. (1) A quorum of the Assembly shall consist of five persons besides the Speaker or other person presiding at the sitting.

(2) If at any sitting of the Assembly 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 Assembly, the Speaker or other person presiding at the sitting ascertains that a quorum of the Assembly is still not present, the Assembly shall be adjourned.

(3) Subject to section 26(5) of this Constitution, the Assembly 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 Assembly 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 Assembly or otherwise took part in those proceedings.

**Voting.**

44. (1) All questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting:

Provided that the ex-officio members of the Assembly shall not vote on any motion that, in the opinion of the Speaker or other person presiding in the Assembly, is a motion of confidence or of no-confidence in the Council of Ministers or in any individual Minister.

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

(3) A member of the Assembly who is presiding in the Assembly 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 Assembly the votes are equally divided, the motion shall be declared lost.

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## CHAPTER IV.

### THE EXECUTIVE.

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

45. (1) The executive authority of the Government of Gibraltar shall vest in the Governor on behalf of Her Majesty; and, save as otherwise provided in this Constitution, that authority may be exercised by the Governor either directly or through officers subordinate to him.

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

#### **Gibraltar Council.**

46. (1) There shall be for Gibraltar a Gibraltar Council, which shall consist of—

- (a) the Deputy Governor, the Deputy Fortress Commander, the Attorney-General and the Financial and Development Secretary; and
- (b) the Chief Minister and such four other Ministers as may for the time being be designated in that behalf by the Governor, acting after consultation with the Chief Minister.

#### **Council of Ministers.**

47. (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 nor more than eight) as may be prescribed by the Governor, acting after consultation with the Chief Minister.

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

(3) The Ministers other than the Chief Minister shall be appointed by the Governor, acting after consultation with the Chief Minister, from among the Elected Members of the Assembly.

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

(5) The Governor, acting in his discretion, may remove the Chief Minister from office if in his judgement the Chief Minister has ceased to command the greatest measure of confidence among the Elected Members of the Assembly and the Chief Minister shall also vacate his Office –

- (a) when, after any dissolution of the Assembly, he is informed by the Governor that the Governor is about to re-appoint him as Chief Minister or to appoint another person as Chief Minister; or
- (b) if for any reason other than the dissolution of the Assembly he ceases to be an Elected Member of the Assembly.

(6) 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) if for any reason other than a dissolution of the Assembly he ceases to be an Elected member of the Assembly; or
- (c) if the Governor, acting after consultation with the Chief Minister, so directs.

(7) 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, consult the Chief Minister before exercising his powers under this subsection.

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## **Assignment of business.**

48. (1) The Governor, acting after consultation with the Chief Minister, may, by directions in writing, charge any member of the Council of Ministers with responsibility for any business of the Government of Gibraltar (including the administration of any department of government) relating to any defined domestic matter.

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

## **Consultation with Gibraltar Council.**

49. (1) Subject to the provisions of this section, the Governor shall consult with the Gibraltar Council in the formulation of policy and in the exercise of all powers conferred upon him by this Constitution or any other law.

(2) The Governor shall not be obliged to consult the Gibraltar Council in the formulation of policy in respect of any defined domestic matter or in the exercise of any power conferred upon him by this Constitution or any other law, to the extent that that power relates to a defined domestic matter.

(3) The Governor shall »not« be obliged to consult the Gibraltar Council in respect of any of the following powers, to the extent that those powers relate to any matter that is not a defined domestic matter:—

- (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;
- (b) any power conferred on him by this Constitution that he is directed or empowered by this Constitution to exercise in his discretion or after consultation with any person or authority other than the Council;
- (c) any power conferred upon him by or under the Emergency Powers Order in Council 1939; or
- (d) any power conferred upon him by any other law that he is empowered, either expressly or by implication, to exercise without consulting the Council.

(4) The Governor shall not be obliged to consult the Gibraltar Council in any case in which, in his judgment—

- (a) it is in the public interest that he should act without consulting the Council thereon; or
- (b) the matters to be decided are too unimportant to require the advice of the Council thereon; or
- (c) the matters to be decided are too urgent to admit of his obtaining the advice of the Council by the time within which it may be necessary for him to act:

Provided that before acting in pursuance of paragraph (c) of this subsection the Governor shall, if practicable, consult with the Chief Minister, and he shall in any case at the next convenient opportunity communicate to the Council the measures that he has adopted, with the reasons therefor.

(5) In any case in which the Governor has consulted the Gibraltar Council then, subject to the provisions of subsection (4) of the next following section, he may, if he thinks it right to do so, act against the advice given to him by the Council; but if he so acts he shall without delay report the matter to a Secretary of State with the reasons for his action.

(6) Whenever the Governor acts against the advice of the Gibraltar Council any member of the Council may require that there shall be recorded in the minutes any advice or opinion he may give upon the question at issue and his reasons.

**Consultation with Council of Ministers.**

50. (1) Subject to the provisions of this section, the Governor shall consult with, and act in accordance with the advice of, the Council of Ministers or a Minister acting under the general authority of the Council in the formulation of policy relating to any defined domestic matter and in the exercise of any power conferred upon him by this Constitution or any other law, to the extent that the power relates to a defined domestic matter.

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

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- (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;
- (b) any power conferred on him by this Constitution that he is directed or empowered by this Constitution to exercise in his discretion or after consultation with any person or authority other than the Council or a Minister;
- (c) any power conferred upon him by or under the Emergency Powers Order in Council 1939; or
- (d) any power conferred upon him by any other law that he is empowered, either expressly or by implication, to exercise without consulting the Council or a Minister.

(3) The Governor may consult with the Gibraltar Council with respect to any defined domestic matter instead of consulting with, or acting in accordance with the advice of, the Council of Ministers or a Minister in respect of that matter—

- (a) if in the opinion of the Governor, acting in his discretion, that matter closely concerns a matter that is not a defined domestic matter; or
- (b) if the Chief Minister requests the Governor to consult the Gibraltar Council concerning that matter.

(4) Where in pursuance of the last preceding subsection the Governor has consulted the Gibraltar Council in respect of a defined domestic matter he shall act in accordance with the advice of the Gibraltar Council in respect of that matter unless—

- (a) he is satisfied that it is necessary or desirable for him to act against the advice of the Council in the interests of a matter that is not a defined domestic matter; or
- (b) he has been authorised by a Secretary of State so to act in the interests of maintaining financial and economic stability in Gibraltar,

in which case he may act against the advice of the Gibraltar Council in respect of that matter.

### **Proceedings in Gibraltar Council.**

51. (1) The Gibraltar Council shall not be summoned except by the authority of the Governor:

Provided that the Governor shall summon the Council if the Chief Minister so recommends.

(2) The Governor shall determine what business shall be transacted at meetings of the Gibraltar Council and shall, so far as is practicable, attend and preside at meetings of the Council.

(3) In the absence of the Governor there shall preside at any meeting of the Gibraltar Council—

- (a) the Deputy Governor; or
- (b) in the absence of the Deputy Governor, such other member of the Council as may have been designated in that behalf by the Governor.

(4) No business shall be transacted in the Gibraltar Council if objection is taken by any member present that there are less than four members of the Council present besides any member presiding.

(5) Subject to the last foregoing subsection, the Gibraltar Council 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.

- (6) (a) The Governor or other person presiding, when in his opinion the business before the Gibraltar Council makes it desirable, may summon any person to a meeting of the Council, notwithstanding that the person is not a member of the Council.
- (b) Any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Gibraltar Council relating to the matter in respect of which he was summoned, except that he shall not have a right to vote.

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

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

52. (1) The Council of Ministers shall not be summoned except by the authority of the Chief Minister:

Provided that the Chief Minister shall summon the Council if the Governor so requests.

(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 the preceding subsection, 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.

(5) If the Attorney-General or the Financial and Development Secretary is invited to attend any meeting of the Council of Ministers for the purposes of any matter, he shall be entitled to take part in the proceedings of the Council relating to that matter as if he were a member of the Council, except that he shall not have a right to vote.

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

53. (1) The Chief Minister shall—

- (a) cause to be transmitted to the Governor copies of all papers submitted for consideration by the Council of Ministers or any committee thereof and all papers summoning the Council or any such committee to meet, at the same time as those papers are transmitted to its members; and
- (b) cause the Governor to be furnished as soon as possible after each meeting of the Council of Ministers or any committee thereof, with a copy of the minutes of the meeting showing the matters discussed and the conclusions reached at that meeting.



(2) The Chief Minister shall keep the Governor fully informed concerning the general conduct of those matters for which he or any other Minister is responsible and shall furnish the Governor with such information as he may request in respect of any particular matter.

(3) The Chief Minister shall (unless he is satisfied that the Governor has already been informed) inform the Governor forthwith if it appears to him that any matter that has been or is about to be considered by himself or by any other Minister is not a defined domestic matter or closely concerns a matter that is not a defined domestic matter.

#### **Oaths of members of Gibraltar Council and Council of Ministers.**

54. (1) Before assuming the functions of his office a member of the Gibraltar Council or 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.

(2) For the purposes of the preceding subsection, any person summoned to a meeting of the Gibraltar Council under section 51(6) of this Constitution shall be deemed to be a member of the Council.

#### **Defined domestic matters.**

55. (1) For the purposes of this Constitution “defined domestic matters” means such matters as may from time to time be specified, by directions in writing, by the Governor, acting in accordance with instructions given by Her Majesty through a Secretary of State.

(2) Any question whether any matter is a defined domestic matter for the purposes of this Constitution shall be determined by the Governor, acting in his discretion, and the determination of the Governor therein shall not be enquired into in any court of law.

### **CHAPTER V.**

#### **THE JUDICATURE.**

##### **Supreme Court.**

56. (1) There shall be a Supreme Court for Gibraltar which shall have unlimited jurisdiction to hear and determine any civil or

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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 59 of this Constitution, consist of one judge, that is to say, the Chief Justice.

## **Court of Appeal.**

57. (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 59 of this Constitution, consist of—

- (a) a President and two Justices of Appeal or such a greater number of Justices of Appeal as the Governor, acting after consultation with the Gibraltar Council, 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) 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 not be 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.**

58. (1) The Chief Justice, the President of the Court of Appeal and the Justices of Appeal shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

(2) No person shall be qualified for appointment as Chief Justice, 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 the Republic of 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 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.

**Additional judges.**

59. (1) If—

- (a) the office of Chief Justice is vacant, or if the holder thereof is for any reason unable to perform the functions of his office; or
- (b) if it appears to the Governor, acting after consultation with the Chief Justice, that the state of business in the Supreme Court so requires,

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the Governor, acting in his discretion, may appoint a person possessing such legal qualifications and experience as he may deem appropriate—

- (a) to sit as an additional judge of the Supreme Court; and
- (b) to discharge such of the functions of the office of Chief Justice (if any) as may be specified in the instrument of appointment.

(2) 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 thereof has resumed those functions, as the case may be, such one of the Justices of Appeal as the Governor, acting in his discretion, may appoint for the purpose shall discharge those functions.

(3) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is discharging the functions of the office of President or is absent from Gibraltar or is for any other reason unable to perform the functions of his office, the Governor, acting in his discretion, may appoint a person possessing such legal qualifications and experience as he, after consultation with the President, may deem appropriate to sit as an additional judge of the Court of Appeal.

(4) Any person appointed under this section to sit as an additional judge of the Supreme Court or of the Court of Appeal shall, unless he is removed from office under the next following section, continue to sit 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 his discretion:

Provided that a person whose appointment so to sit has expired or been revoked may, unless he has been removed from office as aforesaid, continue so to sit for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before the expiration or revocation of his appointment.

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

60. (1) Subject to the provisions of this section, a person holding the office of Chief Justice 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 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 and the Governor;
- (b) the Governor, being satisfied that it is desirable so to do because of exceptional circumstances, may permit a Chief Justice to remain in office for such a further period as may have been agreed between that Chief Justice and the Governor, but so that in any event the Chief Justice shall not hold office after attaining the age of 72 years;
- (c) a Chief Justice, a President of the Court of Appeal or a Justice of Appeal may, unless he has been removed from office under subsection (3) of this section, sit after the date on which he vacates his office under this subsection as an additional judge of the Supreme Court or, as the case may be, of the Court of Appeal for such period as may be necessary »to enable him to deliver judgment or« to do any other thing in relation to any proceeding commenced before him before that date.

(2) The Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court 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 so removed except in accordance with the provisions of the next following subsection.

(3) The Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court 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) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833 or any other enactment enabling Her Majesty

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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, the President of the Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court of Appeal from office for inability as aforesaid or 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 the last foregoing subsection 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.

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(7) If the question of removing the Chief Justice, the President of Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court of Appeal from his office has been referred to a tribunal under subsection (5) of this section, 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—

- (a) if the tribunal advises the Governor 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.

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

**Oaths to be taken by judges.**

61. Before entering upon the functions of his office the Chief Justice, any additional judge of the Supreme Court and every 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 Her Majesty in Council.**

62. (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 of £500 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of £500 or upwards, final decisions in any civil proceedings;
- (c) final decisions in proceedings under section 15 of this Constitution;
- (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

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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) The foregoing provisions of this section shall be subject to the provisions of section 31(6) of this Constitution.

(4) In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely 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 VI.

### FINANCE.

#### **Consolidated Fund.**

63. 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 law into some other fund established for a specific purpose or that may by or under any 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.**

64. (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 66 of this Constitution.



(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 a law.

(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 the Crown Agents for Overseas Governments and Administrations 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.**

65. (1) The Financial and Development Secretary shall cause to be prepared and laid before the Assembly, 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 Assembly to provide for the issue from the Consolidated Fund 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,

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the Financial and Development Secretary shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Assembly and the heads of expenditure shall be included in a supplementary appropriation bill introduced in the Assembly to provide for the appropriation of those sums.

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

66. If the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Financial and Development Secretary 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 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.**

67. (1) There shall be such provision as may be prescribed by the Legislature for the establishment of a Contingencies Fund and for authorising the Financial and Development Secretary, 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 Assembly, 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.**

68. (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 the preceding subsection applies and the remuneration and allowances payable to any judge of the Court of Appeal or additional judge of the Supreme Court 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 the last preceding subsection 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 or terms for which he opts shall, for the purposes of the last preceding subsection, be deemed to be more advantageous to him than any others for which he might have opted.

(5) Subsection (1) of this section applies to the offices of Governor, Chief Justice, Deputy Governor, Attorney-General, Financial and Development Secretary, Commissioner of Police and Principal Auditor.

#### **Public debt.**

69. (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 debts, 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.**

70. (1) The public accounts of Gibraltar and of all courts of law and all authorities and officers 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:

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(2) The Principal Auditor shall submit his reports to the Governor, who shall cause them to be laid before the Assembly.

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(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 VII.

### THE PUBLIC SERVICE.

#### **Power to constitute offices and make appointments, etc.**

71. (1) The Governor may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for Gibraltar and shall so constitute the offices of Attorney-General, Financial and Development Secretary, Commissioner of Police and Principal Auditor.

(2) Subject to the provisions of this Constitution, the Governor, acting in his discretion, 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 Gibraltar,

and, except as otherwise prescribed, all such appointments shall be held during Her Majesty's pleasure.

#### **Public Service Commission.**

72. (1) There shall be a Public Service Commission, which shall consist of a chairman and four other members appointed by the Governor.

(2) No person shall be qualified for appointment as a member of the Public Service Commission if he is an Elected Member of the Assembly 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 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 may appoint a person qualified for appointment as a member of the Commission to sit as an additional member.

(5) The Governor 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.

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

**Public Service Commission to advise Governor.**

73.(1) The Governor, acting in his discretion, may refer to the Public Service Commission for their advice any question that relates to the appointment, promotion, transfer, or termination of appointment, dismissal or other disciplinary control of public officers, and any other question that, in his opinion, affects the public service :

Provided that the provisions of this subsection shall not apply in relation to any of the following—

- (a) the Chief Justice, an additional judge of the Supreme Court or a judge of the Court of Appeal;
- (b) the Deputy Governor;
- (c) the Attorney-General;
- (d) the Financial and Development Secretary;
- (e) the Commissioner of Police;
- (f) the Principal Auditor;
- (g) the Clerk to the Assembly;

# Gibraltar Constitution Order 1969

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(h) the members of the Governor's personal staff.

(2) It shall be the duty of the Public Service Commission to advise the Governor on any question that he refers to them under this section, but the Governor shall not be obliged to act in accordance with their advice.

## **Performance of functions of Public Service Commission.**

74. (1) The Governor, acting after consultation with the Public Service Commission, may by regulations make provision for regulating and facilitating the performance by the Commission of their functions under this Constitution.

(2) Any decision of the Public Service Commission shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member.

(3) Subject to the provisions of this section, the Public Service Commission may regulate their own procedure.

(4) In the exercise of their functions under this Constitution, the Public Service Commission shall not be subject to the direction or control of any other person or authority.

(5) In addition to the functions conferred upon them by or under this Constitution, the Public Service Commission shall have such powers and other functions (if any) as may be prescribed.

## **CHAPTER VIII.**

### **MISCELLANEOUS.**

#### **Powers to dispose of land.**

75. Subject to the provisions of any law for the time being in force in Gibraltar, the Governor, acting after consultation with the Gibraltar Council, may in Her Majesty's name and on Her Majesty's behalf, make grants and dispositions of any lands or other immovable property in Gibraltar that may lawfully be granted or disposed of by Her Majesty.

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

76. (1) The Governor, acting after consultation with the Gibraltar Council, 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) Whenever any person has been sentenced to death by any court of law in Gibraltar, the Governor shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Governor, to be taken into consideration at a meeting of the Gibraltar Council.

(3) The Governor shall not exercise his powers under this section in relation to any such person as is referred to in the last preceding subsection unless it appears to him to be expedient to do so upon receiving the advice of the Gibraltar Council thereon; but he shall decide either to extend or to withhold a pardon or respite according to his own deliberate judgment, whether the members of the Council concur therein or not; causing nevertheless to be entered in the minutes of the Council his reasons, in case he should decide any such question in opposition to the judgment of the majority of the members of the Council.

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

**Powers of Attorney-General in relation to criminal proceedings.**

77. (1) The Attorney-General shall have power in any case in which he considers it desirable so to do—

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- (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.

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

(3) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (1) of this section 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.

(4) 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.

(5) 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.

## **Mayor of Gibraltar.**

78.(1) There shall be a Mayor of Gibraltar, who shall be elected from among the members of the Assembly (other than the ex-officio members) by the Elected Members of the Assembly.



(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 Governor, acting after consultation with the Gibraltar Council.

**Interpretation.**

79. (1) In this Constitution, unless the context otherwise requires—

“the Assembly” means the Gibraltar House of Assembly;

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

“defined domestic matter” means a matter specified by the Governor under section 55(1) of this Constitution;

“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 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 December in any year or such other day as may be prescribed by the Governor, acting after consultation with the Gibraltar Council;\*

“the Gazette” means the Gibraltar Gazette;

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

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

\* *The financial year has been prescribed by the Financial Year Ordinance (Ord. 1970 No. 26).*

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“the Legislature” means the Legislature established by this Constitution and includes the Governor acting in exercise of the powers conferred upon him by section 34 of this Constitution;

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

“oath” includes affirmation;

“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 Ordinance; 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 the provisions of the next following section, 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;

“session” in relation to the Assembly, means the sittings of the Assembly commencing when the Assembly first meets after any general election of Elected Members or after its prorogation and terminating when the Assembly is prorogued or is dissolved without having been prorogued;

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

» «

(4) Where the Governor is directed by any provision of this Constitution other than section 49 or 50 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.

(5) Where the Governor is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has in any matter so acted shall not be enquired into in any court of law.

(6) The Interpretation Act 1889 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.

(7) References in this Constitution to the Emergency Powers Order in Council 1939 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.**

80. (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 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 Assembly, Minister, Elected Member of the Assembly, member of the Public Service Commission, member of any tribunal established under section 60 of this Constitution or Mayor of Gibraltar.

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(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.**

81. (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.

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

82. (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 the provisions of this Constitution.

(2) Where a 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.**

83. 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.**

84. 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.**

85. (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 the provisions of this Constitution, require the Governor to remove a judge from office for inability to discharge the functions of his office, the Governor, acting in his discretion may carry out such removal either by dismissing that officer or by requiring him to retire.

# Gibraltar Constitution Order 1969

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

## **Power reserved to Her Majesty.**

86. There is reserved to 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 this Constitution).

## **SCHEDULE TO THE CONSTITUTION**

Section 20,  
22, 41, 54  
and 61.

### **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 Gibraltar Council or member of the Council of Ministers of the City of Gibraltar.*

I, \_\_\_\_\_, being a member of the Gibraltar Council/Council of Ministers of the City of Gibraltar, do swear [or solemnly affirm] that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the Governor and Commander-in-Chief of the City of Gibraltar (or any other person for the time being lawfully performing the functions of the office of Governor) for the good management of the public affairs of the City of Gibraltar, and I do further swear [or solemnly affirm] that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular member of the Gibraltar Council/Council of Ministers, and that I will not, except with the authority of the Governor and to such extent as may be required for the good management of the affairs of Gibraltar, directly or indirectly reveal the business or proceedings of the Gibraltar Council/Council of Ministers or any matter coming to my knowledge in my capacity as a member of the Gibraltar Council/Council of Ministers and that in all things I will be a true and faithful member of the Gibraltar Council/Council of Ministers. [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/President of the Court of Appeal/Justice of Appeal/ additional judge of the Supreme Court/Court of Appeal/of the City of Gibraltar and I 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  
TRANSITIONAL 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.

# Gibraltar Constitution Order 1969

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## **Existing laws.**

2. (1) Subject to the provisions of 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) - (5) and 3-10. Omitted,*



DESPATCH

FOREIGN AND COMMONWEALTH OFFICE,  
LONDON S.W.1.

(HGG.1/8).

23rd May, 1969.

Sir,

The Gibraltar Constitution Order 1969 has today been made by Her Majesty in Council. At the constitutional discussion held in Gibraltar in July 1968 under the chairmanship of Lord Shepherd, at which agreement was reached on the main lines of the constitution, as now incorporated in the Order in Council, it was also agreed that certain matters could appropriately be dealt with by a despatch from the Secretary of State to the Governor accompanying the publication of the new constitution. I should accordingly be obliged if you would cause this despatch to be published in the Gibraltar Gazette at the same time as the Order in Council itself. It will be understood that this despatch does not attempt to summarise the new constitution but is designed simply to supplement it on certain important points.

2. As agreed in the 1968 discussions, the position of Gibraltar as part of Her Majesty's dominions is set out in the preamble to the Order in Council which embodies the assurances then given. The constitutional instruments in no way change the international status of Gibraltar. Similarly the constitution in no way affects the existing status of the people of Gibraltar, that is to say, British Subject, citizen of the United Kingdom and Colonies, which they continue to enjoy by virtue of the British Nationality Act 1948.

3. While the Governor remains the head of the executive government, the new constitution provides, as agreed at the discussions in 1968, for the devolution of certain responsibilities to Ministers in a more formal manner than hitherto. These responsibilities relate to matters of domestic concern and are to be devolved upon Ministers by means of directions given by the Governor under Section 55(1) of the constitution. I consider that, generally speaking, the matters of domestic concern to be devolved should comprise the matters which have hitherto been within the competence of the City Council and the existing Council of Ministers. These, broadly speaking, fall within certain well defined

ADMIRAL OF THE FLEET

SIR VARYL BEGG, G.C.B., D.S.O., D.S.C.,  
ETC., ETC., ETC.

# Gibraltar Constitution Order 1969

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spheres, as for example, municipal and public utilities services (e.g. electricity, water); social services (e.g. housing, public health, labour and social security, and education); and matters which clearly affect the economy of Gibraltar (e.g. tourism and trade and commerce). Directions specifying the defined domestic matters should be given at the stage when the constitution has been brought into operation and the Ministers are appointed following the General Election. You have, however, recommended that particulars should be made known in advance for general information. Accordingly I annex to this despatch a list of matters which in my view should be specified as defined domestic matters at that stage. It must be recognised that this list may need adjustment from time to time. The devolution of authority to Ministers in defined domestic matters should also be read as subject to what is said in the following paragraphs of this despatch.

4. The Governor will retain direct responsibility for all matters primarily concerned with external affairs, defence and internal security, including the police, and for such matters as, by reason of their close connection with these matters, would most appropriately be placed under the day-to-day control of the Deputy Governor, the Attorney-General or the Financial and Development Secretary. Since everything which is not a defined domestic matter automatically remains within the Governor's direct responsibility, it is unnecessary and undesirable to attempt an exhaustive definition of all matters retained by the Governor. It is desirable, however, to draw attention to certain general exceptions which must qualify the list of defined domestic matters, in the sense that wider considerations would require responsibility to be retained by the Governor even though the subject matter may at first sight appear to be "domestic". Such exceptions should, in my view, include all matters relating to Her Majesty (for example honours, flags, etc.); the application to Gibraltar of international agreements, the implementation in Gibraltar of international obligations and the participation of Gibraltar in specialised international bodies; matters affecting the armed forces and United Kingdom civilian departments in Gibraltar, including their land and property, facilities provided by them (e.g. schools and hospitals) and their privileges and exemptions; labour from outside Gibraltar; certain land matters; and appointments to public bodies other than appointments specifically devolved upon Ministers. Although the Governor has this responsibility, section 49 of the new constitution provides machinery under which such matters may continue to be discussed, as appropriate, with Ministers in the Gibraltar Council. Provision has also been included in the constitution to protect the independence of the judiciary and of the

Principal Auditor and to vest powers with respect to criminal proceedings in the Attorney-General; administrative matters in those fields should also remain within the direct responsibility of the Governor. Similarly administrative responsibility for the public service generally should remain within the direct responsibility of the Governor (see also paragraph 6 below).

5. The significance of Gibraltar's economic problems at this time, as well as the nature of the new constitution itself and the merging of the finances of the Gibraltar Government and the City Council, make it important that all financial affairs, both as regards defined domestic matters and as regards residual matters not so defined, should as hitherto be fully coordinated. It was for this reason that all those who took part in the constitutional discussions in July 1968 recognised that the Financial and Development Secretary would be in a special position under the new constitution and that the Governor should have certain powers in relation to the maintenance of financial and economic stability. Accordingly responsibility for the financial business of the Government of Gibraltar should continue to be entrusted to the Financial and Development Secretary, and it is thus necessary that there should be very close liaison and consultation between him and the Ministers responsible for defined domestic matters. I should hope, therefore, that the Financial and Development Secretary will be invited by the Chief Minister to attend all meetings of the Council of Ministers when any matters affecting his sphere of responsibility are discussed. Matters for which the Financial and Development Secretary should remain responsible will include customs control; the collection of taxes, duties, licences and fees etc.; payment of salaries, wages and accounts; and the general co-ordination of financial and economic business and accounting. Subject to the provisions of the new constitution the Legislature will, of course, continue to be responsible for the authorisation of expenditure and taxation measures.

6. There will be a single public service in Gibraltar. Since the matters for which the Governor and Ministers will respectively be directly responsible are intrinsically incapable of being completely separated and are bound to overlap, it would not be conducive to efficient administration to divide the public service into two separate groups. As agreed at the constitutional discussions in July 1968 the Governor will in practice, subject to certain exceptions, consult the Chief Minister over appointments to posts of Head of Department level, but will not be bound to act in accordance with his advice. Civil servants will work to the Deputy Governor in respect of matters which remain within the direct responsibility of the Governor. In respect of defined domestic matters, which are the

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responsibility of Ministers, the civil servants concerned will work direct to the Ministers responsible. But when and where matters arise which overlap or appear to overlap both fields, there will need to be direct contact between the civil servants concerned and the Deputy Governor. The successful operation of the new constitution will depend on a continuance of the harmonious cooperation and working relationships at all levels that have characterised the public affairs of Gibraltar in the past. This cooperation will be even more important in view of the increase in the direct responsibilities of the Gibraltar Government, and accordingly in the size of its public service, resulting from its assumption of functions hitherto delegated to the City Council.

7. In conclusion I would hope that the fullest use would be made under the new constitution of the Gibraltar Council as provided for in sections 46, 49 and 50(3). The Council is so constituted as to bring together the senior elected representatives of the people of Gibraltar with the Governor's senior official advisers, in a body small enough and flexible enough in its procedures to permit frank, intimate and confidential discussion of problems of mutual concern. The great importance of such a forum needs no emphasis in the special circumstances of Gibraltar today, and I am confident that under Your Excellency's chairmanship the Gibraltar Council will continue to fulfil a most valuable function.

I have the honour to be,  
Sir,  
Your most obedient, humble servant,  
MICHAEL STEWART.

## **DEFINED DOMESTIC MATTERS**

(List referred to in paragraph 3 of Despatch)

### **I. MUNICIPAL SERVICES (INCLUDING PUBLIC UTILITIES BUT EXCLUDING THOSE TRANSFERRED TO APPROPRIATE HEADS e.g. PUBLIC HEALTH)**

- (a) Animals and Birds
- (b) City Council
  - Provisions requiring retention, e.g.
  - Bye-Laws made under S. 26 ; Freeman-S. 31
- (c) Entertainments
- (d) Food and Drugs
- (e) Markets  
(including Street Pedlars and Traders)
- (f) Public Utilities
  - (i) Electricity
  - (ii) Telephones
  - (iii) Water Supply

### **II. SOCIAL SERVICES**

- (a) Education
  - (i) Education
  - (ii) Youth Welfare including Youth Employment
  - (iii) Undertakings by Students
  - (iv) John Mackintosh Hall
- (b) Housing
  - (i) Construction and Allocation of Accommodation
  - (ii) Rent Relief
  - (iii) Landlord and Tenant

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- (c) Labour and Social Security
  - (i) Labour (from within Gibraltar)
  - (ii) Control of Employment
  - (iii) Dock Workers
  - (iv) Employment Injuries Insurance
  - (v) Employment of Women, Young Persons and Children
  - (vi) Factories
  - (vii) Family Allowances
  - (viii) Friendly Societies
  - (ix) Non-Contributory Social Insurance
  - (x) Public Assistance
  - (xi) Regulation of Wages and Conditions of Employment
  - (xii) Shop Hours
  - (xiii) Social Insurance
  - (xiv) Trade Unions and Trade Disputes
  
- (d) Medical and Public Health
  - (i) Hospitals and Laboratory
  - (ii) Medical Practitioners and Dentists
  - (iii) Mental Treatment
  - (iv) Midwives
  - (v) Nurses Registration
  - (vi) Pharmacy and Medicines
  - (vii) Quarantine
  - (viii) Sanitation of Buildings
  - (ix) Nuisances and Offensive Trades
  - (x) Notification and Prevention of Diseases
  - (xi) Rats and Mice Extermination
  - (xii) Vaccination
  - (xiii) Baths, Washhouses, Bathing Places, etc.
  - (xiv) Cellar Dwelling, Lodging Houses, etc.
  - (xv) General Provisions of Public Health Ordinance

### **III. REVENUE-CONTRIBUTING SERVICES**

- (a) Economic Development
  - (as hitherto)
  
- (b) Government Lottery and Gaming

- (c) Postal Services
  - (i) Post Office
  - (ii) Savings Bank
  
- (d) Tourism
  - (i) Tourist Promotion in Gibraltar
  - (ii) London Office (i.e., a Gibraltar Tourist Office in London with the same functions as are at present prescribed)
  - (iii) Tourist Sites
  - (iv) Museum and Antiquities
  - (v) Hotels and Restaurants
  - (vi) Hotel Proprietors
  
- (e) Trade and Commerce
  - (i) Business Names
  - (ii) Carriage of Goods by Sea
  - (iii) Companies
  - (iv) Contract and Tort
  - (v) Copyright
  - (vi) Deeds of Arrangement
  - (vii) Designs
  - (viii) Factors
  - (ix) Marine Insurances
  - (x) Merchandise Marks
  - (xi) Partnership
  - (xii) Patents
  - (xiii) Pawnbrokers
  - (xiv) Sale of Goods
  - (xv) Trade Generally including Supplies
  - (xvi) Price Control

NOTE: The Registrar of the Supreme Court is responsible for the following registries:

- (1) Companies
- (2) Business Names
- (3) Trade Marks
- (4) Patents
- (5) Deeds of Arrangement

The Registrar is also responsible for the registers of:

- (6) Births, Deaths and Marriages

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- (7) Gibraltarians
- (8) Land Titles
- (9) Building Societies.

## **IV. PUBLIC SERVICES**

- (a) Civil Air Terminal
- (b) Fires and Fire-Fighting
- (c) Management and control in relation to the areas of land known as Waterport and Waterport Wharf and those parts of the North Mole under lease to the Government with respect to commercial and tourist activities.
- (d) Public Works
  - (i) Building (Interim Control)
  - (ii) Building Bye-Laws
  - (iii) Public Highways
  - (iv) Recreation Grounds
  - (v) Cemeteries
- (e) Vehicles
  - (i) Motor Vehicles Insurance (Third Party)
  - (ii) Traffic (including Licensing)

## **V. PERSONAL STATUS**

- (i) Gibraltarian Status and permits of residence
- (ii) Adoption-Infants-Legitimacy
- (iii) Births, Deaths and Marriages
- (iv) Maintenance
- (v) Married Women
- (vi) Matrimonial Causes

## **VI. MISCELLANEOUS**

- (i) Census
- (ii) Charities
- (iii) Clubs
- (iv) Elections
- (v) Hire Purchase
- (vi) Noise Abatement
- (vii) Oaths



- (viii) Performers' Protection
- (ix) Petroleum
- (x) Prison
- (xi) Probates
- (xii) Public Holidays
- (xiii) Public Relations and information media in respect of defined domestic matters.

Supplement No: 2

# Gibraltar Constitution Order 1969

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**Subsidiary**

# Gibraltar Constitution Order 1969

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## **Subsidiary**

Order under s. 47 of the Constitution

### **COUNCIL OF MINISTERS.**

*»29 March 1988*

His Excellency the Governor, acting after consultation with the Chief Minister, has prescribed that the Council of Ministers shall consist of the Chief Minister and seven other Ministers.«

Supplement No: 2

# Gibraltar Constitution Order 1969

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**Subsidiary**

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# Gibraltar Constitution Order 1969

## Subsidiary

Particular directions under s.48

The Ministers specified in the Schedule have been charged with responsibility for the business of the Government of Gibraltar relating to the defined domestic matters listed below their titles.

### »SCHEDULE

#### LIST OF MINISTERIAL PORTFOLIOS

<b>MINISTER</b>	<b>BUSINESS</b>
Chief Minister	The Economy. Public Relations and Information. Personal Status, (including residence permits). Elections. Responsibility for and supervision of Government Departments. Industrial Relations. Gibraltar Savings Bank.
Minister for Trade & Industry	Trade and Economic Development. Marketing. Finance Centre. International Business Development (including development of telecommunications and satellite operations, inward investment and new industries). Commercial Affairs.
Minister for Education, Training, Culture and Youth	Education. Training. Culture. Youth Affairs.
Minister for Government Services and Sports	Electricity and Water Supply. Telephone Services. Postal Services. Broadcasting. Fire Services. Government Lottery. Government Support Services. Sports and Recreation.

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# Gibraltar Constitution Order 1969

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**Subsidiary**

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## Subsidiary

Minister for Tourism and Transport	Tourism. The Port. Traffic. Transport.
Minister for Social Affairs	Housing. Drugs. Social Security. Social Services. H M Prison.
Minister for Employment and Buildings and Works	Employment. Construction, Maintenance and Management of Government Buildings.
Minister for the Environment and Health	The Environment. Heritage. Town Planning. Medical Services. Public Health. Consumer Affairs.«

# Gibraltar Constitution Order 1969

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**Subsidiary**



# Gibraltar Constitution Order 1969

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Order made under s.57(2) of the Constitution

**Subsidiary**

**GIBRALTAR COURT OF APPEAL  
(JUSTICES OF APPEAL) ORDER.**

*28 October 1976*

**Title.**

1. This Order may be cited as the Court of Appeal (Justices of Appeal) Order.

**Number of Justices of Appeal.**

2. The number of Justices of Appeal may be three.

# Gibraltar Constitution Order 1969

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**Subsidiary**

# Gibraltar Constitution Order 1969

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**Subsidiary**

Regulations made under s.74 of the Constitution

## **PUBLIC SERVICE COMMISSION REGULATIONS.**

### ARRANGEMENT OF REGULATIONS.

Regulation

1. Title.
2. Interpretation.
3. Appointment of staff.
4. Powers of Commission to conduct examinations and appoint boards.
5. Oaths.

### **SCHEDULE 1.**

Oath of Member.

### **SCHEDULE 2.**

Oath of Officer of the Commission.

*1 March 1983*

### **Title.**

1. These regulations may be cited as the Public Service Commission Regulations.

### **Interpretation.**

2. In these regulations, unless the context otherwise requires,-

“chairman” means the chairman of the Public Service Commission;

“Commission” means the Public Service Commission;

“member” means a member of the Commission;

“officer”, in relation to the Commission, means the secretary to or any other officer of the Commission, appointed under regulation 3;

# Gibraltar Constitution Order 1969

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**Subsidiary**

“secretary” means the secretary to the Commission.

# Gibraltar Constitution Order 1969

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## **PUBLIC SERVICE COMMISSION REGULATIONS.**

**Subsidiary**

### **Appointment of Staff.**

3.(1) The Governor may appoint any public officer or other person to be the secretary to the Commission.

(2) The Governor may appoint any other public officers or other persons to be officers of the Commission.

(3) No person appointed under this regulation shall—

(a) be a member of the Commission; or

(b) participate in the proceedings of the Commission or vote on any question that is the subject matter of its deliberations.

### **Powers of Commission to conduct examinations and appoint boards.**

4.(1) The Commission may conduct such examinations, interviews and investigations, and appoint such selection, promotion or other boards as it may consider necessary for the proper discharge of its functions.

(2) Any board may consist wholly or partly of persons who are not members of the Commission.

(3) The Commission may delegate to any board any of the functions of the Commission relating to the examination or interview of or investigation of any circumstances affecting candidates for appointment, promotion or transfer to any public office, or the termination of any appointment to any public office, or the dismissal or disciplinary control of any public officer.

### **Oaths.**

5.(1) Every member shall, on first appointment, take before the Deputy Governor an oath in the form set out in Schedule 1.

(2) Every person (not being a member of the Commission) who is an officer, or is a member of a board appointed under regulation 4, shall on first appointment take before the chairman an oath in the form set out in Schedule 2.

Supplement No: 2

# Gibraltar Constitution Order 1969

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**Subsidiary**

**PUBLIC SERVICE COMMISSION REGULATIONS.**

# Gibraltar Constitution Order 1969

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## **PUBLIC SERVICE COMMISSION REGULATIONS.**

**Subsidiary**

### **SCHEDULE 1.**

Regulation 5(1).

#### **OATH OF MEMBER.**

I, . . . . . having been appointed as chairman/member of the Public Service Commission, do swear that I will freely and without fear or favour, affection or ill-will give my counsel and advice to the Governor of Gibraltar in connection with all such questions or matters as are or may be referred to the Public Service Commission by or under the Constitution, and that I will not, directly or indirectly, reveal any such matters to any unauthorized person or otherwise than in the course of duty.

**SO HELP ME GOD.**

Sworn before me this                      day of                      19                      .

Deputy Governor.

### **SCHEDULE 2.**

Regulation 5(2).

#### **OATH OF OFFICER OF THE COMMISSION.**

I, . . . . . being called upon to exercise the functions of secretary to/an officer of/a member of a board appointed by/the Public Service Commission do swear that I will not directly or indirectly, reveal to any unauthorized person or otherwise than in the course of duty the contents or any part of the contents of any documents, communications or information whatsoever which may come to my knowledge in the course of my duties as such secretary/officer/member.

**SO HELP ME GOD.**

Sworn before me this                      day of                      19                      .

# Gibraltar Constitution Order 1969

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**Subsidiary**

**PUBLIC SERVICE COMMISSION REGULATIONS.**

Chairman of the Public Service  
Commission.