

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,864 of 14th July, 2011

B. 18/11

BILL

FOR

AN ACT To make provision for the establishment of the Borders & Coastguard Agency and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Borders & Coastguard Agency Act 2011.

(2) The provisions of this Act shall come into operation on such day as the Government may appoint, and different days may be so appointed for different purposes.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Agency” means the Borders & Coastguard Agency established by section 3;

“Board” means the Board of the Agency established by Section 4:

“Chief Executive Officer” means the Chief Executive of the Agency appointed under section 10;

“Minister” means the Chief Minister, or such other Minister as the Chief Minister may from time to time designate by legal notice;

Establishment of Borders & Coastguard Agency.

3.(1) There is hereby established the Borders & Coastguard Agency.

(2) The Agency shall be a body corporate with perpetual succession under the name of “Borders & Coastguard Agency” and shall have a common seal which shall be officially and judicially noted.

(3) The common seal of the Agency may only be affixed to an instrument in the presence of the Chairman or the Chief Executive Officer or other person authorised by the Minister for that purpose, and one other member of the Board; the persons so present shall sign the instrument as witnesses to the sealing.

(4) The Agency may sue and be sued in its corporate name. Service of any process or notice on the Agency may be effected by leaving it at, or sending it by registered post to, the principal office of the Agency.

Board.

4.(1) The affairs of the Agency shall be conducted by the Board.

(2) The Board shall consist of the following members—

- (a) the Minister as Chairman;
- (b) the Chief Executive Officer
- (c) such other persons as may be appointed by the Minister.

(3) Members of the Board referred to in paragraph (c) of subsection (2) shall hold office for such period and upon such terms as the Minister may deem appropriate.

(4) If the Minister is satisfied that any member referred to in paragraph (c) of subsection (2)—

- (a) has been absent from three consecutive meetings of the Board without reasonable excuse;
- (b) has become bankrupt;

- (c) has been convicted of a criminal offence involving dishonesty or any criminal offence and been sentenced to a term of imprisonment;
- (d) is incapacitated by physical or mental illness; or
- (e) is otherwise unable or unfit to discharge the functions of a member,

the Minister may, by notice in the Gazette, declare his office as a member of the Board to be vacant and thereupon his office shall become vacant.

(5) A member who wishes to resign his office shall do so in writing addressed to the Chairman and may give up to three months notice thereof.

(6) Any member of the Board other than a member to whom subsection (3)(b) to (e) applies who ceases to be a member shall be eligible for re-appointment.

(7) The Minister shall appoint a person who is an employee of the Agency to be the Secretary of the Board.

Meetings and proceedings of the Board

5.(1) The quorum at all meetings of the Board shall be three members in addition to the Chairman or other person presiding.

(2) The Board shall meet at least once in every six months and on such other occasions as it shall be convened by the Chairman.

(3) At all meetings of the Board the Chairman or, in his absence, such other member as he may designate shall preside.

(4) Any matters arising at a meeting of the Board shall be decided by a majority of the members present and, in the case of an equality of votes, the person presiding shall have a second or casting vote.

(5) All orders and directions of the Board shall be given under the hand of the Chairman or Chief Executive Officer.

Functions and Duties of the Agency.

6.(1) It shall be the principal duty of the Agency to carry out the functions conferred upon it by this or any Act so far as practicable.

(2) Without prejudice to the generality of the provisions of subsection (1), it shall be the duty of the Agency to do the following things in so far as it is mandated to do so by Government and the Government provides sufficient resources therefor—

- (a) to carry out immigration control at points of entry into and if so required exit from Gibraltar as directed by the Principal Immigration Officer;
- (b) to monitor, investigate and enforce compliance with immigration laws;
- (c) to carry out passenger, staff, cargo, vehicle and baggage security checks at all air and sea passenger terminals and ports and in such other places as the Government may direct and generally conduct security checks, functions and controls in relation to such places;
- (d) to carry out vehicular traffic and pedestrian circulation controls in relation to any of its other duties;
- (e) to collect and prepare statistics, data and other information relating to or arising from any of its other duties;
- (f) to carry out and be responsible for maritime search and rescue;
- (g) to provide general maritime and seaborne incident and event response capability including but not limited to accident and pollution response;
- (h) to conduct general patrols of Gibraltar's territorial waters and its maritime and terrestrial borders;
- (i) to monitor and enforce compliance with marine and coastal environmental protection laws and other environmental protection laws where the source or cause of the threat is seaborne;

- (j) to monitor and enforce compliance with maritime safety and shipping laws and Port rules;
- (k) to monitor and enforce compliance with marine leisure laws;
- (l) to monitor compliance with and enforce bunkering laws and rules;
- (m) such other related or similar functions as the Government may direct;
- (n) to advise the Government and assist in the implementation and administration of Government policy in relation to all such matters.

(3) In exercising its powers, duties and carrying out its functions under this Act the Agency shall act in accordance with the policy of the Government and in accordance with any direction of the Government.

Powers of the Agency.

7.(1) Subject to the provisions of this or any other Act, the Agency shall have power to do all things necessary for the carrying out of its functions and duties.

(2) Without prejudice to the generality of the provision of subsection (1), the Agency may—

- (a) employ persons;
- (b) purchase, lease or otherwise acquire, and hold and dispose of any property;
- (c) purchase or otherwise acquire and operate boats and aircraft
- (d) contract with any person for the supply to, or by, the Agency of any goods, services or personnel;
- (e) erect, equip and maintain all necessary buildings, plant, and equipment;

- (f) compile, prepare, print, publish, issue, circulate and distribute, whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the attainment of the objects of the Agency or the advancement of its functions or duties.

Discharge of functions by the Agency.

8.(1) The Agency may arrange for the discharge of any of its duties—

- (a) by a committee, a sub-committee or an employee of the Agency; or
- (b) by any Government department or by any other Agency or authorities.

(2) Any arrangements made by the Agency under this section for the discharge of any of its functions by a committee, sub-committee, employee, Government department or other Agency shall not prevent the Agency from exercising those functions.

Standing Orders.

9.(1) The Agency may regulate its own procedure.

(2) The Agency may make standing orders as respects any committee of the Agency with respect to the quorum, proceedings and place of meeting of the committee (including any sub-committee) but, subject to any such standing orders, the quorum, proceedings and place of meeting shall be such as the committee or sub-committee may determine.

(3) This section is subject to the provisions of section 5.

Appointment of Chief Executive Officer.

10.(1) The Government shall appoint a person to be the Chief Executive Officer of the Agency.

(2) The Chief Executive Officer shall hold office for such period and upon such terms as may be specified in the instrument appointing him.

(3) The Chief Executive Officer shall be the executive officer of the Agency and shall, in addition, perform such other functions and exercise such other powers, as may, from time to time, be conferred upon him by this or any other Act or delegated to him by the Agency.

(4) In the event of the illness, death, retirement, suspension or removal from office or absence from Gibraltar of the Chief Executive Officer, the Agency shall appoint a person to act as Chief Executive Officer upon such terms as the Agency may deem appropriate.

Financial duty of the Agency.

11. The Agency shall so manage its affairs as to ensure that, taking one year with another, its outgoings are not greater than its revenues from—

- (a) all funds which may from time to time be voted by the Parliament for the purposes of the Agency;
- (b) all fees due to the Agency for the provision of services and facilities provided by the Agency in the exercise of its functions; and
- (c) any monies properly accruing to the Agency from any other source.

Establishment and operation of general fund.

12.(1) The Agency shall establish with the Accountant General a general fund—

- (a) into which all monies received by the Agency shall be paid; and
- (b) out of which all payments made by the Agency shall be paid.

(2) The Chief Executive Officer shall be responsible for the management of the general fund established under subsection (1).

(3) The Agency may borrow temporarily by way of advance from the Government only such sums as it may require for meeting its obligations and discharging its functions.

Accounts and auditing.

13.(1) The Agency shall keep proper books of account of its operations during each financial year, and shall also cause a statement of its accounts for each financial year to be prepared within six months after the end of each financial year.

(2) The accounts of the Agency for each financial year shall be audited and certified by the Principal Auditor as soon as practicable after the end of that year and shall be submitted to him for that purpose within seven months after the end of the financial year to be audited.

(3) The Principal Auditor shall, with reference to the accounts of the Agency, report—

- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of the audit; and
- (b) whether, in his opinion, proper books of account have been kept by the Agency, so far as appears from his examination of those books; and
- (c) whether the Agency has discharged its financial duties and obligations under the provisions of this Act.

(4) Within one month after the end of the audit of its accounts for any financial year, the Agency shall prepare and submit to the Minister a written report of its operations for that year together with a copy of the audited accounts for that year.

(5) The Minister shall lay one copy of the annual report and of the audited accounts on the table of the Parliament as soon as practicable after they have been received by him.

(6) The Agency shall furnish to the Government—

- (a) a copy of the estimates of income and expenditure, including capital expenditure, no later than the 15th day of January in each year; and

- (b) such financial and statistical returns as it may from time to time require.

Financial year.

14. The financial year of the Agency shall be the twelve month period ending 31 March each year:

Provided that the first financial year of the Agency shall be the period commencing on the date of establishment of the Agency and ending on the 31st day of March next following.

No personal liability to attach to members.

15. No personal liability shall attach to any member of the Agency in respect of anything done or omitted to be done, in good faith under the provisions of this or any other Act.

Proceedings on failure of Agency to perform its duties.

16. If at any time it appears to the Government that the Agency has failed to comply with any of the provisions of this or any other Act, it may by notice in writing require the Agency to make good the default within such time as may be specified in the notice.

Restriction on execution.

17. No execution by attachment of property or process in the nature thereof shall be issued against the Agency.

Acquisition of land compulsorily.

18. The functions of the Agency are a public purpose within the definition of "public purpose" contained in section 2 of the Land (Acquisition) Act.

Regulations.

19. The Government may make Regulations for carrying out the purposes of this Act or for the purposes of, or howsoever relating to, any of the powers, functions and duties of the Agency and its employees.

Consequential modifications and amendments.

20.(1) The Schedule to the Public Services Ombudsman Act 1998 shall be amended by inserting after paragraph 2.10 the following paragraph—

“2.11 The Borders & Coastguard Agency”.

(2) The Government may make regulations for the purpose of modifying and amending any orders, regulations or rules made under any Act for the purpose of giving effect to any modifications or amendments made to any Act by this Act and for the purpose of transferring the functions of any person or body to the Agency, notwithstanding that the power to make such orders, regulations and rules is vested in some person or body other than the Government.

EXPLANATORY MEMORANDUM

This Bill provides for the establishment of the Borders & Coastguard Agency.

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