

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3,598 of 17th May, 2007

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**B. 39/07**

**HOUSING ACT 2007**

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No. 3,598 of 17th May, 2007

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B. 39/07

**BILL**

**FOR**

**AN ACT** to make provision for the proper and effective use of Government housing; to make provision about the rights and obligations of landlords and tenants of residential premises; to make provision about property management, to make provision about anti-social behaviour in relation to housing; and to make other provision about housing and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

**Title and commencement.**

1. This Act may be cited as the Housing Act 2007 and comes into operation on such day as the Government may, by notice in the Gazette, appoint and different days may be appointed for different provisions and purposes.

**PART I  
Government Housing**

*Preliminary*

**Interpretation.**

2. In this Part, unless the context otherwise provides—

“agreement” means a tenancy or licence agreement between the Principal Housing Officer for and on behalf of the Government and a tenant or joint tenants;

“block of flats” means a building or part of a building which contains two or more premises;

“committee” means the Housing Allocation Committee established under section 5;

“housing area” means a housing estate or a block or blocks of flats not in a housing estate;

“Housing Authority” means the Minister or such other body or person as the Government may designate from time to time by notice published in the Gazette;

“let” includes a reference to licensed and like expressions shall be construed accordingly;

“Minister” means the Minister with responsibility for housing;

“Principal Housing Officer” means the senior public officer of the Ministry for Housing or any other public officer duly authorised by him for any purpose under this Part;

“prescribed” means (unless the context otherwise requires or is specified to the contrary) prescribed by regulations made by the Minister;

“public housing” means a flat, house, building or part of a building owned by the Government and occupied by a tenant or available for allocation to be occupied by a tenant as a residence, under an agreement;

“tenant” means any person occupying premises under an agreement and where the context so admits reference to a tenant shall be construed as including a reference to a licensee and the expression includes joint tenants;

“Tribunal” means the Housing Tribunal established under section 82;

“year” means any period of twelve consecutive calendar months.



**Housing Authority.**

3.(1) The general management and supervision, registration and control of public housing and of all buildings comprising public housing shall be vested in and shall be exercised by the Housing Authority.

(2) For the purposes of subsection (1) above the Housing Authority may by notice in the Gazette make rules for a Scheme relating to the allocation of public housing.

(3) Without prejudice to the generality of subsection (2) above a Scheme under sub-section (2) may make provisions for applications, eligibility, qualification, a pointage system, registration, transfer and exchange of tenancies, temporary accommodation, decanting, homeless persons, representations and appeals and the special schemes for new housing estates and other special or exceptional circumstances.

**Government Housing Advisory Board.**

4.(1) There shall be established a Board, to be known as the Government Housing Advisory Board.

(2) The provisions of Schedule 1 shall have effect with respect to the functions, constitution and proceedings of the Board.

**Housing Allocation Committee.**

5.(1) There shall be established a Committee, to be known as the Housing Allocation Committee.

(2) The provisions of Schedule 2 shall have effect with respect to the functions, constitution and proceedings of the Committee.

*Occupation of Premises*

**Personal occupation essential.**

6.(1) Subject to subsection (3), it shall be a condition of possession of any public housing that the tenant shall be entitled to such possession so long as he is in personal occupation of the public housing for not less than 270 days in the aggregate in every year.

(2) A tenant shall not be deemed to be in personal occupation for the purposes of subsection (1) on any day in which he does not sleep in such premises.

(3) The Principal Housing Officer may authorise, in the particular case of any tenant, a reduction of the 270 days stipulated by subsection (1).

(4) A tenant shall be deemed to be in personal occupation of the public housing, notwithstanding that he does not sleep in such public housing on such day, provided that the reason for his not so sleeping is that he is prevented from personal occupation by circumstances beyond his control, save that to meet the requirements of this section, any period exceeding 28 days must be approved in writing by the Principal Housing Officer.

(5) Where a tenant is not in personal occupation of his public housing and his absence does not render him liable to have his tenancy terminated under section 8 by reason of such non-occupation, the premises may be occupied by a person approved in writing by the Principal Housing Officer when there is a period of absence by the tenant exceeding 28 days.

**Tenants in ownership of residential property.**

7.(1) It shall be a condition of possession of any public housing which is allocated to a tenant after the date of commencement of this Act, that the tenant shall be entitled to continue in possession so long as he or his spouse, if residing with him—

- (a) is not or does not become, either directly or indirectly, a majority share owner of residential property in Gibraltar which is or can by his or his spouse's decision be made available for occupation by him; or
- (b) does not, either directly or indirectly, have nor acquire a beneficial interest in a shareholding of a company or other legal entity wherever incorporated or established which owns a property such as is described in paragraph (a) above; or
- (c) does not, either directly or indirectly, have nor acquire a vested interest in a trust (wherever established) which owns a property such as is described in paragraph (a) above.

**Notice of termination of tenancy.**

8.(1) If the Principal Housing Officer has reason to believe that a tenant has not been or will not be able to be in personal occupation of the public housing for the number of days required under section 6 and the tenant has not terminated the tenancy agreement, he may, with the approval of the Committee and of the Minister, serve notice of termination of tenancy on the tenant, in such form as may be prescribed, requiring possession of the public housing to be given up within 30 days of the date of service of the notice.

(2) A notice under subsection (1) shall—

- (a) state the grounds on which the notice is being served;
- (b) give notice that all moveable property remaining in the public housing 21 days after the termination of tenancy shall be removed and taken into custody by the Government and all perishable goods remaining therein shall be immediately disposed of; and
- (c) inform the tenant of his right of appeal under section 26;

(3) Notwithstanding anything contained in subsection (1), no notice shall specify a year commencing more than 12 months before the date of the notice.

(4) Subject to subsection (5), if the Principal Housing Officer has reason to believe that a tenant has failed to comply with the condition in section 7 without justifiable reason and he has not terminated the tenancy agreement, he may, with the approval of the Committee and of the Minister, serve notice of termination of tenancy on the tenant, in such form as may be prescribed, requiring possession of the public housing to be given up within 30 days of the date of service of the notice.

(5) A notice under subsection (4) shall—

- (a) state the grounds on which the notice is being served including such information, as the Principal Housing Officer considers necessary, establishing those grounds;

- (b) give notice that all moveable property remaining in the public housing 21 days after the coming into force of the notice of termination of tenancy, shall be removed and taken into custody by the Government and all perishable goods remaining therein shall be immediately disposed of;
- (c) inform the tenant of his right of appeal under section 26.

(6) If the Principal Housing Officer has reason to believe that a tenant has failed to comply with a decanting notice under section 15 and no appeal is brought against such a notice under section 28, or any such appeal is not upheld, he may serve notice of termination of tenancy, in such form as may be prescribed, requesting possession of the public housing to be given up within 30 days of the date of service of the notice.

(7) There shall be no right of appeal against a notice of termination issued under subsection (6).

**Refund of rent.**

9. On termination of tenancy under section 8, any rent paid by or on behalf of the tenant under the agreement for any period thereafter shall be refunded.

**Entry on and disposal of property on the premises.**

10.(1) The Principal Housing Officer may, on the termination of a tenancy pursuant to section 8—

- (a) enter upon the public housing and remove all movable property therein;
- (b) dispose of any perishable goods therein in a manner thought fit and proper by him.

(2) Subject to any claims under section 11 and to the rights of any third party therein, any movable property of a tenant removed by the Principal Housing Officer shall vest in and become the property of the Government on the expiration of a period of 3 months from the date of publication of a notice in the Gazette to that effect.

**Claim by tenant.**

11.(1) Whenever a tenant has had his tenancy terminated under section 8, he may at any time within one year from the date of termination of his tenancy, claim from the Government the amount of the proceeds of the sale of any movable or any perishable property sold under section 10.

(2) There shall be deducted from the amount due under subsection (1) the expenses of the Government in relation to such sale, the cost of any repairs or renovations necessary on the termination of the tenancy (other than those due to fair wear and tear) to render the public housing fit for occupation, and any other sum then due from the tenant to the Government.

**New tenancy or licence agreement.**

12.(1) Where a tenant has died the Principal Housing Officer shall, if the entitled person so requires and he meets the current criteria for the allocation of public housing, enter into an agreement with the entitled person in respect of the public housing on the same terms and conditions as the agreement with the deceased tenant or on such other terms and conditions as he may approve after consultation with the Committee.

(2) For the purpose of this section “entitled person” means—

- (a) the widow or widower, as the case may be, of the deceased tenant living with the tenant at the time of death;
- (b) where the deceased tenant leaves no widow or widower or if such widow or widower was not living with the tenant at the time of death, the father, mother or child over the age of 18 years (in that order and where there is more than one such child the eldest such child) of the deceased tenant, provided that such person had been living with the deceased tenant continuously for not less than 12 months immediately prior to the tenant’s death with the written consent of the Principal Housing Officer.

**Direction for the recovery of judgement debts.**

13.(1) The Principal Housing Officer may serve a direction on—

- (a) any employer in Gibraltar making payment of any wages, salary, pension, bonus, commission, allowance or other remuneration; or
- (b) any person making payment of any old age, widow's, disability or other social security pension or allowance, household cost allowance, savings bank account interest or interest on any Gibraltar Government or Gibraltar Savings Bank debenture or bond;

to a tenant who is a judgement debtor in respect of his arrears of rent on public housing or any other moneys due and payable by the tenant under this Act.

(2) A direction shall require the employer or person on whom it is served to deduct such amounts and at such times as the direction may require and to account for and pay over to the Principal Housing Officer such amount as so deducted at such times and at such place as required by the direction.

(3) Where a tenant named in a direction dies or otherwise ceases to be entitled to receive any further payments from the employer or person on whom the direction was served, that employer or person shall, within seven days of such death or cessation, notify the Principal Housing Officer accordingly.

(4) A copy of a direction shall be sent at the same time to the tenant the subject of the direction.

(5) An employer on whom a direction has been served and who without reasonable excuse fails to comply with the order or fails to comply with the requirements of subsection (3) shall commit an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Unlawful occupation.**

14.(1) Any person who—

- (a) enters into possession of, or remains in occupation of any public housing after the tenancy agreement in respect of those premises has been terminated under section 8 and whether such person is the tenant on whom notice was served or not; or

- (b) occupies any public housing held by the Government without the written authority of the Principal Housing Officer; or
- (c) gives false or misleading information in any application form or other document for the purpose of being allocated any public housing;

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Where any person has been found guilty of an offence under subsection (1), the court shall, at the request of the Principal Housing Officer, in lieu of or in addition to a fine order the offender to give up possession of the public housing within 14 days of such conviction.

(3) Pursuant to an order for possession of public housing under subsection (2) it shall be lawful for the Principal Housing Officer in the company of a police officer to enter upon the public housing to give effect to the order.

(4) Any person who aids, abets, counsels or procures the commission of an offence under subsection (1)(a) or (b) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Separately from and regardless of any proceedings for an offence under this section, where a person to whom subsection (1)(a), (b) or (c) applies is in occupation of any public housing, the court shall, at the request of the Principal Housing Officer, order the person to give up possession of the public housing within 14 days of such order.

**Decanting notices.**

15.(1) The Minister may, in his discretion, serve a decanting notice on a tenant if—

- (a) having regard to the fact that the majority of the public housing in a block of flats are empty, he considers that it is necessary or desirable to empty the block of its remaining tenants; or

(b) vacant possession of the public housing is required for social or economic reasons or in the public interest.

(2) Every tenant so decanted shall be provided with suitable alternative public housing at a rent no higher than the public housing the subject of a decanting notice.

(3) A decanting notice shall provide the tenant with details and composition of the allocated public housing to where it is intended to decant him and his family, if any, and inform him of the reason for the decanting and of his right of appeal.

(4) An appeal against a decanting notice may be brought on the grounds only that the facts or reasons stated in the notice to justify the decanting are not true, or that the alternative public housing specified therein is not suitable or not of the same or lower rent.

(5) A decanting notice becomes operative, if no appeal is brought under section 28, at the end of the period of 21 days beginning with the date of service of the notice.

(6) A decanting notice shall specify the date by which the move to the allocated premises is to be completed.

(7) The obligation to take the action specified in the notice continues despite the fact that the date for decanting to the allocated premises has passed.

(8) The Principal Housing Officer may, in deserving cases and in his absolute discretion, assist, financially or with the provision of transport, materials or other resources, a tenant on whom a decanting notice has been served with the move to the allocated public housing.

(9) The Principal Housing Officer may, with the prior approval of the Minister and at the discretion of the Minister, at any time vary or revoke a decanting notice if he considers that it is appropriate to do so.

(10) A tenant who fails, without reasonable excuse, to comply with a decanting notice shall commit an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale and shall in addition thereto be liable to termination of his tenancy under section 8(6).



*Entry upon Public Housing***Power of entry.**

16.(1) Where the Housing Authority considers it is necessary to—

- (a) carry out a survey or examination of any public housing in order to determine whether any damage has occurred to, or is likely to occur to the public housing, the building of which it forms part or any adjoining building; or
- (b) carry out a survey or examination of any public housing in order to determine whether any powers under this Part should be exercised in relation to the public housing; or
- (c) abate any damage that has occurred to that or any other public housing or prevent any further damage; or
- (d) to carry out any routine maintenance of the public housing, the building of which it forms part or any adjoining building;

a person authorised by the Housing Authority may, after giving 7 days notice in writing to the tenant, enter such public housing, accompanied by such persons as he may deem necessary, for any of the purposes mentioned in paragraphs (a) to (d).

(2) Notwithstanding the requirement to give 7 days notice under subsection (1), if it is considered necessary as a matter of urgency to enter any public housing for any of the purposes mentioned in subsection (1)(a) or (c), a person authorised by the Housing Authority may at any reasonable time, on giving 24 hours notice to the tenant, enter such public housing.

(3) A tenant may waive the requirement in subsection (2) to be given 24 hours notice.

(4) An authorisation for the purposes of this section shall, if so required, be produced for inspection by the tenant.

(5) If the public housing is unoccupied or the tenant is temporarily absent, a person entering under the authority of this section shall cause as little damage as is reasonably possible and shall leave the public housing as

effectively secured against trespassers as he found them and shall as soon as is reasonably possible inform the tenant of the entry.

(6) Any person who without reasonable excuse refuses or delays the admission of or obstructs any person authorised by the Housing Authority in exercising his right of entry pursuant to subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Warrant to authorise entry.**

17.(1) Where a justice of the peace is satisfied, on a sworn information in writing, that admission to the public housing specified in the information is reasonably required by a person authorised by the Housing Authority for any of the purposes mentioned in section 16(1) he may by warrant under his hand authorise that person to enter on the public housing for any of those purposes.

(2) The justice shall not grant the warrant unless he is satisfied that admission to the public housing has been refused and that admission was sought after not less than the required period of notice of the intended entry under section 16(1) or (2), as the case may be, had been given to the tenant.

(3) The power of entry conferred by a warrant under this section—

- (a) includes power to enter by force (if necessary); and
- (b) may be exercised by the person on whom it is conferred either alone or together with other persons.

(4) A warrant under this section shall, if so required, be produced for inspection by the tenant.

*Housing Conditions*

**Unauthorised developments.**

18.(1) A tenant shall not, except with the permission in writing of the Housing Authority and under the authority of a permit granted by the Development and Planning Commission under the Town Planning Act, and in accordance with such conditions as may be imposed by the Commission in granting the permit and with the provisions of any regulations made under

that Act, carry out any development, as defined in that Act, in his public housing, housing area or in the vicinity of the public housing or the housing area which contains the public housing.

(2) A person who acts in contravention of subsection (1) shall commit an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(3) This section shall not apply in relation to anything done before its commencement.

**Restoration orders.**

19.(1) The Principal Housing Officer may serve a restoration order on a tenant in relation to any public housing if the tenant has acted in contravention of section 18(1) (“the contravention”).

(2) A restoration order shall specify—

- (a) the contravention concerned;
- (b) the remedial action to be undertaken in relation to the contravention;
- (c) the date by which the remedial action is to be completed;
- (d) the right of the tenant to appeal.

(3) A restoration order becomes operative, if no appeal is brought under section 28, at the end of the period of 21 days beginning with the date of service of the order.

(4) The Principal Housing Officer may serve notice of—

- (a) variation of a restoration order so as to alter the dates, events or remedial action to be undertaken;
- (b) revocation of a restoration order if he considers that it is appropriate to do so.

(5) The obligation to take the action specified in a restoration order continues despite the fact that the date for completion of the action has passed.

(6) A tenant who fails, without reasonable excuse, to comply with a restoration order shall commit an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Power to demolish building.**

20.(1) The Principal Housing Officer may serve a demolition order on a tenant if the tenant, in his public housing, in the vicinity of his public housing or the housing area which contains his public housing, has acted in contravention of section 18(1) (“the contravention”).

(2) A demolition order under subsection (1) shall specify—

- (a) the public housing, building or structure and the contravention concerned;
- (b) the remedial action to be undertaken in relation to the contravention;
- (c) the date by which the remedial action is to be completed;
- (d) the right of the tenant to appeal.

(3) A demolition order becomes operative, if no appeal is brought under section 28, at the end of the period of 21 days beginning with the date of service of the order.

(4) The Principal Housing Officer may serve notice—

- (a) of variation of a demolition order so as to alter the dates, events or remedial action to be undertaken.
- (b) of revocation of a demolition order if he considers that it is appropriate to do so.

(5) The obligation to take the action specified in the order continues despite the fact that the date for completion of the action has passed.

(6) A tenant who fails, without reasonable excuse, to comply with a demolition order under subsection (1) shall commit an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Stoppage orders.**

21.(1) Notwithstanding anything contained in the Town Planning Act and without prejudice to the powers of the Development and Planning Commission under that Act, the Principal Housing Officer, may serve a stoppage order on any person who appears to be carrying out any unauthorised development in contravention of section 18(1).

(2) An order under subsection (1) shall include—

- (a) the name and address of the person on whom the stoppage order is served;
- (b) the particulars of the nature, address or place of the apparent contravention.

**Power to take action in relation to contraventions.**

22.(1) The Principal Housing Officer may by agreement with the tenant on whom an order is served under section 19, 20 or 21 take any action which that tenant is required to take in relation to any public housing, building or structure in pursuance of such an order.

(2) The Principal Housing Officer may, with a warrant issued by a Justice of the Peace, enter into public housing in respect of which an order under section 19, 20 or 21 has been served but not complied with, and take any action which the tenant is required to take in pursuance of such order.

(3) Action shall be taken by the Principal Housing Officer under this section at the expense of the tenant, and the reasonable cost of such action shall become a debt due by the tenant to the Government.

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*Information Provisions***Power to require information**

23.(1) The Principal Housing Officer may, for any relevant purpose, give notice to any tenant requiring him—

- (a) to supply to the Housing Authority such information as may be specified or described in the notice; and
- (b) to supply it at a time and place, and in a form and manner, so specified and to a person so specified.

(2) In this section “relevant purpose” means—

- (a) the purpose of initiating action leading to the issue of a direction under section 13 or leading to the serving of an order under section 19(1) or 21(1);
- (b) the purpose of initiating action leading to the issue of an order under section 19(1), 20(1) or 21(1).
- (c) any purpose connected with the exercise of the functions of the Housing Authority or the Principal Housing Officer under this Part or under any regulations made under this Part.

(3) A notice under this section shall include information about the possible consequences of not complying with the notice.

(4) If a person makes default in complying with a notice under subsection (1), the Magistrates’ Court may, on the application of the Principal Housing Officer make such order as the Court considers appropriate for requiring the default to be made good.

(5) Any such order may, in particular, provide that all the costs or expenses of, and incidental to, the application shall be borne by the person in default.

**Enforcement of powers under section 23.**

24. A person who intentionally and without reasonable excuse, fails to do anything required of him by a notice under section 23 shall commit an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**False or misleading information.**

25.(1) A person who supplies any information to the Housing Authority or to the Principal Housing Officer in connection with any of its or his functions under this Part and—

- (a) the information is false or misleading in a material respect; and
- (b) he knows that it is false or misleading in a material respect or is reckless as to whether it is false or misleading in a material respect;

shall commit an offence and shall be liable on summary conviction, to a fine not exceeding level 3 on the standard scale.

*Appeals***Appeal against termination of tenancy.**

26.(1) Any tenant who is aggrieved by a notice of termination of tenancy under section 8(1) may within 21 days beginning with the date of service of the notice appeal to the Tribunal on the ground that he was in personal occupation or will be able to be in personal occupation of the public housing for 270 or more days in the year so specified, as the case may be.

(2) The burden of proof of personal occupation for 270 or more days shall lie upon the tenant who may make available to the Tribunal and the Principal Housing Officer at least 7 days before the hearing of the appeal—

- (a) records of consumption of electricity and water at the public housing for the year to which the notice relates and any other period if requested; and

- (b) any other documentation which in the view of the Tribunal is relevant to the appeal.

(3) On hearing the appeal where the Tribunal is satisfied that the tenant was in personal occupation or will be able to be in personal occupation for 270 or

more days, as the case may be, shall allow the appeal and direct the Principal Housing Officer to withdraw the notice.

(4) Any tenant who is aggrieved by a notice of termination of tenancy under section 8(4) may within 21 days beginning with the date of service of the notice appeal to the Housing Tribunal against the termination of tenancy on the grounds of ownership of residential property under any of the paragraphs (a) to (c) of subsection 7(1).

(5) On hearing the appeal where the Tribunal is satisfied that the tenant is unable to comply with the condition in section 7, shall confirm the notice.

(6) Notwithstanding section 8(1), where an appeal has been lodged under subsection (1) the date of termination of tenancy shall be—

- (a) where the appeal is withdrawn by the tenant, at the end of 14 days from the date of withdrawal;
- (b) where the notice is confirmed by the Tribunal, at the end of 14 days from the date of determination of the appeal.

(7) Notwithstanding section 8(4), where an appeal has been lodged under subsection (4), the date of termination shall be—

- (a) where the appeal is withdrawn by the tenant, at the end of 14 days from the date of withdrawal;
- (b) where the notice is confirmed by the Tribunal, at the end of 14 days from the date of determination of the appeal.

(8) The Principal Housing Officer or a tenant aggrieved by the decision of the Tribunal may appeal to the Magistrates' Court against the decision on a point of law.



**Appeal against direction under section 13 (rent arrears etc collection order).**

27.(1) A person aggrieved by a direction under section 13 may, within a period of 21 days beginning with the date of service of the direction, appeal to the Housing Tribunal.

(2) On an appeal the Tribunal may confirm, quash or vary the direction.

(3) If an appeal is brought, a direction does not become operative until—

- (a) a decision on the appeal confirming the direction is given and the period of 30 days within which an appeal to the Magistrates' Court can be brought expires without any such appeal having been brought; or
- (b) if a further appeal to the Magistrates' Court is brought, a final decision is given confirming the order.

(4) For the purposes of subsection (3), the withdrawal of an appeal shall have the same effect as a decision confirming the direction appealed against.

**Appeal against decanting notices and enforcement, restoration, demolition or stoppage orders.**

28.(1) A person aggrieved by a notice under section 15 or by its variation or revocation may, within a period of 21 days beginning with the date of service of the notice, appeal to the Tribunal.

(2) A person aggrieved by an order under sections 19, 20 or 21 may, within a period of 21 days beginning with the date of service of the relevant order, appeal to the Tribunal.

(3) On an appeal the Tribunal may confirm, quash or vary the notice or order.

(4) If an appeal is brought, an order or notice (or a notice of its variation) does not become operative until—

- (a) a decision on the appeal confirming the order or notice (with or without variation) is given and the period of 30 days within

which an appeal to the Magistrates' Court can be brought expires without any such appeal having been brought; or

- (b) if a further appeal to the Magistrates' Court can be and is brought, a final decision is given in that appeal.

(5) For the purposes of subsection (4), the withdrawal of an appeal shall have the same effect as a decision confirming the notice or order appealed against.

(6) An appeal against a decision of the Tribunal upon an appeal brought under this section shall be, on a point of law, to the Stipendiary Magistrate.

(7) The Stipendiary Magistrate shall hear and determine any question of law on an appeal under subsection (6) and shall remit the case to the Tribunal and to the server of the notice or order the subject of the original appeal to the Tribunal, with his legal opinion thereon or make such order in relation to the case as he may think fit.

*Supplementary Provisions*

**Service of notice.**

29.(1) A notice or direction under this Part shall be served—

- (a) by giving it to the tenant; or
- (b) by sending it to the tenant by registered post or by recorded delivery service; or
- (c) failing both of the preceding methods, by the notice, order or demand being attached to a conspicuous part of the tenant's premises where it is able to be read by persons entering therein.

(2) An acknowledgement or certificate of delivery of a letter containing a notice, order or demand issued by the Royal Gibraltar Post Office shall be sufficient evidence of service.

**Power to make regulations.**

30. The Minister may make regulations for carrying the provisions of this Part into effect, and without prejudice to the generality of this power may make regulations—

- (a) prescribing the conditions of occupation of premises by tenants in addition to those set out in their agreement, subsisting on the  
  
date of the coming into force of this Act, which shall prevail in the event of any inconsistency between the regulations and the agreement.
- (b) prescribing any form of notice or direction required to give effect to any provision of this Act;
- (c) prescribing circumstances in which failure to occupy the premises for 270 days or more in a year shall not render the tenant liable to have his tenancy terminated;
- (d) relating to persons who may occupy premises in the case of an absent tenant (whether or not such tenant is entitled not to have his tenancy terminated) and the terms and conditions of such occupation;
- (e) prescribing the functions of and procedure to be followed by the Housing Allocation Committee, and the procedure to be followed by the Principal Housing Officer in giving effect to the provisions of this Part;
- (f) relating to the storage of any goods or property removed from any premises pursuant to section 10;
- (g) relating to exchanges of premises by tenants, and the conditions under which such exchanges may be approved;
- (h) for appeals by any person aggrieved by the exercise of any powers conferred by this Act;

- (i) creating offences against such regulations and providing penalties therefor;
- (j) generally, for the good rule and management of any public housing or housing area, and the allocation of public housing.

**Tenants associations.**

31.(1) The tenants of a housing area may establish a tenants association to represent and advance their collective interests as tenants of public housing in that housing area and the Housing Authority shall consult with such tenants association in relation to issues relating to that housing area.

(2) The establishment of a tenants association in a housing area shall require the support of the tenants of at least 25 per cent of the public housing in the housing area, expressed either by vote at a general meeting or in writing.

(3) The name of the association shall be the name of the housing area followed by the words "Tenants Association".

(4) The provisions of Schedule 3 shall have effect with respect to the functions, constitution and proceedings of the association.

**Right to buy.**

32.(1) The Government may sell public housing to its tenants and may create in favour of such tenants a right to buy such public housing at a discount to its market value at such discount and otherwise on such terms and conditions, including but not limited to resale restrictions, as the Government considers appropriate.

(2) The proceeds of all sales under subsection (1) shall be reinvested in public housing.

(3) The Government may make regulations prescribing the circumstances in which the right to buy shall exist, the formula for the computation of the sale price, the terms and conditions of such sale and applicable resale conditions and restrictions.

**PART II**  
**Landlord and Tenant: Residential Premises**

**Interpretation.**

33.(1) In this Part, unless the context otherwise requires—

“communal services tenement” means a dwelling that is for the time being declared by the Minister under section 39 to be a communal services tenement;

“court” means the Supreme Court;

“dwelling” means domestic premises which are used exclusively for residential purposes;

“financially dependent” means a person who is a member of the tenant’s family who is in receipt of income below the amount prescribed from time to time under this Act and was dependent on the tenant at the time of the tenant’s death or departure under the terms of this Act;

“former Act” means the Landlord and Tenant Act 1983, as amended;

“landlord” in relation to this Part, includes any person who under any lease or tenancy agreement is entitled, as between himself and the tenant or other lessee of the premises, to the rents and profits of the demised premises that are payable under the lease or agreement;

“lease” or “tenancy agreement” includes every agreement for the letting of any premises, whether it is oral or in writing;

“let” in relation to this Part, includes to sub-let, and “letting” includes a sub-letting;

“Minister” means the Minister with responsibility for housing;

“mortgage” includes a charge, and also includes a lien;

“net annual value” has the same meaning as it has in section 294 of the Public Health Act or any replacement or re-enactment thereof;

“notice to quit” means a notice to terminate a tenancy (whether it is a periodical tenancy or a tenancy for a term of years certain) that is given in accordance with the express or implied terms of the tenancy;

“rateable value” in relation to a dwelling house—

- (a) in the case of a dwelling that was first assessed on or before the commencement of this Act, means the rateable value of those premises on the commencement of this Act; and
- (b) in the case of a dwelling that was first assessed after the commencement of this Act, means the rateable value of those premises on the date on which they were first assessed;

“rates” means any general rate levied under section 271 of the Public Health Act and any water rate levied under section 117 of that Act or any replacement or re-enactment thereof

“recoverable rent”, in relation to a dwelling, means the maximum rent that is recoverable from the tenant under this Act;

“Rent Assessor” means the rent assessor appointed under section 37;

“retail price index” means the average measure of change in the prices of goods and services bought for the purposes of consumption by the majority of households in Gibraltar as published on a quarterly basis by notice in the Gazette;

“statutory rent” in relation to a tenancy of any dwelling, means the statutory rent prescribed for the time being under this Act;

“tenancy” means a tenancy that is created, either immediately or derivatively, out of—

- (a) a tenancy held by any person from the Crown; or
- (b) an estate in fee simple;

whether by way of a lease, or of an underlease, or of an agreement for a lease or underlease or of a tenancy agreement; and also means, in relation to a dwelling, a sub-tenancy; but does not mean in any case a mortgage term or any interest arising in favour of a mortgagor by his attorning tenant to his mortgagee;

“terms” in relation to a tenancy, includes conditions.

“Tribunal” means the Housing Tribunal established under section 82.

(2) In this Part, unless the context otherwise requires—

- (a) references to the granting of a tenancy and to demised property shall be construed by reference to the definition of the expression “tenancy” in subsection (1); and
- (b) the terms “landlord”, “mortgagee” and “mortgagor” include any person from time to time deriving title under the original landlord, mortgagee or mortgagor.

**Definition of “tenant”.**

34.(1) In this Part, unless the context otherwise requires, “tenant”—

- (a) includes in every case, a sub-tenant, and any person from time to time deriving title under the original tenant;
- (b) in relation to this Part means an individual and includes—
  - (i) the widower or widow of a tenant, if he or she was living with the tenant at the date of the tenant’s death;
  - (ii) where the tenant leaves no widower or widow, the member of the family of the tenant (if any) determined in accordance with subsections (2) and (3); and
  - (iii) where the tenant ceases to occupy the dwelling for a reason prescribed for the purposes of this section, the spouse or other member of the family of the tenant (if any) determined in accordance with subsections (2) and (3);

- (c) includes a person who immediately before coming into operation of section 36A of the former Act was in lawful occupation of premises registered under the provisions of the Labour from Abroad Accommodation) Act.

(2) For the purposes of this section, the expression “the member of the family” means a son or daughter of the tenant who has lived with the tenant for not less than 12 months immediately before the tenant’s death or departure from the dwelling for a prescribed reason, and also means, where there are no such sons or daughters, any other member of the family who has so lived with the tenant and was at the time of the tenant’s death or departure financially dependent on him.

(3) Where there is more than one member of the family to whom subsection (2) applies, the expression “the member of the family” means—

- (a) the one of those members who is determined by unanimous agreement in writing between all of those members and served on the landlord within 3 months after the death or departure from the dwelling for a prescribed reason of the tenant; or
- (b) where those members cannot agree unanimously within that period, the one of them who is designated as such for the purposes of subsection (1) by the court, on an application made by any of those members to it within 4 months after the death or departure from the dwelling for a prescribed reason of the tenant.

(4) In this section the expression “first tenant” shall include existing tenants (as defined in Schedule 6) and new first tenants.

(5) Any person who after the commencement of this Act becomes a tenant of a dwelling to which this Part applies shall for the purposes of this Part be the new first tenant of the dwelling.

(6) Subject to subsection (8), the right to retain possession of a dwelling to which this Part applies shall pass from the first tenant to the first successor and then (if applicable) to the second successor in the manner specified in subsection (7).



(7) On the death or departure from the dwelling for a prescribed reason of the tenant under a statutory tenancy (in this subsection called “the first successor”) whose right to retain possession by virtue of this Part or the former Act arose on the death or departure from the dwelling for a prescribed reason of the first tenant under a tenancy to which this Part or the former Act applied, any member of the family of the first successor or (if more than one) the one of them determined or designated in the manner specified in subsection (3), shall be the second successor for the purposes of this section and the right to retain possession by virtue of this Part shall pass to him.

(8) In the case of a new first tenant the right to retain possession of a dwelling to which this Part applies shall pass from the new first tenant to the first successor only.

**Application to the Crown.**

35.(1) Subject to subsection (2), but notwithstanding any other rule of law, where there subsists or at any material time has subsisted, in relation to any dwelling, an interest belonging to the Crown, those premises shall be a dwelling to which this Part applies, to the same extent as they would be if no such interest had subsisted in relation to those premises.

(2) Where a tenant holds his interest as tenant, in any dwelling to which this Part applies, directly from the Crown, that Part shall not apply to that tenant or tenancy, but nothing in this subsection shall restrict the application of this Part to any other tenant or tenancy where the other tenancy is not held directly from the Crown.

**Forfeiture clauses in Crown leases.**

36.(1) This section applies to every tenancy where the interest of the Landlord belongs to the Crown.

(2) Notwithstanding any provisions of this Part to the contrary, where the lease creating a tenancy to which this section applies, provides for a right of entry or forfeiture for a breach by the lessee of any covenant or condition of the lease, and the lessee is in breach of such covenant or condition for a period of not less than three months—

- (a) the provisions of section 14 of the Conveyancing and Law of Property Act 1881 of the United Kingdom (44 and 45 Vict. Ch. 41) shall not have effect, and
- (b) the right of entry or forfeiture shall be enforceable against the lessee.

**Rent Assessor.**

37.(1) The Minister shall appoint a fit and proper person to be the Rent Assessor.

(2) The Minister may, by regulation, prescribe fees to be charged, by whom such fees shall be payable, and to whom they shall be paid in respect of any of the several matters, which by virtue of the provisions of this Part, may be referred to the Rent Assessor.

**Functions and powers of Rent Assessor.**

38.(1) The Rent Assessor shall have such functions and powers as are conferred on him by this Act or by regulations made under this Part.

(2) Except as otherwise provided for in this Act, the functions and powers of the Rent Assessor shall be exercisable by him, in relation to a tenancy, on the application of the landlord or the tenant.

**Communal services tenements.**

39. The Minister may from time to time, by notice in the Gazette, declare to be a communal services tenement for the purposes of this Part any dwelling where—

- (a) the dwelling forms part of premises let in parts as dwellings; and
- (b) the tenant of the dwelling shares lavatory facilities in common with other tenants of a dwelling in the same premises.

**Application of this Part.**

40.(1) Subject to the provisions of this Act, this Part shall apply to dwellings but only to the following extent, namely—

- (a) it shall apply to every dwelling that has been erected on or before the 1<sup>st</sup> January 1945, provided that the rights exercised and thus accrued by a tenant before the 1<sup>st</sup> January 2007 under the former Act in respect of a dwelling that has been erected on or before the 1<sup>st</sup> March 1959 shall not be prejudiced and shall persist as if it were a tenancy to which this Part applied.
- (b) it shall apply to such a dwelling, whenever it is so let, if but only if it is let as a separate dwelling; and
- (c) it shall apply to every part of such a dwelling that is let as a separate dwelling, as if that part were a separate dwelling;

and every such dwelling or part of a dwelling shall be deemed to be a dwelling to which this Part applies.

(2) Any room in a dwelling that is subject to a separate letting, wholly or partly, as a dwelling shall for the purposes of this Part be treated as a part of a dwelling let as a separate dwelling.

(3) The application of this Part to a dwelling house shall not be excluded by reason only of the fact that part of the premises is used as business premises.

(4) Where any land or premises are let together with a dwelling and the rateable value of the land or premises, if let separately, would be less than 25 percent of the rateable value of the dwelling, if let separately, the land or premises shall for the purposes of this Part be treated as part of the dwelling.

(5) Except as provided in subsection (4), this Part shall not apply to a dwelling that is let together with land other than the site of the dwelling.

(6) Where, in order to determine the rateable value of a dwelling, it is necessary to apportion the rateable value of the property in which the dwelling is comprised—

- (a) the court may on application by either party make such apportionment as it considers just; and
- (b) the decision of the court as to the amount to be apportioned to the dwelling shall be final and conclusive.

(7) “current year” for the purposes of this section, means the year in which a matter is referred under this Part to the Rent Assessor or to the Tribunal or in any application of the provisions of this Part, the year in which that application was first made.

(8) Subject to the proviso to subsection (1)(a), this Part shall not apply to any dwelling house that has been erected after the 1<sup>st</sup> January 1945 or to any tenancy to which the former Act did not apply.

(9) This Part shall not apply to a dwelling which upon the coming into effect of this Act is vacant.

(10) Upon application of the landlord, and upon being satisfied that any of the circumstances described in subsection (8) or (9) exist, the Rent Assessor shall issue a certificate to the effect that the dwelling is a dwelling to which this Part does not apply, and such a certificate shall be conclusive on that issue absent manifest error, but the absence of such a certificate shall not detract from the non-applicability of this Part to such dwelling.

**Statutory rent.**

41.(1) Except where otherwise provided in this Act, the statutory rent of any dwelling to which this Part applies shall be the rent appropriate to that dwelling as assessed by the Rent Assessor in accordance with the criteria set out in Part 1 of Schedule 4 and such further criteria as may be prescribed.

(2) The application for assessment by the Rent Assessor under subsection (1) shall be in such form and be undertaken in such manner as may be prescribed in regulations.

(3) On determination of an application for assessment the Rent Assessor shall issue to the landlord (and tenant, if, any) a notice in the form prescribed setting out his determination whereupon the rent assessed in the notice shall become the statutory rent of the dwelling until further determination under the provisions of this Act.

(4) An assessment of rent shall be valid for a period of three years from the date of the notice issued under subsection (3).

(5) Notwithstanding any provision of this section the issue of a notice of assessment shall not prevent any application under sections 43 or 49.

(6) There shall be a Register of Assessed Rent which will be available to the public for inspection on payment of the prescribed fee and which shall contain such particulars of rents assessed under this section as may be prescribed.

(7) Subject to subsections (10) and (11) and Schedule 6, the statutory rent of any dwelling to which this Part applies and in respect of which a tenancy was in existence immediately before the commencement of this Act shall be the rent appropriate to that dwelling house as calculated in accordance with Part II of Schedule 4.

(8) Notwithstanding subsection (7), in the case of any tenancy in existence immediately before the commencement of this Act—

- (a) where the Rent Assessor is satisfied, having regard to all the circumstances of the case, including the design, condition and location of the dwelling, that it is reasonable to do so, he may increase or decrease the statutory rent of that dwelling, as calculated in accordance with subsection (7), by not more than 25 per cent; and
- (b) where the Rent Assessor is satisfied that the landlord has, in the circumstances specified in section 46 carried out substantial repairs to a dwelling (other than works described in section 43(3) at any time before the 1st January 2007 he may increase the statutory rent by not more than 40 percent of the amount of the existing rent.

(9) The Rent Assessor may only exercise his powers under subsection (8) once in respect of any dwelling.

(10) Where at the time of commencement of this Act a tenancy was held under the provisions of section 15 of the former Act the rent so determined under the former Act shall be the statutory rent under this Act.

(11) Subject to section 63 and to any Regulations made under section 76 where at the time of commencement of this Act a tenancy was held under the provisions of section 36A of the former Act the statutory rent under this Act shall be the rent appropriate to that dwelling as calculated in accordance with Part II of Schedule 4 and all remaining tenants of that dwelling shall be jointly and severally liable therefor.

(12) The statutory rent for a dwelling to which subsections (1), (7), (10) or (11) apply shall be reviewed annually on the 1st January in each calendar year and increased by the percentage by which the retail price index has increased during the preceding twelve months or by such greater percentage as the Minister may prescribe by notice in the Gazette—

provided that in the calendar year of commencement of this Act the Minister may prescribe any such increase in statutory rents at anytime after such commencement and such increased rents shall become payable by the tenant as from such date as the Minister may prescribe.

(13) Any person aggrieved by an assessment of the Rent Assessor under subsection (1), may appeal to the Tribunal by filing notice of appeal in the prescribed form within 21 days of such assessment.

(14) On an appeal under subsection (13), the Tribunal shall have the same powers as it has when considering applications under section 58.

**Rating adjustments.**

42. Where the rates payable in respect of any dwelling that is a communal services tenement are increased or decreased, the statutory rent of the dwelling shall be increased or decreased by the same amount.

**Adjustments for improvements.**

43.(1) Subject to the provisions of this section, on application by the landlord, the Rent Assessor may increase the existing statutory rent of any dwelling where the Rent Assessor is satisfied that the landlord has since the commencement of the former Act incurred expenditure on improving or structurally altering the dwelling.

(2) The Rent Assessor shall not under subsection (1) increase the statutory rent of any dwelling—

- (a) by any amount exceeding the rate of 8 per cent per annum of the amount expended; or
- (b) in respect of any expenditure for which he has granted an increase under section 41(8); or

- (c) where the tenant proves that the expenditure was unnecessary and that he was the tenant at the time of the expenditure and did not consent in writing to the work.

(3) Where the works have been carried out by the landlord in consequence of a notice served on him under the Public Health Act on the ground that the dwelling is not in all respects reasonably fit for human habitation, or that its condition constitutes a nuisance, the Rent Assessor shall not under subsection (1) increase the statutory rent in respect of such expenditure unless, on application by the landlord, the Rent Assessor is satisfied—

- (a) that the condition of the dwelling is due wholly or partly to the tenant's neglect, default or breach of express agreement; or
- (b) that for any other reason it is equitable that an increase should be made.

**Restrictions on rent increases.**

44.(1) Notwithstanding any agreement to the contrary, where a landlord desires to increase the rent payable by a tenant in respect of a tenancy of a dwelling to which this Part applies—

- (a) the landlord shall first give notice of his intention to do so to the tenant; and
- (b) no such increase shall be due or recoverable until or in respect of any period prior to the expiration of 3 months after the date of the service of the notice on the tenant.

(2) Notwithstanding subsection (1), where an increase is permitted under section 42 (which relates to rates) only 2 weeks' notice of the landlord's intention shall be required.

(3) Notwithstanding subsection (1), where an increase is permitted by section 41(12) (which relates to annual increases in the statutory rent), such increased rent shall be due and payable with effect from 1st January or such other date as the Minister may prescribe in each year without need for notice.

**Restrictions on recovery of possession.**

45.(1) No order or judgment for the recovery of possession of any dwelling to which this Part applies or for the ejection of a tenant therefrom shall be made or given, unless the court considers it reasonable to make such an order or give such a judgment and either—

- (a) the court has power so to do under the provisions of Schedule 5; or
- (b) the court is satisfied that suitable alternative accommodation is available for the tenant or will be available for him when the order or judgment takes effect.

(2) A certificate issued by the Rent Assessor, certifying that suitable alternative accommodation is available for the tenant by a date specified in the certificate, shall be conclusive evidence that suitable accommodation will be available for him by that date.

(3) Where no such certificate is produced to the court, accommodation shall be suitable if—

- (a) it consists either—
  - (i) of a dwelling to which this Part applies; or
  - (ii) of premises to be let as a separate dwelling on terms which will, in the opinion of the court, afford to the tenant security of tenure reasonably equivalent to the security afforded by this Part in the case of dwellings to which this Part applies; and
- (b) it is, in the opinion of the court either—
  - (i) similar, as regards the rental and extent to the accommodation afforded by dwellings provided by the Government for persons whose needs as regards extent are, in the opinion of the court, similar to those of the tenant and his family; or



- (ii) otherwise reasonably suitable to the means of the tenant and to the needs of the tenant and his family as regards extent and character.

(4) For the purposes of subsection (3), a certificate of the Rent Assessor stating—

- (a) the extent of the accommodation afforded by dwellings provided by the Government to meet the needs of tenants with families of such numbers as may be specified in the certificate; and
- (b) the amount of the rents charged by the Government affording accommodation of that extent;

shall be conclusive evidence of the facts so stated.

(5) Where—

- (a) an application is made for an order or judgment for recovery of possession of a dwelling to which this Part applies; or
- (b) any such order or judgment is made or given; or
- (c) an order or judgment for the ejection of a tenant from any such dwelling is given or made;

the court at any time before execution of the order or judgment (whether or not the application, order or judgment has been made before or after the commencement of this Act) may adjourn the application, or stay or suspend execution on the order or judgment, or postpone the date of possession for such period or periods as it thinks fit, subject to such conditions (if any) in regard to payment by the tenant of any arrears of rent, rates, or mesne profits, and subject to such other conditions (if any) as the court thinks fit, and, if those conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(6) Where—

- (a) any order or judgment has been made or given before the date of commencement of the Act but not executed; and

- (b) in the opinion of the court, the order or judgment would not have been made or given if this Part had been in force at the time when the order or judgment was made or given;

the court may, on application by the tenant, rescind or vary the order or judgment in such manner as the court thinks fit for the purpose of giving effect to this Part.

(7) Notwithstanding any provision to the contrary in the Supreme Court Act—

- (a) every warrant for delivery of possession of any dwelling to which this Part applies; and
- (b) every warrant to enter and give possession of any such dwelling,

shall remain in force for 3 months from the day next after the last day named in the order or judgment for delivery of possession or ejection and for such further period or periods, if any, as the court may from time to time (whether before or after the expiration of that period of 3 months) direct.

(8) Where a landlord has obtained an order or judgment for possession or ejection under this section on any of the grounds specified in paragraphs (f) and (g) of Schedule 5 and it subsequently appears to the court that the order or judgment was obtained by misrepresentation or the concealment of material facts, the court may order the landlord to pay the former tenant such sum as appears sufficient as compensation for damage or loss sustained by that tenant as the result of the order or judgment.

(9) Notwithstanding anything to the contrary in the original contract of tenancy, or in any other provision in this Part, a landlord who obtains an order or judgment for the recovery of possession of a dwelling to which this Part applies, or for the ejection of the tenant, shall not be required to give any notice to quit to the tenant.

(10) Where, in accordance with the provisions of any other Act, an order is made by any court for the demolition of a dwelling and that court was satisfied that the demolition of that dwelling was in whole or in part necessitated by the failure of the landlord to maintain such dwelling, or the premises in which it is situated, in a fit and proper condition, the provisions

of this section shall apply in so far as they relate to the provision of suitable alternative accommodation for the tenant.

**Temporary repossession to carry out repairs.**

46.(1) Notwithstanding any other provision in this Act, where—

- (a) a court has ordered the landlord of a dwelling to which this Part applies to carry out any repairs to the dwelling; and
- (b) it is necessary, in order to carry out the repairs, for the landlord to occupy temporarily any part of it that is in the possession of the tenant; and
- (c) the court is satisfied that suitable temporary accommodation is available for the tenant, at a rent not in excess of that being currently paid by the tenant, while the repairs are carried out, or will be so available when any order made under this subsection takes effect;

the court may make an order requiring the tenant to vacate the dwelling temporarily in order that the repairs may be carried out by the landlord.

(2) An order under subsection (1) may be made against any sub-tenant of the dwelling or of any part of it to which this Part applies in the same manner as it may be made against the tenant.

(3) An order under subsection (1) shall not terminate the tenancy of any tenant or the sub-tenancy of any sub-tenant.

(4) Where the landlord fails, within such time as the court thinks reasonable after the making of an order under subsection (1), to carry out the repairs to which the order relates, the court may on the application of the tenant or of any sub-tenant—

- (a) order the landlord to withdraw from temporary occupation of the dwelling, or of any sub-let part of it, within such period as the court specifies; or
- (b) make such other order as the court thinks just.

(5) A landlord who fails to comply with an order made against him under subsection (4) shall be liable to attachment.

**Acceptance of rent after notice to quit.**

47. Where the landlord of a dwelling to which this Part applies has served a notice to quit on a tenant, the landlord may accept rent from the tenant for any period, not exceeding 3 months from the expiry of the notice, without prejudicing his right to possession of the premises.

**Restrictions on distraint.**

48.(1) No person may levy distress for the recovery of any rent for a dwelling to which this Part applies, without the leave of the court.

(2) On an application for leave under subsection (1), the court shall have the same powers of adjournment, stay, suspension, postponement, imposition of conditions, discharge, rescission and variation as it has under section 45 on applications for the recovery of possession.

**Application for decontrol.**

49(1) Where a dwelling to which this Part applies becomes vacant after the commencement of this Act; and—

- (a) works or structural alterations of a type and standard prescribed by regulations have been carried out to the dwelling; and
- (b) the effect of the works or structural alterations are that they shall substantially improve the condition and size or amenities of the dwelling;

the landlord may make an application to the Rent Assessor who shall, if he is satisfied that the requirements of this section have been met, issue a certificate under this section certifying that this Part shall not apply to the dwelling.

(2) If works or structural alterations such as are referred to in subsection (1) are to be carried out, the landlord may apply to the Rent Assessor for confirmation that if certain specified works are carried out to the satisfaction of the Rent Assessor, the Rent Assessor will upon completion of those

works issue a certificate under subsection (1) and the landlord shall be bound by any such certificate.

(3) An application under subsection (1) or (2) may be made by a landlord in respect of a dwelling that is not vacant at the time of the application if and only if—

- (a) the tenant of the dwelling signifies his consent in writing; or
- (b) in the absence of such consent if the Rent Assessor is satisfied that the proposed works or structural alterations shall not commence until the said dwelling is vacant and that no undue hardship will be caused to any tenant of the dwelling by the proposed works or structural alterations; or
- (c) the tenant has been relocated to alternative accommodation with his consent or in the absence of his consent by order of the court that may only be granted after taking into account such factors and in such circumstances as may be prescribed.

(4) In determining whether a certificate should be issued under subsection (1), the Rent Assessor—

- (a) may take into account the standard of such Government housing as may be appropriate as comparables to assist in the making of his determination; and
- (b) shall take into account such other factors or other matters as may be prescribed.

(5) Subject to subsection (6), a certificate issued under this section shall take effect from the date, as determined by the Rent Assessor, on which the works or structural alterations were completed.

(6) Where a certificate is issued under this section in respect of any works or structural alterations that are to be carried out, the determination shall have effect from the date on which the structural alterations are completed, as certified by the Town Planner.

(7) When a certificate made under this section comes into effect the premises to which it relates shall thereupon cease to be a dwelling to which this Part applies.

(8) Any person aggrieved by a decision of the Rent Assessor under this section may appeal to the Tribunal by filing notice of appeal with the secretary of the Tribunal in the prescribed form within 21 days of the date on which such decision or confirmation is notified to him.

(9) On an appeal under this section the Tribunal may confirm, vary or quash the decision of the Rent Assessor and if deciding to vary or quash any decision may do so on such terms as it considers appropriate.

(10) Notice and copies of all applications for decontrol, for applications for confirmation under subsection (2) and of decisions of the Rent Assessor shall be given to the tenant of every dwelling affected thereby.

**Prohibition on assignment and sub-letting etc.**

50.(1) No tenant of a dwelling to which this Part applies shall after the date on which this Act comes into effect, assign any tenancy or sub-let any part of the dwelling or part with exclusive possession of any part thereof on licence or any other terms.

(2) A tenant who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

**Increased statutory rent where premises sub-let.**

51.(1) Where the tenant of a dwelling to which this Part applies has before the commencement of this Act, sub-let any part of the dwelling the statutory rent shall be deemed to have been increased as from the date of commencement of this Act by the amount of the rent received by the tenant from the sub-letting.

(2) Subject to subsection (3), the amount of the increase shall be due and recoverable by the landlord from the tenant, and such increase shall have effect as long, but only as long, as the sub-tenancy continues.

(3) No amount shall be recoverable under this section in respect of any period exceeding 12 months.

**Recovery of excessive rent on sub-let part.**

52.(1) Where, in any proceedings, it appears to the court either—

- (a) that no apportionment of the statutory rent has been made as between the dwelling and the part sub-let; or
- (b) that no determination of the recoverable rent of the sub-let part has been made;

the court shall make the apportionment or determination, whether or not it makes or gives an order or judgment for recovery of possession or ejection.

(2) Where—

- (a) the statutory rent has been apportioned (under subsection (1) or otherwise) as between the dwelling and the part sub-let, or the recoverable rent for the sub-let part has been determined (under subsection (1) or otherwise); and
- (b) the tenant thereafter (at a date after the commencement of this Act) charges for the sub-let part a rent that exceeds the recoverable rent for that part;

the tenant is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(3) It shall be a defence to a charge under subsection (2) if the tenant proves that—

- (a) he did not at any material time know the recoverable rent of the part sub-let; and
- (b) he could not by reasonable inquiry have ascertained the recoverable rent; and
- (c) the charging of the excess rent was the result only of accidental miscalculation.

**Sub-tenant's option to take surrendered tenancy.**

53.(1) Where—

- (a) a tenant of a dwelling to which this Part applies has prior to the date of commencement of this Act lawfully sub-let any part of the dwelling; and
- (b) the sub-let part is also a dwelling to which this Part applies; and
- (c) the tenant has surrendered his tenancy;

the sub-tenant shall have the first option, exercisable in accordance with subsection (2), to take over the surrendered tenancy.

(2) Before re-letting the dwelling the tenancy of which has been surrendered, the landlord shall serve notice in writing in the prescribed form on the sub-tenant of the surrender of the tenancy and the sub-tenant shall, if he wishes to do so, exercise the option in writing served on the landlord within 14 days after the landlord serves the notice under this subsection on him.

(3) Where there is more than one sub-tenant to whom subsection (1) refers—

- (a) the landlord shall serve notice under subsection (2) on every such sub-tenant; and
- (b) if more than one sub-tenant exercises his option under subsection (2), the court shall in the absence of agreement between the landlord and the sub-tenants determine which sub-tenant shall become the tenant; and
- (c) each sub-tenant who exercises his option shall be jointly and severally liable, with every other sub-tenant who exercises his option, to the landlord for the payment of the statutory rent for the tenancy for the period from the date of its surrender until the date of the agreement or determination.

(4) Notwithstanding any other provision in this section, where the Tribunal is satisfied, on the application of the landlord, that he requires the dwelling for occupation as a residence for—

- (a) himself; or



- (b) any son or daughter of himself or of his wife who is over the age of 18 years;

no option shall be exercisable under this section by a sub-tenant and any option exercised before the making of an application under this section shall be of no effect.

**Sub-lettings after the date of commencement void.**

54.(1) Any sub-letting of all or part of a dwelling to which this Part applies after the date of commencement of this Act shall be void.

(2) The landlord of any dwelling or part thereof which has been unlawfully sub-let, and which sub-letting is void under subsection (1), shall be entitled to regain possession of the dwelling or part thereof, as the case may be.

**Conditions of statutory tenancies.**

55.(1) Where a tenant by virtue of this Part retains possession of any dwelling to which this Part applies—

- (a) he shall, so long as he does so, observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, to the extent that they are consistent with this Part; and
- (b) he may only give up possession (unless the landlord otherwise agrees) on giving such notice as he is required to give for that purpose under the original contract of tenancy; and
- (c) he shall not, as a condition of giving up possession, ask or receive the payment of any consideration by any person other than the landlord; and
- (d) where, as a condition of giving up possession, he requires that any furniture or other article shall be purchased—
  - (i) he shall state the price he demands, if he is requested to do so by the person of whom the demand is made; and

- (ii) he shall not demand or accept a price exceeding the reasonable price of the furniture or article.

(2) A tenant who contravenes subsection (1)(c) or (d) is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

(3) Where a tenant is convicted of an offence against subsection (2), the court by whom he is convicted may, in lieu of any other method of recovery under this Act, order him to repay to the person from whom he has received it—

- (a) the value of any consideration referred to in paragraph (c) of subsection (1); or
- (b) the amount by which the price of any furniture or other article referred to in paragraph (d) of subsection (1) exceeds its reasonable price;

as the case requires.

(4) In every tenancy of a dwelling to which this Part applies, the following conditions shall apply—

- (a) the landlord shall insure the dwelling (but not its contents) against loss or damage by fire; and subject to paragraph (b) where fire destroys the dwelling, and the landlord rebuilds it, the tenant shall be entitled to the first option to take a tenancy of the rebuilt dwelling, which option shall be exercisable within one month after the landlord notifies the tenant that the dwelling has been rebuilt;
- (b) the tenant shall not be entitled to the option described in paragraph (a) if the landlord makes suitable alternative accommodation available to the tenant, and for these purposes suitable alternative accommodation has the same meaning as in section 45;
- (c) the tenant shall be liable to maintain all electrical installations and interior fixtures and fittings in good repair, in accordance with the provisions of Schedule 7;

- (d) the tenant shall allow the landlord access to the dwelling and all reasonable facilities in order to carry out any repairs that the landlord is entitled or obliged to carry out.

(5) Nothing in subsection (4)(c) shall relieve any person from liability for negligence.

**Statement as to statutory rent.**

56. A landlord of any dwelling to which this Part applies shall, on being so requested in writing by the tenant of the dwelling, supply him with a statement in writing as to what is the statutory rent of the dwelling, and if, without reasonable excuse, he either fails within 14 days to do so, or supplies a statement which is false in any material particular, he is liable on summary conviction to a fine at level 4 on the standard scale.

**Rent record and tenancy particulars.**

57.(1) The landlord of a dwelling to which this Part applies shall—

- (a) keep a written record of all rent paid by the tenant;
- (b) provide a receipt to the tenant for all rent paid;
- (c) produce a copy of the said record to the Rent Assessor at the request of the Rent Assessor.

(2) The landlord shall provide to the tenant in writing a statement of the prescribed particulars in respect of the tenancy and any changes thereto.

(3) If the landlord fails to comply with any of the requirements of this section, he, and any person who on his behalf demands or receives rent in respect of the dwelling, is, in respect of each week in which the failure occurs or continues, guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

(4) If—

- (a) any person in any written record of rents paid or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which by virtue of this Part is irrecoverable; or

- (b) where any such entry has been made by or on behalf of any landlord, if the landlord on being requested by or on behalf of the tenant so to do, refuses or neglects to cause the entry to be deleted within 7 days;

that person is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

(5) It shall be defence to a charge under subsection (4) that the defendant believed bona fide that the rent was recoverable.

**Reference to Tribunal to determine rent.**

58.(1) Where any contract, has, whether before or after the commencement of this Part, been entered into whereby a dwelling to which this Part applies has been let, then subject to the provisions of this section, the landlord or the tenant may in the prescribed form apply to the Tribunal to determine—

- (a) what is the correct amount of the statutory rent payable in respect of the dwelling under this Part; and
- (b) whether and to what extent the amount of the statutory rent as so determined may be increased or decreased in accordance with this Part.

(2) The Tribunal shall not be required to entertain an application under this section if it is satisfied, having regard to the length of time that has elapsed since any previous application made by the same party and to any other circumstances, that the application is frivolous or vexatious.

(3) On hearing an application under this section, the Tribunal shall determine the statutory rent of the dwelling to which the application relates in accordance with the criteria laid down in this Part.

(4) In any proceedings before the Tribunal under this section, where the landlord and the tenant are in dispute as to the amount of the statutory rent for the dwelling to which the application relates, the onus shall be on the landlord to prove the correct amount of the statutory rent.

(5) Where the Tribunal determines the statutory rent in respect of any dwelling under this section, that rent shall be the statutory rent for the dwelling as at the date at which it is to be determined.

**Recovery of rent.**

59.(1) Notwithstanding any agreement to the contrary, where the rent of any dwelling to which this Part applies exceeds the rent that is for the time being permitted under this Part, the amount of the excess shall be irrecoverable from the tenant.

(2) Where any sum has been paid on account of any rent, being a sum which is under this Part irrecoverable from the tenant, the sum so paid shall be recoverable from the landlord who received the payment or from his legal personal representative, and any such sum may, without prejudice to any other method of recovery, be deducted by the tenant from any rent payable by him to the landlord.

(3) Any sum paid by a tenant which under subsection (1) is recoverable by the tenant shall be recoverable at any time within 6 months from the date of payment, but not afterwards.

**Premiums.**

60.(1) Subject to the provisions of this section, a person shall not as a condition of the grant, renewal or continuance of a tenancy of a dwelling to which this Part applies, require the payment of any premium in addition to the rent.

(2) Notwithstanding the provisions of subsection (1) where the rent payable under the terms of a tenancy includes payments in respect of the use of furniture, the grantor of the tenancy may require—

- (a) that there shall be paid to the grantor so much of the outgoings discharged by him as is referable to any period after the grant takes place; or
- (b) that there shall be paid to the grantor a reasonable amount in respect of goodwill of a business, trade or profession, being goodwill transferred to the tenant in connection with the grant or accruing to him in consequence thereof.

(3) Where after the date of commencement of this Part, any premium has been paid which, or the whole of which, could not lawfully be required under this section, the amount of the premium or so much of it as could not lawfully be required or have been required, as the case may be, shall be irrecoverable by the person by whom it was paid.

(4) A person requiring any premium in contravention of this section is guilty of an offence and is liable on summary conviction to a fine at level 5 on the standard scale, and the court by which he is convicted may order the amount of the premium, or so much of it as cannot lawfully be required under this section, to be repaid to the person by whom it was paid.

(5) Nothing in this section shall render any amount recoverable more than once.

(6) Where the purchase of any furniture or other articles is required as a condition of the grant, renewal, or continuance of a tenancy of a dwelling to which this Part applies, the price demanded shall, at the request of the person on whom the demand is made, be stated in writing, and, if the price exceeds the reasonable value of the articles, the excess shall be treated as if it were a fine or premium required to be paid as a condition of the grant, renewal, or continuance, and the provisions of this section, including penal provisions, shall apply accordingly.

**Jurisdiction to grant possession.**

61. The court shall have jurisdiction to hear and determine any action for the recovery of possession of a dwelling to which this Part applies.

**Rent relief.**

62.(1) A tenant of any dwelling to which this Part applies and in respect of which the rent payable does not exceed the statutory rent specified in Schedule 4, may if his household income is below the prescribed amount apply to the Principal Housing Officer in such form as may be prescribed for rent relief in accordance with the rules and formulae prescribed in that respect.

(2) Any person aggrieved by the decision of the Principal Housing Officer as to his entitlement to receive rent relief under this section or as to the amount of such relief allowed by the Principal Housing Officer, may within 21 days of receipt of the decision, appeal to the Housing Tribunal.

(3) On hearing the appeal, the Tribunal may, subject to the prescribed terms and conditions, confirm, vary or quash the assessment of the Principal Housing Officer.

(4) The amount of any rent relief which is allowed under this section shall be paid by the Principal Housing Officer to the tenant by way of subsidy of the rent payable by the tenant in respect of the dwelling.

(5) Rules relating to rent relief under this section may, inter alia, make provision precluding from entitlement to such relief any tenant who is directly or indirectly through an interest in a legal entity the owner or part owner of the dwelling or related to such owner by family tie, as may be prescribed or any tenant in respect of a dwelling which is not occupied by him as his principal residence.

**Register of section 41(11) tenancies.**

63.(1) There shall be a register of tenancies which at the commencement of this Act were held under section 36A of the former Act.

(2) The Rent Assessor shall keep a register in the prescribed form and shall enter in the register the details of any tenancy that is required to be registered under this section.

(3) Every tenancy to which this section applies, being a tenancy that has commenced on or before the commencement of this Act, shall be registered by the landlord or by the tenant in the prescribed manner within 3 months after the commencement of this Act.

(4) If the tenancy is not registered within the period required by subsection (3), the statutory rent of the tenancy shall be assessed by the Rent Assessor in accordance with the provisions of section 41(1).

(5) Where during the period of any tenancy that is to be registered under this section, any change occurs in the particulars of the tenancy (being prescribed particulars), the landlord shall within one month of the date of change notify the Rent Assessor in writing of the change, and the Rent Assessor shall amend the register accordingly.

(6) The register shall be open to inspection by any member of the public on payment of the prescribed fee.

(7) Any person who—

- (a) fails to comply with any requirement imposed on him by any of subsections (3) or (5);
- (b) for the purposes of or in connection with the registration of a tenancy, or having been required under this section to provide any information, knowingly provides any information that is untrue;

is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

**Restriction on right to possession in certain cases.**

64.(1) Where proceedings are taken against a tenant of any premises to which this Part applies for the recovery of possession of the dwelling or for the ejection of the tenant, and it appears to the court that the proceedings are harsh or oppressive or that exceptional hardship would be caused to the tenant by the making or giving of an order or judgment for possession or ejection, the court may refuse to make or give such an order or judgment or may adjourn the application for or stay or suspend execution of any such order or judgment or postpone the date of possession for such period or periods, and subject to such conditions as it thinks proper, and, if such conditions are complied with, the court may, if it thinks fit, discharge or rescind any such order or judgment.

(2) For the purpose of the exercise of its jurisdiction under this section, the court may direct that the tenancy shall be treated as a subsisting tenancy notwithstanding the determination of the same by any notice to quit or similar notice or otherwise and may set aside and annul any such notice accordingly, and shall, subject to the provisions of this Part, have power to determine what increase of rent (if any) is fair and reasonable, having regard to the character and condition of the premises and the rents of similar premises in the locality.

(3) The court shall not exercise any of its powers under subsections (1) or (2) in any case where it is satisfied that greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it.



(4) In any such proceedings, an order or judgment for possession or ejection against the tenant of the premises shall not, unless the court otherwise directs, be operative against a tenant of a part of the premises which is lawfully sub-let to him, and the court shall, in relation to that part of the premises and the tenant thereof, have the same powers and jurisdiction as it has in relation to the whole premises and the tenant thereof.

(5) In order to assist the court in the determination of questions arising under this Part in relation to the rent, character or condition of premises, the Minister may establish reference committees to whom such questions may be referred by the court for consideration and report.

**Compensation for possession obtained by misrepresentation.**

65.(1) Where under section 45 an order is made for the recovery of property comprised in a tenancy the court refuses an order for the grant of a new tenancy and it is subsequently made to appear to that court that the order was obtained, or the court was induced to refuse the grant, by misrepresentation or the concealment of any material fact, the court may order the landlord to pay to the tenant such sum as appears sufficient as compensation for damage or loss sustained by the tenant as the result of the order or refusal.

(2) In this section the expression “the landlord” means the person applying for possession or opposing an application for the grant of a new tenancy, and the expression “the tenant” means the person against whom the order for possession was made or to whom the grant of a new tenancy was refused.

**Power to issue notices and summonses.**

66.(1) For the purpose of determining any application made to it under the provisions of this Act, the Tribunal may—

- (a) require either party to give to it within such period as may be specified in the notice (not being less than 7 days from the date of the service of the notice) such information as it may reasonably require and specify in the notice, relating to the contract or to the dwelling or the personal circumstances of the applicant and his family; and
- (b) refer any question relating to the measurement of the dwelling or part thereof, the subject of the application, to a qualified surveyor or engineer; and

- (c) summon any person to appear before it to give evidence on oath or to produce any document, for which purposes it shall have all the powers of the magistrates' court.

(2) Any summons or notice by the Tribunal under subsection (1) shall be signed by the person presiding and may be served either personally or by post.

**Errors in notice of increase.**

67.(1) Where a court of competent jurisdiction or the Tribunal is satisfied that any error or omission in a notice of intention to increase rent (whether served before or after the commencement of this Act) is the result of a bona fide mistake on the part of the landlord—

- (a) the court or the Tribunal may amend the notice by correcting the error or supplying the omission on such terms and conditions, in relation to arrears of rent or otherwise, as it considers just and reasonable; and
- (b) if the court or Tribunal so directs, the notice (as so amended by it) shall be a valid notice.

(2) No increase of rent that becomes payable by reason of the amendment under this section of a notice shall be recoverable in respect of any period that has ended more than 6 months before the date on which the court or Tribunal amends the notice.

**Appeals against decision of Tribunal and Rent Assessor.**

68.(1) Unless otherwise provided by this Act, any person who is aggrieved by any decision of the Rent Assessor or of the Tribunal under this Act may, within 21 days after being notified in writing of the decision, appeal against it in the case of the Rent Assessor to the Tribunal and in the case of the Tribunal to the Supreme Court.

(2) On hearing the appeal, the Tribunal or the court as the case may be may confirm, reverse or vary the decision.

**Notices to quit.**

69. Subject to the other provisions of this Act, but notwithstanding any agreement to the contrary, no periodical tenancy shall be determinable by less than 6 months' notice of intention to terminate the tenancy.

**Interim continuation of tenancies pending determination by court or Tribunal.**

70.(1) Notwithstanding any other provisions of this Part, in any case where—

- (a) a notice to terminate a tenancy has been given under this Part; and
- (b) an application to a court has been made under this Part; and
- (c) apart from this section, the effect of the notice or request would be to terminate the tenancy before the expiration of the period of 3 months beginning with the date on which the application is finally disposed of;

the effect of the notice or request shall be to terminate the tenancy at the expiration of the said period of 3 months and not at any other time.

(2) The reference in subsection (1)(c) to the date on which an application is finally disposed of shall be construed as a reference to the earliest date by which the proceedings on the application (including any proceedings on or in consequence of an appeal) have been determined and any time for appealing or further appealing has expired, except that if the application is withdrawn or any appeal is abandoned the reference shall be construed as a reference to the date of the withdrawal or abandonment.

**Provisions as to reversions.**

71.(1) Where by virtue of any provision of this Part a tenancy (in this subsection referred to as “the inferior tenancy”) is continued for a period such as to extend to or beyond the end of the term of a superior tenancy, the superior tenancy shall, for the purposes of this Part and of any other enactment and of any rule of law, be deemed so long as it subsists to be an interest in reversion expectant upon the termination of the inferior tenancy

and, if there is no intermediate tenancy, to be the interest in reversion immediately expectant upon the termination thereof.

(2) Where by virtue of any provision of this Part a tenancy (in this subsection referred to as “the continuing tenancy”) is continued beyond the beginning of a reversionary tenancy which was granted (whether before or after the commencement of this Act) so as to begin on or after the date on which apart from this Part the continuing tenancy would have come to an end, the reversionary tenancy shall have effect as if it had been granted subject to the continuing tenancy.

(3) Where by virtue of any provision of this Part a tenancy (in this subsection referred to as “the new tenancy”) is granted for a period beginning on the same date as a reversionary tenancy or for a period such as to extend beyond the beginning of the term of a reversionary tenancy, whether the reversionary tenancy in question was granted before or after the commencement of this Act, the reversionary tenancy shall have effect as if it had been granted subject to the new tenancy.

**Provisions as to mortgagees in possession.**

72. Anything authorised or required by the provisions of this Part, to be done at any time by, to or with the landlord, or a landlord of a specified description, shall, if at that time the interest of the landlord in question is subject to a mortgage and the mortgagee is in possession or a receiver appointed by the mortgagee or by the court is in receipt of the rents and profits, be deemed to be authorized or required to be done by, to or with the mortgagee instead of that landlord.

**Production of rates demand notes.**

73. It shall be a condition of every tenancy that the tenant shall, if so requested in writing by the landlord, deliver to the landlord within 15 days of such request or other greater period specified by the landlord a copy of the demand note addressed to the tenant by the Government pursuant to section 276 of the Public Health Act and of the receipt or some other sufficient evidence of payment of the amount due and payable by the tenant.

**Rules of court.**

74. The Chief Justice may make such rules of court and give such directions as he thinks fit for regulating the proceedings of the court under the

provisions of this Part and the fees payable in respect thereof and may by those rules or directions provide for any such proceedings to be conducted so far as possible in private and for the remission of any fees.

**Financial provision for repairs.**

75.(1) A company or other legal person that is the owner of a dwelling to which this Part applies or part owner thereof shall out of the rental income of the property make and maintain reasonable financial provision for repair and maintenance of the property or such proportion thereof as is equivalent to the proportion of the dwelling that it owns.

(2) Financial provision under subsection (1) may take the form of a cash reserve, or the availability of a legally binding loan commitment by a licensed bank in Gibraltar or, if the owner is a company, by its shareholders.

**Regulations.**

76. The Minister may from time to time make regulations for all or any of the following purposes—

- (a) for regulating the manner in which financial provision under section 75 shall be made and maintained;
- (b) for the form of and the particulars to be contained in rent records and receipts;
- (c) for the keeping of the registers under sections 41 or 63;
- (d) for prescribing the manner in which applications for rent relief may be made and determined under this Act, the criteria against which these applications will be determined and the rates of relief that may be paid;
- (e) for prescribing the manner in which applications for assessment of rent or decontrol of dwellings may be made and determined;
- (f) for the establishment of criteria to assist the determination of applications for the assessment of rent under section 41 or specifying the type of works or structural alterations that would be required to make an application for decontrol under

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section 49 or for setting out appropriate criteria identifying the circumstances in which tenants may be ordered to move to alternative accommodation under 49(3)(c);

- (g) for such other matters as may be prescribed under this Act;
- (h) for such other matters as may be necessary for or incidental to the due administration of this Act; and
- (i) to repeal, replace, amend or vary the schedules to this Act;
- (j) to make provision relating to tenancies which were at the time of commencement of this Act a tenancy under the provisions of section 36A of the former Act, including (but without prejudice to the generality of the foregoing) provision for the re-categorisation of those tenancies, or all such tenancies meeting the criteria to be prescribed, as licences, and otherwise to make provisions relating thereto.
- (k) for varying the level of any rates payable in respect of dwellings depending on whether the dwelling is occupied or vacant.

**Savings.**

77. Notwithstanding the repeal of Part III of the former Act but subject to Schedule 6 to this Act—

- (a) any subsidiary legislation made or issued under or in operation by virtue of the former Act, which could have been made under this Act if it had been in operation when that subsidiary legislation was so made or issued, shall remain in operation as if it had been made or issued under this Act, but may be revoked or amended by subsidiary legislation made or issued under this Act; and
- (b) any rent payable in respect of any tenancy under or by virtue of the former Act (being a tenancy to which this Part applies) shall continue to be the rent payable under that tenancy until the rent in respect of that tenancy is determined on the application of the landlord or tenant or otherwise increased in accordance with this Act.

**PART III**  
**Anti-social Behaviour**

**Interpretation.**

78.(1) In this Part, unless the context otherwise provides or requires “anti-social behaviour” means—

- (a) any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, loss, alarm, distress, fear or annoyance to any reasonable person living, working or otherwise lawfully in or in the vicinity of a housing area; or
- (b) any behaviour which disrupts peace and good order in or in the vicinity of a housing area and, without prejudice to the foregoing, includes, inter alia, violence, threats, intimidation, coercion, harassment or serious obstruction of any person; or
- (c) any of the actions listed in sub-section (2).

(2) For the purposes of subsection (1)(c), the following actions by any person shall constitute anti-social behaviour—

- (a) throwing, or allowing dirt, rubbish, rags or other refuse to be thrown down any water closet;
- (b) allowing any item of furniture, box, refuse, rubbish or any obstacle whatever which is not permitted by any applicable rules, regulations, bye laws or agreements to be left in the passage or on any landing outside the public housing;
- (c) wilfully, carelessly or negligently defacing, damaging or destroying any wall, lift or other part of or structure within the housing area or fence in or enclosing the public housing or;
- (d) wilfully, carelessly or negligently removing or displacing any barrier, railing, post or seat, or any part of any erection or ornament, or any implement provided for use in the laying out or maintenance of the premises;

- (e) wilfully, carelessly or negligently throwing or discharging any missile to the damage or danger of any person; or
- (f) obstructing any of the common areas to be found within a housing area, unless in pursuance of an agreement with the person or entity entitled to authorise such acts or otherwise in the exercise of any lawful right or privilege.

(3) In this Part, unless the context otherwise requires or provides “housing area” means a building or part of a building which contains two or more residential dwellings.

**Policies and procedures.**

79.(1) The Housing Authority shall have as one of its functions the preparation of a policy in relation to anti-social behaviour and procedures for dealing with occurrences on anti-social behaviour and for the reduction of such behaviour.

(2) The Housing Authority shall from time to time keep policy and procedures under review and shall publish a statement of its policy and procedure in such a way as it thinks best calculated to bring it to the attention of persons residing in housing areas and shall consult the Housing Advisory Council on all such matters.

**Power to make regulations.**

80.(1) The Minister may make regulations providing for the identification, reduction, deterring and elimination of and otherwise addressing occurrences of anti-social behaviour including the imposition of sanctions and remedial measures.

(2) Without prejudice to the generality of the foregoing, regulations made under this section may—

- (a) prescribe the authority responsible for their administration and enforcement;
- (b) prescribe the procedure for lodging complaints of anti-social behaviour, who may lodge such complaints and the person against whom complaints can be lodged;



- (c) prescribe provisions relating to the issue of anti-social behaviour orders by the Magistrates' Court and the circumstances and manner in which they can be issued;
- (d) make provision for the issue by the Magistrates' Court of orders and directions relating to anti-social behaviour, and for the variation and discharge of such orders;
- (e) create offences against such regulations and provide penalties therefor and other sanctions;
- (f) provide for appeals by any person aggrieved by the exercise of any powers conferred by the Regulations;
- (g) provide for the issue of injunctions by the Supreme Court;
- (h) prescribe any form of notice, direction, order or other document required to give effect to this Act; and
- (i) protect persons from the effects of anti-social behaviour by others and for maintaining peace and good social order in housing areas.

(3) Regulations made under this section shall be laid by the Minister in the Gibraltar Parliament and shall come into effect after they have been approved by resolution in the Gibraltar Parliament moved by a Minister.

#### **PART IV**

#### **Housing Tribunal and Housing Advisory Council**

##### **Housing Advisory Council.**

81.(1) There shall be established a Council, to be known as the Housing Advisory Council.

(2) The provisions of Schedule 9 shall have effect with respect to the functions, constitution and proceedings of the Council.

(3) The Minister may make regulations relating to any matter appertaining to the functions, constitution and proceedings of the Council.

**Housing Tribunal.**

82.(1) There shall be established a Tribunal, to be known as the Housing Tribunal to hear and determine applications and appeals under this Act and to exercise such other functions as may be specified in this or any other Act.

(2) The provisions of Schedule 10 shall have effect with respect to the constitution, composition, powers and proceedings of the Tribunal.

(3) The Minister may make Regulations—

- (a) regulating the proceedings of the Tribunal;
- (b) prescribing the fees to be charged in respect of any proceedings before the Tribunal;
- (c) regulating the powers, practice and procedures of the Tribunal in the consideration of applications and appeals under this Act and such other functions as may be specified in this or any other Act.

**PART V**  
**Property Management**

**Interpretation.**

83. In this Part, unless the context otherwise requires—

“court” means the Supreme Court;

“flat” means a separate set of premises, whether or not on the same floor, which—

- (a) forms part of a building;
- (b) is divided horizontally from some other part of the building; and
- (c) is constructed or adapted for use for the purposes of a dwelling and is occupied wholly or mainly as a private dwelling;

“landlord” includes any person who has a right to enforce payment of a service charge;

“relevant policy” in relation to a dwelling, means any policy of insurance under which the dwelling is insured (being, in the case of a flat, a policy covering the building containing it);

“superior landlord” means a person (whether the owner of a freehold or leasehold interest in the building or not) whose interest is superior to the interest of a landlord;

“tenant” includes—

- (a) where the tenancy is held by joint tenants, any one or more of these tenants; and
- (b) where a dwelling is sublet, the sub-tenant.

**Meaning of “service charge” and “relevant costs”.**

84.(1) In this Part “service charge” means an amount payable by a tenant of a flat as part of or in addition to the rent—

- (a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord’s cost of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

- (a) “costs” includes overheads; and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

- (4) There shall not be included in the relevant costs—
- (a) any fines, legal costs or other expenses incurred by the landlord for the purpose, or in the course, or as a result, of any proceedings taken against the landlord, or any person acting under the landlord's instructions, express or implied, for any contravention against any law arising out of, or in connection with, the condition or management of, or other things appertaining to the building;
  - (b) the cost of any works or services other than works done or services performed directly for the benefit of the tenants in their capacity as such.

**Limitation of service charges: reasonableness.**

85.(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

- (a) only to the extent that they are reasonably incurred; and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

(3) An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 2(1) of the Arbitration Act) is void in so far as it purports to provide for determination in a particular manner, or on particular evidence, of any question—

- (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,

- (b) whether services or works for which costs were incurred are of a reasonable standard; or
  - (c) whether an amount payable before costs are incurred is reasonable.
- (4) The court may make a declaration—
- (a) that any such costs were or were not reasonably incurred;
  - (b) that any such services or works are or are not of a reasonable standard; or
  - (c) that any such amount is or is not reasonable;

notwithstanding that no other relief is sought in the proceedings.

**Limitation of service charges: estimates and consultation.**

86.(1) Where relevant costs incurred on the carrying out of works on a building exceed the limit specified in subsection (2), the excess shall not be taken into account in determining the amount of a service charge unless—

- (a) the requirements of subsection (3) as to estimates and consultation have been complied with; or
- (b) those requirements have been dispensed with by the court in accordance with subsection (5);

and the amount payable shall be limited accordingly.

- (2) The limit is whichever is the greater of—
- (a) £50, or such other amount as may be prescribed by order of the Minister, multiplied by the number of flats in the building; or
  - (b) £1,000, or such other amount as may be so prescribed.
- (3) The requirements are—

- 
- (a) at least three estimates for the works shall be obtained, two of them from persons wholly unconnected with the landlord;
  - (b) a notice accompanied by a copy of the estimates shall be given to each of the tenants concerned;
  - (c) a copy of the notice shall be displayed in a conspicuous place in the building so as to be likely to come to the notice of all the tenants concerned;
  - (d) the notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the address in Gibraltar of the person to whom the observations may be sent and the date by which they are to be received;
  - (e) the date stated in the notice shall not be earlier than one month after the date on which the notice is given to each of the tenants concerned as required by paragraph (b);
  - (f) the landlord shall have regard to any observations received in pursuance of the notice and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.

(4) For the purposes of subsection (3) the tenants concerned are all the landlord's tenants of flats in the building by whom a service charge is payable to which the costs of the proposed works are relevant.

(5) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the requirements of subsection (3).

(6) An order under this section may make different provision with respect to different cases or descriptions of case, including different provision for different areas.

**Limitation of service charges: time limits on making demands.**

87.(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then

(subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

**Limitation of service charges: costs of court proceedings.**

88.(1) A tenant may make an application to the appropriate court for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with any proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application; and the court may make such order on the application as it considers just and equitable in the circumstances.

(2) In subsection (1) “the appropriate court” means—

- (a) if the application is made in the course of the proceedings in question, the court before which the proceedings are taking place; and
- (b) if the application is made after those proceedings are concluded, the court.

**Request for summary of relevant costs.**

89.(1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred—

- (a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of the request, or
- (b) if the accounts are not so made up, in the period of twelve months ending with the date of the request, and which are relevant costs in relation to the service charges payable or demanded as payable in that or any other period.

(2) A request is duly served on the landlord if it is served on—

- (a) an agent of the landlord named as such in the rent book or similar document, or
- (b) the person who receives the rent on behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(3) The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection (1)(a) or (b) whichever is the later.

(4) The summary shall set out the costs in a way showing how they are or will be reflected in demands for service charges.

(5) If there are more than four flats in the building or the costs also relate to another building, the summary shall be certified by a qualified accountant as—

- (a) in his opinion a fair summary complying with the requirement of subsection (4); and
- (b) being sufficiently supported by accounts, receipts and other documents which have been produced to him.

(6) In subsection (5) a qualified accountant means a person duly registered as the auditor of a company, or exempt from registration, under section 4 of the Auditors Registration Act.

**Request to inspect supporting accounts, etc..**

90.(1) This section applies where a tenant has obtained such a summary as is referred to in section 89(1), whether in pursuance of that section or otherwise.

(2) The tenant may within six months of obtaining the summary require the landlord in writing to afford him reasonable facilities in Gibraltar—

- (a) for inspecting the accounts, receipts and other documents supporting the summary; and



(b) for taking copies or extracts from them.

(3) A request under this section is duly served on the landlord if it is served on—

(a) an agent of the landlord named as such in the rent book or similar document; or

(b) the person who receives the rent on behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(4) The landlord shall make such facilities available to the tenant for a period of two months beginning not later than one month after the request is made.

(5) The landlord shall—

(a) where such facilities are for the inspection of any documents, make them so available free of charge;

(b) where such facilities are for the taking of copies or extracts, be entitled to make them so available on payment of such reasonable charge as he may determine.

(6) The requirement imposed on the landlord by subsection (5)(a) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

**Request relating to information held by superior landlord.**

91.(1) If a request under section 89 relates in whole or in part to relevant costs incurred by or on behalf of a superior landlord, and the landlord to whom the request is made is not in possession of the relevant information—

(a) he shall in turn make a written request for the relevant information to the person who is his landlord (and so on, if that person is not himself the superior landlord);

- (b) the superior landlord shall comply with that request within a reasonable time; and
- (c) the immediate landlord shall then comply with the tenant's request, or that part of it which relates to the relevant costs incurred by or on behalf of the superior landlord, within the time allowed by section 90 or such further time, if any, as is reasonable in the circumstances.

(2) If a request under section 90 relates to a summary of costs incurred by or on behalf of a superior landlord—

- (a) the landlord to whom the request is made shall forthwith inform the tenant of that fact and of the name and address of the superior landlord; and
- (b) section 90 shall then apply to the superior landlord as it applies to the immediate landlord.

**Effect of assignment on request.**

92. The assignment of a tenancy does not affect the validity of a request made under section 89, 90 or 91 before the assignment; but a person is not obliged to provide a summary or make facilities available more than once for the same flat and for the same period.

**Failure to comply with section 89, 90 or 91 an offence.**

93.(1) It is a summary offence for a person to fail, without reasonable excuse, to perform a duty imposed on him by section 89, 90 or 91.

(2) A person committing such an offence is liable on conviction to a fine at level 4 on the standard scale.

**Request for summary of insurance cover.**

94.(1) Where a service charge is payable by the tenant of a dwelling which consists of or includes an amount payable directly or indirectly for insurance, the tenant may require the landlord in writing to supply him with a written summary of the insurance for the time being effected in relation to the dwelling.

(2) A request is duly served on the landlord if it is served on—

- (a) an agent of the landlord named as such in the rent book or similar document; or
- (b) the person who receives the rent on behalf of the landlord;

and a person on whom a request is so served shall forward it as soon as may be to the landlord.

(3) The landlord shall, within one month of the request, comply with it by supplying to the tenant such a summary as is mentioned in subsection (1), which shall include—

- (a) the insured amount or amounts under any relevant policy; and
- (b) the name of the insurer under any such policy; and
- (c) the risks in respect of which the dwelling or (as the case may be) the building containing it is insured under any such policy.

(4) In subsection (3)(a) “the insured amount or amounts”, in relation to a relevant policy, means—

- (a) in the case of a dwelling other than a flat, the amount for which the dwelling is insured under the policy; and
- (b) in the case of a flat, the amount for which the building containing it is insured under the policy and, if specified in the policy, the amount for which the flat is insured under it.

(5) The landlord shall be taken to have complied with the request if, within the period mentioned in subsection (3) he instead supplies to the tenant a copy of every relevant policy.

(6) In a case where two or more buildings are insured under any relevant policy, the summary or copy supplied under subsection (3) or (5) so far as relating to that policy need only be of such parts of the policy as relate—

- (a) to the dwelling house; and

- (b) if the dwelling is a flat, to the building containing it.

**Request to inspect insurance policy, etc.**

95.(1) This section applies where a tenant has obtained either—

- (a) such a summary as is referred to in section 94(1), or
- (b) a copy of any relevant policy or of any such parts of any relevant policy as relate to the premises referred to in section 94(6)(a) or (b);

whether in pursuance of section 94 or otherwise.

(2) The tenant may within six months of obtaining any such summary or copy as is mentioned in subsection (1)(a) or (b) require the landlord in writing to afford him reasonable facilities—

- (a) for inspecting any relevant policy;
- (b) for inspecting any accounts, receipts or other documents which provide evidence of payment of any premiums due under any such policy in respect of the period of insurance which is current when the request is made and the period of insurance immediately preceding that period; and
- (c) for taking copies of or extracts from any of the documents referred to in paragraphs (a) and (b).

(3) Any reference in this section to a relevant policy includes a reference to a policy of insurance under which the dwelling in question was insured for the period of insurance immediately preceding that current when the request is made under this section (being, in the case of a flat, a policy covering the building containing it).

(4) Section 89(3) to (6) shall have effect in relation to a request made under this section as they have effect in relation to a request made under that section.

**Request relating to insurance effected by superior landlord.**

96.(1) If a request is made under section 94 in a case where a superior landlord has effected, in whole or in part, the insurance of the dwelling in question and the landlord to whom the request is made is not in possession of the relevant information—

- (a) he shall in turn make a written request for the relevant information to the person who is his landlord (and so on, if that person is not himself the superior landlord);
- (b) the superior landlord shall comply with that request within a reasonable time; and
- (c) the immediate landlord shall then comply with the tenant's request in the manner provided by section 94(3) to (6) within the time allowed by that section or such further time, if any, as is reasonable in the circumstances.

(2) If, in a case where a superior landlord has effected, in whole or in part, the insurance of the dwelling in question, a request under section 95 relates to any policy of insurance effected by the superior landlord—

- (a) the landlord to whom the request is made shall forthwith inform the tenant of that fact and of the name and address of the superior landlord; and
- (b) that section shall then apply to the superior landlord in relation to that policy as it applies to the immediate landlord.

**Effect of assignment on request.**

97. The assignment of a tenancy does not affect the validity of a request made under section 94, 95 or 96 before the assignment; but a person is not obliged to provide a summary or make facilities available more than once for the same dwelling and for the same period.

**Failure to comply with section 94, 95 or 96 an offence.**

98.(1) It is a summary offence for a person to fail, without reasonable excuse, to perform a duty imposed on him by or by virtue of section 94, 95 or 96.

(2) A person committing such an offence is liable on conviction to a fine at level 4 on the standard scale.

**Tenant's right to notify insurers of possible claim.**

99.(1) This section applies to any dwelling in respect of which the tenant pays to the landlord a service charge consisting of or including an amount payable directly or indirectly for insurance.

(2) Where—

(a) it appears to the tenant of any such dwelling that damage has been caused—

(i) to the dwelling, or

(ii) if the dwelling is a flat, to the dwelling or to any other part of the building containing it,

in respect of which a claim could be made under the terms of a policy of insurance, and

(b) it is a term of that policy that the person insured under the policy should give notice of any claim under it to the insurer within a specified period;

the tenant may, within that specified period, serve on the insurer a notice in writing stating that it appears to him that damage has been caused as mentioned in paragraph (a) and describing briefly the nature of the damage.

(3) Where—

(a) any such notice is served on an insurer by a tenant in relation to any such damage, and

- (b) the specified period referred to in subsection (2)(b) would expire earlier than the period of six months beginning with the date on which the notice is served;

the policy in question shall have effect as regards any claim subsequently made in respect of that damage by the person insured under the policy as if for the specified period there were substituted that period of six months.

**Right to challenge landlord's choice of insurers.**

100.(1) This section applies to a tenancy of a dwelling which requires the tenant to insure the dwelling with an insurer nominated by the landlord.

(2) Where, on an application made by the tenant under any such tenancy, the court is satisfied—

- (a) that the insurance which is available from the nominated insurer for insuring the tenant's dwelling is unsatisfactory in any respect; or
- (b) that the premiums payable in respect of any such insurance are excessive;

the court may make either an order requiring the landlord to nominate such other insurer as is specified in the order or an order requiring him to nominate another insurer who satisfies such requirements in relation to the insurance of the dwelling as are specified in the order.

**Unlawful ejection and harassment of occupier.**

101.(1) In this section "residential occupier", in relation to any premises, means a person occupying the premises as a residence, whether under a contract or by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession of the premises.

(2) If any person unlawfully deprives the residential occupier of any premises of his occupation of the premises or any part thereof, or attempts to do so, he shall be guilty of an offence unless he proves that he believed, and has reasonable cause to believe, that the residential occupier had ceased to reside in the premises.

(3) If any person with intent to cause the residential occupier of any premises—

- (a) to give up the occupation of the premises or any part thereof;  
or
- (b) to refrain from exercising any right or pursuing any remedy in respect of the premises or part thereof;

does acts calculated to interfere with the peace or comfort of the residential occupier or members of his household, or persistently withdraws or withholds services reasonably required for the occupation of the premises as a residence, he shall be guilty of an offence.

(4) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for six months and to a fine at level 3 on the standard scale;
- (b) on conviction on indictment, to imprisonment for two years and to a fine at level 5 on the standard scale.

(5) Nothing in this section shall be taken to prejudice any liability or remedy to which a person guilty of an offence thereunder may be subject in civil proceedings.

**Restriction on re-entry without due process of law.**

102. Where any premises are let as a dwelling on a lease which is subject to a right of re-entry or forfeiture it shall not be lawful to enforce that right otherwise than by proceedings in the court while any person is lawfully residing in the premises or part of them.

**Prohibition of ejection without due process of law.**

103.(1) Where any premises have been let as a dwelling under a tenancy and—

- (a) the tenancy (in this section referred to as the former tenancy) has come to an end; but



- (b) the occupier continues to reside in the premises or part of them;

it shall not be lawful for the owner to enforce against the occupier, otherwise than by proceedings in the court, his right to recover possession of the premises.

- (2) In this section—

“the occupier” in relation to any premises, means any person lawfully residing in the premises or part of them at the termination of the former tenancy;

“the owner” in relation to any premises means the person who, as against the occupier, is entitled to possession thereof.

**Tenant’s right to apply to court for appointment of manager.**

104.(1) In sections 104 to 107 both inclusive, “Sub-Part” means sections 104, 105, 106 and 107 of this Act

(2) The tenant of a flat contained in any premises to which this Sub-Part applies may, subject to the following provisions of this Sub-Part, apply to the court for an order under section 107 appointing a manager to act in relation to those premises.

(3) Subject to subsection (4), this Sub-Part applies to premises consisting of the whole or part of a building if the building or part contains two or more flats.

(4) This Sub-Part does not apply to any such premises at a time when the premises are included within the functional land of any charity.

- (5) An application for an order under section 107 may be made—

- (a) jointly by tenants of two or more flats if they are each entitled to make such an application by virtue of this section; and
- (b) in respect of two or more premises to which this Sub-Part applies;

and, in relation to any such joint application as is mentioned in paragraph (a), references in this Part to single tenant shall be construed accordingly.

(6) An application to the court for it to exercise in relation to any premises any jurisdiction existing apart from this Part to appoint a receiver or manager shall not be made by a tenant (in his capacity as such) in any circumstances in which an application could be made by him for an order under section 107 appointing a manager to act in relation to those premises.

(7) References in this Sub-Part to a tenant do not include references to a tenant under a tenancy to which Part II of this Act applies.

**Preliminary notice by tenant.**

105.(1) Before an application for an order under section 107 is made in respect of any premises to which this Sub-Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (3)) be served on the landlord by the tenant.

(2) A notice under this section shall—

- (a) specify the tenant's name, the address of his flat and an address in Gibraltar (which may be the address of his flat) at which the landlord may serve notices, including notices in proceedings, on him in connection with this Part;
- (b) state that the tenant intends to make an application for an order under section 107 to be made by the court in respect of such premises to which this Part applies as are specified in the notice but, (if paragraph (d) is applicable) that he will not do so if the landlord complies with the requirement specified in pursuance of that paragraph;
- (c) specify the grounds on which the court would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;
- (d) where those matters are capable of being remedied by the landlord, require the landlord, within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified; and

- (e) contain such information (if any) as the Minister may by regulations prescribe.

(3) The court may (whether on the hearing of an application for an order under section 107 or not) by order dispense with the requirement to serve a notice under this section in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the landlord, but the court may, when doing so, direct that such other notices are served, or such other steps are taken, as it thinks fit.

(4) In a case where—

- (a) a notice under this section has been served on the landlord; and
- (b) his interest in the premises specified in pursuance of subsection (2)(b) is subject to a mortgage;

the landlord shall, as soon as is reasonably practicable after receiving the notice, serve on the mortgagee a copy of the notice.

**Application to court for appointment of manager.**

106.(1) No application for an order under section 107 shall be made to the court unless—

- (a) in a case where a notice has been served under section 105, either—
  - (i) the period specified in pursuance of section 105(2)(d) of that section has expired without the landlord having taken the steps that he was required to take in pursuance of that provision; or
  - (ii) section 105(2)(d) was not applicable in the circumstances of the case; or
- (b) in a case where the requirement to serve such a notice has been dispensed with by an order under subsection (3) of that section, either—

- (i) any notices required to be served, and any other steps required to be taken, by virtue of the order have been served or (as the case may be) taken; or
- (ii) no direction was given by the court when making the order.

(2) Rules of court shall make provision—

- (a) for requiring notice of an application for an order under section 107 in respect of any premises to be served on such descriptions of persons as may be specified in the rules; and
- (b) for enabling persons served with any such notice to be joined as parties to the proceedings.

**Appointment of manager by the court.**

107.(1) The court may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Sub-Part applies—

- (a) such functions in connection with the management of the premises; or
- (b) such functions of a receiver;

or both, as the court thinks fit.

(2) The court may only make an order under this section in the following circumstances, namely—

- (a) where the court is satisfied—
  - (i) that the landlord either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable for the tenant to give him the appropriate notice; and

- (ii) that the circumstances by virtue of which he is (or would be) in breach of any such obligation are likely to continue; and
    - (iii) that it is just and convenient to make the order in all the circumstances of the case; or
  - (b) where the court is satisfied that other circumstances exist which make it just and convenient for the order to be made.
- (3) The premises in respect of which an order is made under this section may, if the court thinks fit, be either more or less extensive than the premises specified in the application on which the order is made.
- (4) An order under this section may make provision with respect to—
- (a) such matters relating to the exercise by the manager of his functions under the order; and
  - (b) such incidental or ancillary matters as the court thinks fit; and, on any subsequent application made for the purpose by the manager, the court may give him directions with respect to any such matters.
- (5) Without prejudice to the generality of subsection (4), an order under this section may provide—
- (a) for rights and liabilities arising under contracts to which the manager is not a party to become rights and liabilities of the manager;
  - (b) for the manager to be entitled to prosecute claims in respect of causes of action (whether contractual or tortious) accruing before or after the date of his appointment;
  - (c) for remuneration to be paid to the manager by the landlord or by the tenants of the premises in respect of which the order is made or by all or any of those persons;

- (d) for the manager's functions to be exercisable by him (subject to subsection (8)) either during a specified period or without limit of time.

(6) Any such order may be granted subject to such conditions as the court thinks fit, and in particular its operation may be suspended on terms fixed by the court.

(7) In a case where an application for an order under this section was preceded by the service of a notice under section 105, the court may, if it thinks fit, make such an order notwithstanding—

- (a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period; or
- (b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 108.

(8) The court may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section.

(9) An order made under this section shall not be discharged by the court by reason only that, by virtue of section 104(4), the premises in respect of which the order was made have ceased to be premises to which this Sub-Part applies.

(10) References in this section to the management of any premises include references to the repair, maintenance or insurance of those premises.

**Notices.**

108.(1) Any notice required or authorised to be served under this Part shall be in writing and may be sent by post.

(2) The Minister may by regulations prescribe—

- (a) the form of any notices required or authorised to be served under or in pursuance of any provision of sections 94 to 100 and 104 to 107; and

- (b) the particulars which any such notices must contain (whether in addition to, or in substitution for, any particulars required by virtue of the provision in question).

(3) Any such regulations may make different provision with respect to different cases or descriptions of case, including different provision for different areas.

**Offences by bodies corporate.**

109. Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager or secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Power of Principal Housing Officer to investigate offences.**

110.(1) If the Principal Housing Officer has reasonable ground for suspecting that an offence under this Part or under section 60 is being, has been or is about to be committed, he may require any person—

- (a) to produce any accounts, books, records or documents in the custody or under the control of such persons;
- (b) to render such explanations and give such information relating to the entries contained in any accounts, books, records or documents in his possession or control as may be reasonably required;
- (c) to furnish any information relating to any premises which he thinks relevant to his enquiry.

(2) If a justice of the peace is satisfied on information on oath that there is reasonable ground for suspecting that—

- (a) any accounts, books, records, documents or information referred to in subsection (1) are on premises and that their

inspection is likely to disclose evidence of the commission of an offence under this Part; or

- (b) any offence under this Part is being, has been or is about to be committed on a any premises; and, in either case;
- (c) admission to the premises has been or is likely to be refused and that notice of intention to apply for a warrant under this subsection has been given to the occupier,

the justice may, by warrant under his hand, authorise the Principal Housing Officer or other person therein named to enter any premises specified in the warrant, if necessary by force, at any reasonable time within 14 days from the time of issue of the warrant and any person who enters premises under the authority of the warrant may seize and remove any account, book, record or document found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of any such offence.

(3) Any person entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he has entered by virtue of a warrant under subsection (2) he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectually secured against trespassers as he found them.

(4) Any person who obstructs the exercise of any such power shall be guilty of an offence and liable on summary conviction to imprisonment for six months and to a fine at level 4 on the standard scale.

**Restriction on prosecutions.**

111. No prosecution for an offence under this Part shall be instituted except by or with the consent of the Attorney-General.

**No application to the Crown.**

112. For the removal of doubt, it is hereby declared that nothing in this Part shall bind the Crown or affect prejudicially any estate, right, power, privilege or exemption of the Crown.



**PART VI**  
**Miscellaneous**

**Repeals.**

- 113.(1) The Housing (Special Powers) Act is repealed.
- (2) The Consumer Protection (Property Management) Act is repealed.
- (3) Part III of the Landlord and Tenants Act 1983 is repealed.

**SCHEDULE 1**

Section 4

**CONSTITUTION AND ROLE OF THE GOVERNMENT HOUSING  
ADVISORY BOARD**

**Membership of the Board.**

1.(1) The Board shall consist of the Minister as chairman, the Principal Housing Officer, the Chief Executive Officer (Buildings and Works), the chairperson of each Tenants Association established under section 31 and such number of other members as the Minister may determine and appoint.

(2) Members of the Board shall hold office for such period and on such terms as may be specified in their instrument of appointment, and shall be eligible for re-appointment.

(3) The Chairman shall preside at all meetings and three members of the Board shall form a quorum.

**Role of the Board.**

2.(1) The Board shall advise the Minister on any matter concerning his powers, functions and responsibilities in connection with the provision, administration and management of Government housing and all matters related to Government housing.

(2) Without prejudice to the generality of the foregoing, the Board shall keep under review and advise on—

- (a) tenancy agreements and any material published by the Ministry for Housing;
- (b) complaints procedures available to tenants of public housing;
- (c) anti-social behaviour policies in conjunction with residents of housing areas.

**Secretary.**

3. The Minister shall designate an officer of the Ministry of Housing to be the secretary of the Board.

**SCHEDULE 2**

Section 5(2)

**CONSTITUTION AND ROLE OF HOUSING ALLOCATION  
COMMITTEE**

**Membership of the Committee.**

1.(1) The Committee shall consist of five members appointed by the Minister as follows—

- (a) a registered medical practitioner;
- (b) an occupational therapist or a person possessing similar qualifications;
- (c) a social worker or a person possessing similar qualifications;  
and
- (d) two other persons, one of whom shall be the chairman and the other the deputy chairman, in each case designated by the Minister.

(2) The Housing Manager shall be an additional member of the Committee.

(3) In respect of the chairman and each member there shall be an alternate member appointed by the Minister to substitute for any member of the Committee and they shall have the same rights and powers as appointed members.

(4) Members and alternate members of the Committee shall hold office for such period and on such terms as may be specified in their instrument of appointment, and shall be eligible for re-appointment.

(5) Notwithstanding anything contained in sub-paragraph (4), the Minister may, in his discretion, terminate the appointment of the chairman, any member and any alternate member of the Committee at any time on the grounds of inability, neglect of duty, persistent failure to attend meetings or misconduct.

(6) The chairman shall preside at all meetings and whilst three members of the Committee shall form a quorum there shall be present the medical practitioner and the occupational therapist or their alternates when an award of medical points is considered and the social worker or his alternate present when an award of social points is considered.

**Procedure.**

2.(1) The Committee shall advise the Housing Authority in relation to the administration of any scheme approved by the Government for the allocation of government housing, shall advise the Government on allocations of public housing, award of points, categorisation of applicants, administration of waiting lists and when so required by the Minister make such recommendations on the most equitable and effective use of Government housing as the Committee may think appropriate.

(2) The Housing Authority and the Committee shall be entitled to call on such evidence as it considers necessary to verify or otherwise the veracity of the matters asserted in each application before it and any failure by the applicant to co-operate in the provision of any such information so required may lead to the rejection of the application.

(3) Subject to the provisions of this Schedule, the procedure of the Committee shall be regulated by the Committee.

**Secretary.**

3. The Minister shall designate an officer of the Ministry of Housing to be the secretary of the Committee.

**SCHEDULE 3**

Section 31

**TENANTS ASSOCIATIONS**

**Recognition.**

(1) The Housing Authority shall recognise a tenants association that has been established in accordance with the requirements of section 31.

(2) The Housing Authority shall recognise only one tenants association as representative of a housing area.

**Functions.**

The functions of a tenants association shall be as follows—

- (a) to provide a collective voice for people who live in the same housing area; to represent the views of tenants towards making their housing area a better place to live in;
- (b) to work closely with the Housing Authority for the improvement of public housing and environmental standards within the housing area;
- (c) to work closely with the Housing Authority on any planned development in the housing area;
- (d) to work closely with the Housing Authority on other issues such as traffic and parking problems within the housing estate;
- (e) to foment among tenants and their families a sense of community well being;
- (f) to promote and defend the interests of tenants of the housing area in general

**Constitution.**

A tenants association shall—

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- (a) have a publicly available constitution, setting out the aims of the association and how it will be run;
  - (b) convene an annual general meeting of tenants every year and extraordinary general meetings as when called for under the terms of the constitution;
  - (c) have a publicly available list of names and contact details of committee members and office bearers and to provide details thereof to the Minister;
  - (d) have a publicly available statement of how the committee will represent tenants;
  - (e) have a publicly available statement of how, when and where tenants can take their grievances, complaints or suggestions to the committee;
  - (f) make provision in its Constitution for its Committee and office holders to be elected by secret ballot of the tenants of the housing area, on the basis of one vote per unit of public housing, for terms of office not exceeding three years at a time;
  - (g) make provision in its Constitution for any alteration to the Constitution to require the support of the tenants of at least two thirds of the public housing;
  - (h) register with the Authority by depositing with the Authority a copy of its Constitution and of any amendments therein within 14 days thereof.

**SCHEDULE 4**

Section 41

**STATUTORY RENT FOR DWELLINGS**

**Part I**

**Criteria for the assessment of rent under section 41(1).**

1. In determining an application for the assessment of rent under Part II of this Act, the Rent assessor shall take into account—

- (a) the size (including the number of rooms and condition of the rooms) and state of repair and maintenance of the dwelling;
- (b) the terms of the proposed or existing tenancy and particularly those provisions relating to liability for repair and maintenance of the dwelling;
- (c) any agreements he had approved under section 15 of the former Act in respect of dwellings of similar size, accommodation, state of repair and maintenance and tenancy terms;
- (d) any rents that have been assessed under this Act that may provide appropriate comparables to the dwelling which is the subject of the application for assessment;
- (e) any costs which the landlord proves to his satisfaction have been expended in carrying out improvements to the dwelling;
- (f) any other matter which may be prescribed in regulations.

**Part II**

1. In this Part of this Schedule—

“rates” means the rates payable in respect of a dwelling or where a dwelling is assessed as a whole and part only of the dwelling is comprised in the tenancy such part of the rates as represents a fair proportion of the rates in respect of such part;

“square” means 100 square feet of the floor space of a dwelling house measured in such manner and excluding such areas as may be prescribed.

2. The statutory rent of a dwelling or part of a dwelling to which Part II of this Act applies shall be as follows—

(a) where the dwelling or part of a dwelling is a self-contained unit, with a bathroom. £120 per square per annum exclusive of rates.

(b) where the dwelling or part of a dwelling is a self-contained unit, without a bathroom. £90 per square per annum exclusive of rates.

(c) where the dwelling or part of a dwelling is a communal services tenement. £80 per square per annum inclusive of rates.

3. In the case of a dwelling or part of a dwelling referred to in paragraph 2(a), where the bathroom has been built by the tenant, and there was no previous bathroom, the statutory rent shall be calculated until the period of 5 years following the completion of the bathroom at the appropriate rate specified in paragraph 2(b) or 2(c).

4. In the case of a dwelling that is let furnished so long as the furniture shall be fit and proper for the purpose and shall at least comply with the provisions of Schedule 8, the statutory rent shall be increased, for the period of 8 years following the date on which the furniture is provided, by one-eighth of the value of the furniture on the date that it is so provided.

5. Where any reference is made in this Schedule to the payment of a statutory rent “exclusive of rates”, this shall be construed, subject to the provisions of Part II of this Act, as imposing upon the tenant the obligation to pay rates.

6. Where any reference is made in this Schedule to the payment of a statutory rent “inclusive of rates”, this shall be construed, subject to the provisions of Part II of this Act, as imposing upon the landlord the obligation to pay rates.



**SCHEDULE 5**

## Section 45

**POSSESSION OR EJECTMENT WITHOUT PROOF OF ALTERNATIVE ACCOMMODATION**

The court shall, for the purposes of section 45, have power to make or give an order or judgment for the recovery of possession of any dwelling to which Part II applies or for the ejectment of a tenant therefrom without proof of suitable alternative accommodation (where the court considers it reasonable so to do) if—

- (a) any rent lawfully due from the tenant has not been paid, or any other obligation of the tenancy (whether under the contract of tenancy or under Part II), so far as the obligation is consistent with the provisions of Part II, has been broken or not performed;
- (b) the tenant or any person residing or lodging with him or being his sub-tenant has been guilty of conduct which is a nuisance or annoyance to adjoining occupiers, or has been convicted of using the premises or allowing the premises to be used for an immoral or illegal purpose, or the condition of the dwelling has, in the opinion of the court, deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any such person, and, where such person is a lodger or sub-tenant, the court is satisfied that the tenant has not, before the making or giving of the order or judgment, taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant;
- (c) the tenant has given notice to quit, and, in consequence of that notice, the landlord has contracted to sell or let the dwelling or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession;
- (d) the tenant has at any time after the coming into operation of this Act, assigned or sub-let the whole of the dwelling or sub-let part of the dwelling;

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- (e) the dwelling is so overcrowded as to be dangerous or injurious to the health of the inmates, and the court is satisfied that the overcrowding could have been abated by the removal of any lodger or sub-tenant (not being a parent or child of the tenant) whom it would, having regard to all the circumstances of the case, including the question whether other accommodation is available for him, have been reasonable to remove, and that the tenant has not taken such steps as he ought reasonably to have taken for his removal;
  - (f) the dwelling is reasonably required by the landlord for occupation as a residence for some person engaged in his whole-time employment or in the whole-time employment of some tenant from him or with whom conditional on housing accommodation being provided, a contract for such employment has been entered into, and the tenant was in the employment of the landlord or a former landlord, and the dwelling was let to him in consequence of that employment and he has ceased to be in that employment;
  - (g) the dwelling is reasonably required by the landlord (being a landlord who has become landlord by purchasing or otherwise acquiring the dwelling or an interest therein before the commencement of this Act or not less than 5 years before the date of the application) for occupation as a residence for—
    - (h) himself; or
      - (i) any son or daughter of himself or of his wife who is over the age of 18 years of age; or
      - (ii) his father or mother:

Provided that an order or judgment shall not be made or given on any ground specified in paragraph (g) of the preceding provisions of this Schedule if the court is satisfied that having regard to all the circumstances of the case, including the question whether other accommodation is available for the landlord or the tenant, greater hardship would be caused by granting the order or judgment than by refusing to grant it.

**SCHEDULE 6**

Section 77

**TRANSITIONAL PROVISIONS**

1. Every person who was immediately before the commencement of this Act the tenant of a dwelling to which the former Act then applied shall on the commencement of this Act, if the dwelling is one to which Part II of this Act applies, for the purposes of Part II of this Act be deemed the first tenant of the dwelling and shall for the purposes of section 34 and this Schedule be referred to as the existing tenant.

2. The existing tenant shall enjoy the succession rights set out in section 34 in respect of such dwelling save that where the existing tenant was the first successor under the former Act he shall be deemed to be the first successor for the purposes of this Act and where such tenant was the second successor under the former Act he shall be deemed to be the second successor for the purposes of this Act

3. The first tenant and first successor of the dwelling to which paragraph 1 applies shall pay statutory rent in respect of their tenancy at the level calculated in accordance with section 41(7) and Part II of Schedule 4.

4. The second successor of the dwelling to which paragraph 1 applies shall pay statutory rent in respect of his tenancy at the level calculated in accordance with section 41(1) and Part I of Schedule 4.

5. Where—

- (a) any improvements or structural alterations have been carried out to any dwelling to which Part II applies at any time after the 1 day of January, 2000, but before the commencement of this Act; and
- (b) within 18 months after the commencement of this Act the landlord of the dwelling applies to the Tribunal—

the Tribunal may make any order in respect of the dwelling that it could have made under section 43 or 49 on the application of the landlord if the improvement works or structural alterations had been carried out after the

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commencement of this Act and where it makes such an order the provisions of section 43 or 49 (as the case requires) shall apply to the dwelling as they apply to applications made under that section.

6. Where—

- (a) any application has been made to or any proceeding has been instituted before any court or the Tribunal or any other authority under the former Act; and
- (b) that application or proceeding has not been determined before the commencement of this Act; and
- (c) the application or proceeding could have been brought under this Act if this Act had been in operation when it was made or instituted (whether or not it could have been brought before the same court, Tribunal or authority);

the court, Tribunal or authority before whom it was brought shall notwithstanding any other provision of this Act, continue to have jurisdiction to hear and determine it in accordance with the provisions of this Act.

7. If it appears to the Minister to be desirable to do so, he may for such period as he may specify appoint, in addition to the Rent Assessor provided for in section 37, one or more other fit and proper persons to be Rent Assessors; and every additional Rent Assessor so appointed shall, during the term of his appointment and thereafter until he has disposed of all matters referred to him during that term, have all the functions, powers and duties of the Rent Assessor appointed under section 37.

**SCHEDULE 7**

Section 55(4)

**TENANT'S LIABILITY TO REPAIRS**

Flushing Cisterns	Renewal or repairs to W.C. seat, chain.
WC fittings	Renewal of broken W.C. pan.
Wash hand basin kitchen sink and bath	Renewal of cracked or chipped basin or sink. Renewal of washers. Renewal or refixing chain and plug. Repairs to damaged draining board.
Taps generally other than stop cock	Renewal of washers.
Drains	Unchoking blocked traps and pipes from connection to fitting to underground connection or stack pipes if under the control of the tenant.
Meters	Repairs to damaged meters if under the control of the tenant.
Electrical fittings	Renewal or repairs to broken or defective switches, plugs, pendants, lamp holders and fuses.
Door, window and cupboard fitting	Repairs to locks, hinges, bolts, hooks, buttons, etc. Replacement of lost keys. Blinds
Blinds	Repair to damaged slats, canvas and fittings.
Awnings	Repair to fittings.

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Glass	Replacement of broken glass to doors and windows.
Chimneys	Sweeping.
Plaster	Repairs to damaged internal plaster.
Floors	Renewal of broken tiles.
Decoration	Interior decoration.
Gullies	Unchoking of and renewal of missing or broken gratings.

In addition, the tenant is also responsible for any damage to the premises, including fixtures and fittings, caused by neglect, carelessness or willfulness.

Provided that the tenant will not be liable for any repairs, the need for which arose from failure of the landlord to discharge any legal obligation.

**SCHEDULE 8**

Schedule 4 Part II  
Paragraph 4

**FURNITURE TO BE PROVIDED IF PROPERTY  
IS LET FURNISHED**

**(a) In any room let as a bedroom:**

- (1) One bed or if let for occupation by two persons, one double bed or two single beds, complete with the necessary mattresses and pillows.
- (2) One wardrobe complete with shelves and hanging rails or locks.
- (3) One dressing table and chest of drawers.
- (4) One (or two if let for occupation by two persons) night table.
- (5) One armchair (provided that where the accommodation is let to two persons there shall be 2 armchairs).

**(b) In any room let as a sitting room/dining room:**

- (1) One dining table.
- (2) One coffee table.
- (3) Two armchairs and one settee.
- (4) Four chairs.
- (5) One cupboard or one sideboard.

**(c) In any room let as a kitchen:**

- (1) One electric cooker, (which shall consist of at least two cooking plates and one oven).
- (2) One fridge.
- (3) One kitchen table.

- (4) Two chairs.
- (5) One sink unit.
- (6) One kitchen cupboard.
- (7) One washing machine.

**(d) In any room let as a bed sitting room:**

- (1) One bed or if let for occupation by two persons, one double bed or two single beds, complete with the necessary mattresses and pillows.
- (2) One wardrobe.
- (3) One dining table.
- (4) Two armchairs.
- (5) Two chairs.
- (6) One cupboard or sideboard.
- (7) Kitchen sink unit.
- (8) One electric cooker.
- (9) One fridge.



**SCHEDULE 9**

Section 81(2)

**CONSTITUTION AND ROLE OF HOUSING ADVISORY COUNCIL**

**Membership of the Council.**

1.(1) The Council shall consist of the Minister as chairperson and the following members—

- (a) the Principal Housing Officer;
- (b) the Chief Technical Officer;
- (c) the Managing Director, Land Property Services Limited;
- (d) two persons appointed by the Minister representing public housing estates tenant's associations;
- (e) two persons appointed by the Minister representing private estates;
- (f) two other persons who in the opinion of the Minister may be able to make a valuable contribution to the work of the Council;
- (g) two persons appointed by the Minister representing the interests of private landlords.

(2) In respect of each appointed member there shall be an alternate member appointed by the Minister to substitute for any member of the Council.

(3) Appointed members and alternate members of the Council shall hold office for such period as may be specified in their instrument of appointment, and shall be eligible for re-appointment.

(4) Notwithstanding anything contained in paragraph 3, the Minister may, in his discretion, terminate the appointment of any appointed member and

alternate member of the Council at any time on the grounds of inability, persistent failure to attend meetings or misconduct.

**Terms of reference.**

2. The Council shall have the following terms of reference—

- (a) To assess, and keep under review, the housing market in Gibraltar, and in particular to monitor supply, demand, house prices and affordability, both in relation to purchase and rental housing, and to advise the Government thereon.
- (b) To identify present and future housing issues that require or may require addressing.
- (c) To monitor the incidence of and advise Government on ways of combating anti-social behaviour in housing areas.
- (d) To provide advice to the Government on housing matters generally.
- (e) To advise the Government on any matter related to housing which the Minister may refer to the Council.

**Procedure.**

3. Subject to the provisions of this Schedule, the procedure of the Council shall be regulated by the Minister.

**Secretary.**

4. The Minister shall designate an officer of the Ministry for Housing to be the secretary of the Council.

**SCHEDULE 10**

Section 82(2)

**CONSTITUTION AND ROLE OF HOUSING TRIBUNAL**

**Membership of the Tribunal.**

1.(1) The Tribunal shall consist of a chairperson and four members appointed by the Chief Minister, one of whom shall be a barrister or solicitor admitted to practice in Gibraltar.

(2) Members of the Tribunal shall hold office for such period as may be specified in their instrument of appointment.

(3) Notwithstanding anything contained in sub-paragraph (2), the Chief Minister may, at any time, in his discretion terminate the appointment of the chairperson and any member of the Council on the grounds of inability, neglect of duty or misconduct.

(4) The validity of any proceedings of the Tribunal shall not be affected by a defect in the appointment of any of its members.

(5) The Chief Minister shall designate a public officer to be the secretary of the Tribunal and shall hold office for such period of time as may be specified in the instrument of appointment.

(6) The secretary to the Tribunal shall act under the direction of the chairperson of the Tribunal.

(7) The chairperson and members of the Tribunal shall not act as such in relation to any matter in which he has a personal interest.

(8) The chairperson and members of the Tribunal shall not disclose any information received in the course of his duties except in such cases as may be required by law.

(9) The chairperson and two members of the Tribunal shall form a quorum.

**Procedure.**

2.(1) Proceedings before the Tribunal may be continued by the chairperson and any one or more of the members of the Tribunal if all parties give their consent.

(2) Unless the Tribunal otherwise fixes a date for a hearing, any party to proceedings which are to be heard by the Tribunal shall serve notice on the secretary that he wishes a date for the hearing to be fixed.

(3) On receipt of a notice under paragraph 2(2) the secretary shall send notice to each party to the proceedings of the place, date and time of the hearing.

(4) Unless the parties otherwise agree or the Tribunal otherwise directs, the date of the hearing specified in a notice under paragraph 2(3) shall not be earlier than 28 days after the date on which the notice is sent to the parties.

(5) If it is shown to the satisfaction of the Tribunal that owing to any reasonable cause a person has been prevented from attending the hearing of an appeal or other matter on the day fixed for that purpose, the Tribunal may adjourn the hearing of the appeal or other matter for such reasonable time as it thinks necessary.

(6) Any party to the matter before the Tribunal may represent himself or be represented by a lawyer and the Principal Housing Officer may be represented by a subordinate officer.

**Hearings.**

3.(1) Hearings before the Tribunal shall be conducted in such manner as the chairperson and members of the Tribunal consider most suitable for the clarification and determination of the issues before the Tribunal and generally to the just handling of the proceedings.

(2) Evidence before the Tribunal may be given orally or, if the Tribunal so directs, by affidavit or a statement made or recorded in a document, but at any stage of the hearing, the Tribunal may, on the application of any party or of its own motion, require the personal attendance as a witness of—

- (a) the maker of an affidavit; or

- (b) the maker of a statement; or
- (c) in the case of an oral statement recorded in a document, the person by whom the statement was so recorded:

Provided that the Tribunal may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

**Decisions.**

4.(1) A decision of the Tribunal shall be made by the votes of the majority of the members comprising that Tribunal and in the event of an equality of votes the chairperson shall be entitled to a second or casting vote.

(2) The decision may be given orally by the chairperson at the end of the hearing or may be reserved and in either event shall be recorded in a document signed and dated by the chairperson.

(3) The secretary shall send to each party a notice setting out the decision recorded under paragraph 4(2).

(4) Except where the decision is given at the end of a hearing, it shall be treated as having been made on the date when the notice is sent to the parties under paragraph 4(3).

**Further particulars.**

5. The Tribunal may, at any time before the determination of an appeal or other matter, give notice to the appellant, applicant or any other party to the proceedings requiring him within a time specified in the notice to deliver to it such particulars as it may require for the purposes of determining the appeal or other matter.

**Summoning of witnesses.**

6. The Tribunal may summon any person to appear before it and give evidence.

**Irregularity.**

7. Any irregularity resulting from any failure to comply with any provision of this Schedule or with any direction given by the Tribunal before the Tribunal has reached its formal determination shall not of itself render the proceedings void.

**Notices.**

8.(1) Every notice required by this Schedule shall be in writing unless the members of the Tribunal authorise it to be given orally.

(2) Any notice or document required or authorised by this Schedule to be sent, delivered to or served on any person shall be duly sent, delivered or served by hand, by post or by facsimile transmission.

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**EXPLANATORY MEMORANDUM**

The Bill for the Housing Act 2007 has six Parts and ten Schedules.

Part I deals with Government Housing. Clause 3 provides for the duties and powers of the Housing Authority. Clause 4 establishes the Government Housing Advisory Board and Clause 5 establishes the Housing Allocation Committee. Clause 6 provides that a tenant shall be entitled to possession of any public housing if he is in personal occupation for not less than 270 days per annum. Clause 7 provides that it will be a condition of possession of any public housing which is allocated to a tenant, after the date of commencement of the Act, will be entitled to continue in possession so long as he or his spouse do not become owners of residential property in Gibraltar which could, if they decide, be made available for occupation by them. Clause 8 deals with notice of termination of tenancy and clause 9 provides for refunds of rent pre-paid by a tenant on the date of termination of the tenancy. Clause 10 provides the powers of entry upon premises on termination of tenancy and for the disposal of goods found therein. Clause 11 provides the ability of a tenant to claim the amount of the proceeds of the sale of any goods sold under clause 10. Clause 12 provides for the succession of tenants in the event of the death of the tenant. Clause 13 gives powers to the Principal Housing Officer to serve a direction on an employer of a tenant or certain other persons making payments to a tenant who is a judgement debtor as a result of his arrears of house rent. Clause 14 makes it an offence for any person to occupy premises without authority or to give false or misleading information in an application for housing. Clause 15 allows the Principal Housing Officer to serve a decanting notice in certain circumstances which makes it possible to transfer a tenant to other premises. Clause 16 provides the Housing Authority powers of entry upon premises under its management. Clause 17 provides powers for a Justice of the Peace to issue a warrant for admission to premises where a tenant has refused entry under the previous clause. Clause 18 makes it an offence for a tenant to carry out unauthorised development in his premises or in their immediate vicinity. Clause 19 gives power to the Principal Housing Officer to serve a restoration order on a tenant who has carried out an unauthorised development. A tenant who fails to comply with a restoration order shall commit an offence. Clause 20 gives power for the demolition of unauthorised development when a person has failed to comply with an enforcement order. Clause 21 allows the Housing Authority to request the Development and Planning Commission to use its powers under the Town

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Planning Act to serve a stoppage order on a person who appears to be carrying out any unauthorised development under clause 18.

Clause 23 to 25 allows the Principal Housing Officer to require a tenant to provide information that he or the Housing Authority needs to carry out his or its functions under the Act and provide enforcement powers where a tenant fails to respond to a notice to provide information. Failure to co-operate or to supply false or misleading information is an offence. Clause 26 provides the right of appeal by a tenant who is aggrieved by a direction under clause 13 may appeal to the Tribunal. Clause 27 and 28 provide for further appeals to the Tribunal by aggrieved tenants. Clause 29 provides for the service of notice or direction. Clause 30 provides the Minister with powers to make regulations. Clause 31 provides that tenants associations may be established in housing areas. Clause 32 makes provision should the Government wish to sell public housing to its tenants, it may create in favour of such tenant a right to buy such public housing at a discount to its market value.

Part II re-enacts with amendments Part III of the Landlord and Tenant Act dealing with residential premises. Clause 34 sets out the definition of “tenant” and provides for rights of succession. Clause 37 provides for the Minister to appoint a Rent Assessor whose functions and powers are set out in clause 38. Clause 39 allows the Minister to declare dwellings to be a communal services tenement. Clause 40 sets out which dwellings Part II of the Act applies to. Clause 41 which deals with statutory rent provides for the Rent Assessor to assess the appropriate rent for a dwelling using the criteria set out in Schedule 4 Part 1. A person who is aggrieved by the decision of the Rent Assessor may appeal to the Tribunal. Clauses 42 and 43 deal with rating adjustments and adjustment for improvement. Clauses 44 and 45 provide for restrictions on rent increases and restrictions on recovery of possession. Clause 46 allows the court to make an order requiring the tenant to vacate the dwelling temporarily in order that repairs may be carried out by the landlord. The court has to be satisfied that suitable temporary accommodation is available. Clause 49 sets out the circumstances where a landlord may make an application to the Rent Assessor to have a dwelling decontrolled. Clause 50 prohibits assignment and subletting by a tenant. Clause 51 provides that where a tenant of a dwelling to which Part II of the Act applies has, before the commencement of the Act, sublet any part of the dwelling, the statutory rent shall be deemed to have been increased as from the date of commencement of the Act by the amount of the rent received by the tenant from the subletting. Clause 52 allows the court to apportion the statutory rent between the dwelling and the part sublet. Clause 53 allows a



subtenant to have first option to take over the surrendered tenancy. Clause 54 provides that after the commencement of the Act, sub-lettings will be void. Clause 55 sets out the conditions of statutory tenancies. Clause 57 requires the landlord to keep records of rent paid by the tenant and to provide receipts. Clause 58 provides that a landlord or tenant may apply to the Tribunal to determine what is the correct statutory rent payable in respect of the dwelling. Clause 62 prescribes circumstances where a tenant may apply for rent relief. Clause 63 provides for a register of tenancies to be kept by the Rent Assessor of tenancies held under section 36A of the former Act. Clause 64 provides for restrictions on the right to possession of the dwelling from the tenant where the court is satisfied that the proceedings are harsh and oppressive or that exceptional hardship would be caused to the tenant. However the court will not exercise its powers in any case where it is satisfied that the greater hardship would be caused to the landlord by the exercise of the power than would be caused to the tenant by the refusal to exercise it. Clause 65 provides for compensation for possession obtained by misrepresentation. Clause 68 provides for appeals against a decision of the Tribunal or the Rent Assessor. In the case of an appeal against the decision of the Tribunal, an appeal will lie to the Supreme Court and in the case of the Rent Assessor to the Tribunal. Clause 75 requires owners of dwellings to maintain reasonable financial provision to enable such owner to carry out all necessary repairs of their property. Clause 76 gives the Minister power to make regulations.

Part III deals with anti-social behaviour. Clause 78 sets out what constitutes anti-social behaviour. Under clause 79, the Housing Authority shall have as one of its functions the preparation of a policy in relation to anti-social behaviour. Clause 80 gives the Minister power to make regulations for the purposes of, inter alia, deterring anti-social behaviour.

Part IV deals with the establishment of the Housing Advisory Council and of the Housing Allocation Committee.

Part V deals with property management and in particular with how the amount of service charge is determined. Clause 84 defines "service charge" and "relevant costs". Clause 89 provides that a tenant may require the landlord to provide a summary of relevant costs and under clause 90 the tenant may require the landlord to afford him reasonable access to inspect accounts. Clause 94 allows the tenant to request from the landlord that he be provided with a written summary of the insurance for the dwelling. Under clause 95, a tenant may inspect the insurance policy for the premises. Clause 101 deals with unlawful ejection and harassment of the occupier.

Clause 104 provides for the tenant's right to apply to the court for appointment of a manager to act in relation to the premises. Clause 106 deals with the application to the court for the appointment of a manager and clause 107 deals with the appointment of the manager by the court. Clause 110 gives the Principal Housing Officer power to investigate offences under this Part and clause 111 provides that no prosecution can be instituted without the consent of the Attorney General.

Part VI deals with repeals.

Schedule 1 deals with the Constitution and role of the Government Housing Allocation Committee.

Schedule 2 deals with the Constitution and role of the Housing Advisory Committee.

Schedule 3 deals with Tenants associations.

Schedule 4 deals with statutory rent for dwellings.

Schedule 5 deals with possession or ejection without proof of alternative accommodation.

Schedule 6 deals with transitional provisions.

Schedule 7 deals with tenant's liability to repairs.

Schedule 8 deals with furniture to be provided if the property is let furnished.

Schedule 9 deals with the Constitution and role of Housing Advisory Council.

Schedule 10 deals with the Constitution and role of Housing Tribunal.

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