

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,163 of 16th April, 2015

B. 11/15

FAIR TRADING BILL 2015

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**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,163 of 16th April, 2015

B. 11/15

BILL

FOR

AN ACT To Establish and Provide for the functions of the Office of Fair Trading and the Office of Fair Trading Commission; encourage businesses to comply with consumer law and improve their trading practices; streamline and simplify the trade licensing system and re-name the modernised system as business licensing; establish enforcement powers for the Business Licensing Authority being part of the Office of Fair Trading in cases of non-adherence by licencees; establish a single point of contact as part of the business licensing procedure; amend the law relating to the protection of the collective interests of consumers; enable action to be taken against conduct which may significantly harm the interests of consumers; and for purposes connected therewith.

ENACTED by the Legislature of Gibraltar.

**PART 1
COMMENCEMENT AND INTERPRETATION**

Title and commencement.

1.(1) This Act may be cited as the Fair Trading Act 2015 and comes into operation on a date to be appointed by the Minister by Notice published in the Gazette.

(2) Different dates may be appointed for different provisions and for different purposes of this Act.

Interpretation.

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

“appropriate fee” means such fee as the Government may by regulation prescribe in relation to this Act;

“BLA” means the Business Licensing Authority forming part of the OFT;

“business” means business of a class specified in Schedule 3;

“Chairman of the Commission” means a person appointed in accordance with section 11(1)(a) and Schedule 2 of this Act to preside over the Commission;

“commercial quantities” in relation to any goods imported by any person—

- (a) means any quantity that is in fact intended for resale, or to be disposed of, for profit or gain, to a person other than the importer; and
- (b) any quantity that is such, having regard to the usual and reasonable needs of persons of the same class as the importer, as to be indicative that the goods are intended to be resold, or otherwise disposed of for profit or gain, to a person other than the importer, and not to be retained or used by the importer himself but does not include in any case any quantity of goods that the importer proves are not imported for the purposes of resale, and are not otherwise intended to be disposed of for profit or gain, to a person other than the importer;

“Commission” means the OFT Commission established in accordance with section 10(1) of this Act;

“Commission rules” means any rules made by the Minister in accordance with section 14 of this Act;

“consumer” means—

- (a) in relation to any goods, any person who might wish to be supplied in Gibraltar with goods for his use or consumption;
- (b) in relation to any services or facilities, any person who might wish to be provided with services or facilities in Gibraltar; and

(c) is acting for purposes which are wholly or mainly outside his business or profession;

“Court” means the Supreme Court unless otherwise specified;

“Designated Consumer Body” means a body designated by the Minister under this Act and published by notice in the Gazette;

“enforcement order” means an order made in accordance with section 43 of this Act;

“enactment” includes any Act, and any rule, regulation, bye-law or order made under any Act;

“goods” means any goods, wares, merchandise, commodities or materials;

“licence” means a business licence issued under this Act and includes any duplicate licence issued;

“licence holder” means a person named in a licence;

“the Minister” means the Minister with responsibility for consumer and commercial affairs;

“OFT” means the Office of Fair Trading;

“premises” means commercial premises, to include residential premises in cases where it has come to the attention of the OFT that the occupier may be using such premises for business, and all premises licensed by the BLA;

“publish” means to make publicly or generally known and includes a publication in electronic form;

“Reference” means a reference to the Commission made in accordance with sections 20 and 21 of this Act;

“regulated activity” means any activity conducted by way of business which would require any form of authorisation under any one or more of the Supervisory Acts, the Financial Services (Consumer Credit) Act 2011 or the Financial Services (Moneylending) Act;

“sell” includes exchange, barter, offer for sale or expose for sale, and sale and selling shall be construed accordingly; and

“Supervisory Act” means any Act specified by Order made under section 2 of the Financial Services Commission Act 2007 or defined in the Financial Services Commission (Supervisory Acts) Order 2012.

PART 2
THE ESTABLISHMENT OF AN OFFICE OF FAIR TRADING

The Office of Fair Trading.

3.(1) There shall be a body corporate to be known as the OFT.

(2) In managing its affairs the OFT shall have regard, in addition to any relevant general guidance as to the governance of public bodies, to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the OFT.

Annual Report.

4.(1) The OFT shall, as soon as practicable after the end of each financial year, make to the Minister an annual report on its activities and performance during that year.

(2) The annual report for each year shall include—

- (a) a general survey of developments in respect of matters relating to the OFT’s functions;
- (b) an assessment of the extent to which the OFT’s main objectives and priorities for the year have been met;
- (c) a summary of the significant decisions, investigations or other activities made or carried out by the OFT during the year; and
- (d) an assessment of the OFT’s performance and practices in relation to its enforcement functions.

(3) The Minister shall lay a copy of each annual report before Parliament and arrange for the report to be published.

(4) The OFT may–

- (a) prepare other reports in respect of matters relating to any of its functions; and
- (b) arrange for any such report to be published.

Acquisition of information.

5.(1) The OFT has a duty to obtain, compile and keep under review information relating to the carrying out of its functions with a view to ensure that the OFT has sufficient information to take informed decisions and to carry out its functions effectively.

(2) In carrying out that duty the OFT may carry out, commission or support research, financially or otherwise.

Provision of information to the public.

6.(1) The OFT shall provide to the public–

- (a) materials to make them aware of the ways in which consumer protection measures may benefit consumers and the economy of Gibraltar; and
- (b) information or advice in respect of matters relating to any of its functions to the public.

(2) In carrying out those functions the OFT may–

- (a) publish educational materials or carry out other educational activities; or
- (b) support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice.

General functions of the OFT.

7.(1) Without prejudice to any other functions assigned to it by or under this Act, it is the duty of the OFT–

- (a) to keep under review the carrying on of conduct relating to business, and to collect information with respect to such conduct, and the persons by whom it is carried on, with a view to it becoming aware of, and ascertaining the circumstances relating to, practices which may significantly harm consumer interests;
- (b) to receive and collate evidence becoming available to the OFT with respect to such conduct as is mentioned in paragraph (a) and which appears to it to be evidence of practices which may significantly harm consumer interests; and
- (c) to promote good business practices which may affect consumer interests, to include promoting good business practices both in relation to other businesses and in relation to businesses to consumers, making proposals and giving other information or advice on matters relating to any of its functions including proposals (to Government or any public authority) as to any aspect of the law or a proposed change in the law.

(2) The composition and proceedings of the OFT shall be as set out in Schedule 1 to this Act.

Minister's power to make rules.

8.(1) The Minister may request the OFT to make proposals or give other information or advice on any matter relating to any of its functions and the OFT shall comply with the request.

(2) The Minister may from time to time make rules generally for carrying out the provisions of this Act and for anything that under the provisions of this Act is required or permitted to be prescribed to give effect to this Act.

Minister's power to issue guidance.

9. The Minister may from time to time issue guidance consisting of such information and advice as he considers appropriate with respect to the operation of this Act and any legislation subsidiary to this Act.

**PART 3
THE OFT COMMISSION**

The Commission.

10.(1) There shall be an OFT Commission, to be called the Commission.

(2) The function of the Commission is to ensure a level playing field between businesses for the benefit of consumers and the economy.

(3) The Commission does not initiate inquiries independently. All its activities are undertaken following a reference to it.

Composition of the Commission.

11.(1) The Commission shall consist of—

- (a) the Chairman of the Commission;
- (b) members appointed by the Government to form a panel of chairmen; and
- (c) members appointed by the Government to form a panel of ordinary members;

in accordance with the provisions of Schedule 2 to this Act.

(2) The Commission shall have a Registrar appointed by the Government.

Quorum of the Commission during proceedings.

12.(1) For the purposes of any proceedings before it the Commission shall consist of the Chairman of the Commission and a minimum of two other members.

(2) The Chairman of the Commission shall be a member of the panel of chairmen.

(3) The other members may be chosen from either the panel of chairmen or the panel of ordinary members.

Commission decisions.

13. If the members of the Commission as constituted in accordance with this section are unable to agree on any decision, the decision is to be taken by majority vote and in the case of an equality of votes the Chairman of the Commission shall have a second or casting vote.

Commission rules.

14.(1) The Minister may, after consulting the Chairman of the Commission and such other persons as he considers appropriate, make rules with respect to proceedings before the Commission.

(2) Commission rules may make provision with respect to matters incidental to or consequential upon appeals to the Court in relation to a decision of the Commission.

(3) Commission rules may—

- (a) specify qualifications for the appointment of the Registrar;
- (b) confer functions on the Chairman of the Commission or the Registrar in relation to proceedings before the Commission; and
- (c) contain incidental, supplemental, consequential or transitional provisions.

Referrals of the Commission to the Court.

15. The Commission shall have the power to state a case for the opinion of the Court and in this respect, rules 25 to 30 of the Supreme Court Rules 2000 shall apply to the Commission in the same way as they apply to the Magistrates' Court.

**PART 4
COMPLAINTS TO THE OFT**

Designated Consumer Body.

16. There shall be designated bodies each known as a Designated Consumer Body that shall be capable of making a super-complaint to the OFT in accordance with the provisions of section 18.

Appointment as a Designated Consumer Body.

17. The Minister—

- (a) may designate a body to be a Designated Consumer Body if it appears to him to represent consumer interests; and
- (b) may publish (and may from time to time vary) other criteria to be applied by him in determining whether to make or revoke a designation.

Super-complaints to the OFT.

18.(1) A Designated Consumer Body may make a super-complaint to the OFT in accordance with the provisions of this section, if, in its opinion, any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be significantly harming consumer interests.

(2) The OFT shall, within 90 days after the day on which it receives all information relating to the complaint, produce a response stating how it proposes to deal with the complaint, and in particular—

- (a) whether it has decided to take any action, or to take no action, in response to the complaint; and
- (b) if it has decided to take action, what action it proposes to take.

(3) The response shall state the OFT's reasons for its proposals.

(4) The Minister may by order amend subsection (2) by substituting any period for the period being specified in the order, such order to be made by Notice in the Gazette.

(5) The OFT—

- (a) shall issue guidance to the Designated Consumer Body as to the presentation by the complainant of a reasoned case for the complaint; and
- (b) may issue such other guidance as appears to it to be appropriate for the purposes of this section.

Ordinary Complaint to the OFT by a consumer or business.

19.(1) A consumer or business may make a complaint to the OFT in accordance with the provisions of this section, if, in its opinion, any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be significantly harming consumer interests.

(2) The OFT shall, within 120 days after the day on which it receives all information relating to the complaint, produce a response stating how it proposes to deal with the complaint, and in particular—

- (a) whether it has decided to take any action, or to take no action, in response to the complaint; and
- (b) if it has decided to take action, what action it proposes to take.

(3) The response shall state the OFT's reasons for its proposals.

(4) The Minister may by order amend subsection (2) by substituting any period for the period being specified in the order, such order to be made by Notice in the Gazette.

**PART 5
REFERENCES TO THE COMMISSION**

Power of the OFT to make references to the Commission.

20.(1) The OFT may make a Reference if it has reasonable grounds for suspecting that any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be significantly harming consumer interests.

(2) For the purposes of this section, a feature of a market in Gibraltar for goods or services shall be construed as a reference to—

- (a) the structure of the market concerned or any aspect of that structure;
- (b) any conduct of one or more than one person who supply or acquire goods or services in the market concerned; or
- (c) any conduct relating to the market concerned which supply or acquire goods or services.

(3) In subsection (2) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

Ministerial power to make references to the Commission.

21. The Minister may make a Reference if he has reasonable grounds for suspecting that any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be significantly harming consumer interests if–

- (a) in relation to any goods or services, the Minister is not satisfied with a decision of the OFT not to make a Reference under section 20; or
- (b) in relation to any goods or services, the Minister has brought to the attention of the OFT information which he considers to be relevant to the question of whether the OFT should make a Reference under section 20 but is not satisfied that the OFT will decide, within such period as the Minister considers to be reasonable, whether to make such a Reference.

Undertaking in lieu of Reference.

22.(1) Where it appears to the OFT that a person carrying on a business has in the course of that business conducted himself in a manner that–

- (a) has significantly harmed consumer interests; and
- (b) in accordance with the following provisions of this section significantly harms consumer interests, the OFT shall use its best endeavours to communicate with that person to obtain from him such an assurance in the form of an undertaking as is

mentioned in subsection (6) prior to making a referral to the Commission under section 20 of this Act.

(2) For the purposes of subsection (1)(b) conduct shall be regarded as significantly harmful to consumer interests if it consists of contraventions of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty, prohibition or restriction is imposed in relation to consumers or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention.

(3) For the purposes of subsection (1)(b) conduct on the part of the person carrying on a business shall also be regarded as significantly harmful to consumers if it consists of things done, or omitted to be done, in the course of that business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any enactment or rule of law and enforceable by civil proceedings, whether (in any such case) civil proceedings in respect of the breach of contract or breach of duty have been brought or not.

(4) For the purpose of determining whether it appears to the OFT that a person has conducted himself in such a manner as is mentioned in subsection (1), the OFT shall have regard to either or both of the following—

- (a) complaints received by it, whether from consumers or from other persons;
- (b) any other information collected by or furnished to the OFT, whether by virtue of this Act or otherwise.

(5) For the purposes of this section a person (whether being a natural person or a body of persons, or corporate) has a controlling interest in a body corporate if (but only if) that person can, directly or indirectly, determine the manner in which one-half of the votes which could be cast at a general meeting of the body corporate are to be cast on matters, and in circumstances, not of such a description as to bring into play any special voting rights or restrictions on voting rights.

(6) The undertaking referred to in subsection (1) is a satisfactory written assurance given by the person concerned that he will refrain from—

- (a) conducting himself in the manner described in subsection (1)(a);

- (b) conducting himself in any similar manner in the course of any business which may at any time be carried on by him; and
- (c) if he is a natural person, consenting to or conniving at such conduct by any body corporate in relation to which, at any time when it so conducts itself, he fulfils the condition specified in subsection (7)(a) or (b).

(7) The condition referred to in subsection (6)(c) is that the person either–

- (a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity; or
- (b) whether being a natural person or a body of persons or corporate, has at that time a controlling interest in that body corporate.

(8) An undertaking under this section–

- (a) shall come into force when accepted;
- (b) may be varied or superseded by another undertaking; and
- (c) may be released by the OFT.

(9) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

(10) No Reference shall be made in relation to any feature, or combination of features, of a market in Gibraltar for goods or services if–

- (a) the OFT has accepted an undertaking or undertakings under section 22 within the previous 12 months; and
- (b) the goods or services to which the undertaking or undertakings relates are of the same description as the goods or services to which the feature, or combination of features, relates.

(11) Subsection (10) does not prevent the making of a Reference to the Commission if–

- (a) the OFT considers that any undertaking concerned has been breached and has given notice of that fact to the person responsible for giving the undertaking; or
- (b) the person responsible for giving any undertaking concerned supplied, in connection with the matter, information to the OFT which was false or misleading in a material respect.

(12) The OFT shall keep under review the carrying out of any undertakings given under section 22 and in particular, from time to time consider whether an undertaking given has been or is being complied with.

Investigative powers of the OFT.

23. The OFT may exercise any of the powers in this Part for the purpose of assisting it in deciding whether to make a Reference or to accept an undertaking under section 22.

Notice by the OFT to give evidence.

24.(1) The OFT may give notice to any person requiring him–

- (a) to attend at a time and place specified in the notice;
- (b) to give evidence to the OFT or a person nominated by the OFT for this purpose;
- (c) to produce any documents which are specified or described in the notice, or fall within a category of document which is specified or described in the notice and which are in that person's custody or under his control; and
- (d) to produce them at a time and place so specified and to a person so specified.

(2) The OFT may give notice to any person who carries on any business requiring him–

- (a) to supply to the OFT such estimates, forecasts, returns or other 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.

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

(4) The person to whom any document is produced in accordance with a notice under this section may, for the purpose mentioned in subsection (1), copy the document so produced.

(5) No person shall be required under this section to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the Magistrates' or Court in Gibraltar or to supply any information which he could not be compelled to supply in evidence in such proceedings.

Offences in relation to section 24.

25.(1) A person commits an offence if he, intentionally and without reasonable excuse, fails to comply with any requirement of a notice under section 24.

(2) A person commits an offence if he intentionally and without reasonable excuse alters, suppresses or destroys any document which he has been required to produce by a notice under section 24.

(3) A person who commits an offence under subsection (1) or (2) shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding level 5 on the standard scale or to both.

(4) A person commits an offence if he intentionally obstructs or delays the OFT in the exercise of its powers under section 23.

(5) A person who commits an offence under subsection 4 shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or

- (b) on conviction on indictment, to a fine not exceeding level 5 on the standard scale and to imprisonment for a term not exceeding two years.

Contents of References.

26.(1) A Reference shall, in particular, specify–

- (a) the enactment under which it is made;
- (b) the date on which it is made; and
- (c) the description of goods or services to which the feature or combination of features concerned relates.

(2) A Reference may be framed so as to require the Commission to confine its investigation into the effects of features of goods or services of a description specified in the Reference as exist in connection with–

- (a) a supply, of the goods or services concerned; or
- (b) an acquisition, of the goods or services concerned.

(3) A description of the kind mentioned in subsection (2) may, in particular, be by reference to–

- (a) the place where the goods or services are supplied or acquired; or
- (b) the persons by or to whom they are supplied or by or from whom they are acquired.

Question to be decided on a Reference.

27. The Commission shall, on a Reference, decide whether any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be significantly harming consumer interests.

Additional questions to be decided.

28.(1) The Commission shall, if it has decided on a Reference that there is a significant harm to consumer interests, decide the following additional questions—

- (a) whether action should be taken by the Commission for the purpose of remedying, mitigating or preventing the significant harm to consumer interests so far as it has resulted from, or may be expected to result from, the feature or features which required a Reference;
- (b) whether it should recommend the taking of enforcement action in accordance with Part 7 of this Act for the purpose of remedying, mitigating or preventing the significant harm to consumer interests in so far as it has resulted from, or may be expected to result from, the feature or features which required a Reference; and
- (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

(2) For the purposes of this Part, in relation to a Reference, a significant harm to consumer interests may take the form of—

- (a) higher prices, lower quality or less choice of goods or services in the market in Gibraltar; or
- (b) less innovation in relation to such goods or services.

(3) In deciding the questions in this section, the Commission shall, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the significant harm.

(4) In deciding the questions in this section, the Commission may, in particular, have regard to the effect of any consumer benefits.

(5) For the purposes of this Part a benefit is a consumer benefit—

- (a) if it is a benefit to consumers or future consumers in the form of—

- (i) lower prices, higher quality or greater choice of goods or services in the market in Gibraltar; or
 - (ii) greater innovation in relation to such goods or services; and
- (b) the Commission believes that—
- (i) the benefit has accrued as a result (whether wholly or partly) of the feature or features concerned or may be expected to accrue within a reasonable period as a result (whether wholly or partly) of that feature or those features; and
 - (ii) the benefit was, or is, unlikely to accrue without the feature or features concerned.

Time-limits for investigations and reports by the Commission.

29.(1) The Commission shall, within the period of six months beginning with the date of the Reference, prepare its report and may publish the same at its discretion.

(2) The Minister may by order amend subsection (1) so as to alter and substitute the period of six months mentioned in that subsection to such period as the Minister thinks fit. Before making such order the Minister shall consult the Commission and such other persons as he considers appropriate.

(3) No alteration shall be made by virtue of subsection (2) which results in the period for the time being mentioned in subsection (1) exceeding six months.

Variation of a Reference.

30.(1) The OFT or (as the case may be) the Minister may at any time vary a Reference made by it or (as the case may be) him.

(2) The OFT or (as the case may be) the Minister shall consult the Commission before varying any such Reference.

Commission reports and investigations.

31.(1) The Commission shall prepare and may publish a report on a Reference within the period permitted by section 29.

(2) The report shall, in particular, contain—

- (a) the decisions of the Commission on the questions which it is required to answer by virtue of the Reference;
- (b) the reasons for its decisions; and
- (c) such information as the Commission considers appropriate for facilitating a proper understanding of those questions and of the reasons for its decisions.

(3) The Commission shall carry out such investigations as it considers appropriate for the purposes of preparing a report under this section.

The provision of copies of investigation reports.

32. Should the Commission decide to publish its report, it shall, at the same time as a report under this section is published—

- (a) in the case of a Reference under section 20, make a copy available to the OFT and make a further copy available to the Minister; and
- (b) in the case of a Reference under section 21, make a copy available to the Minister and make a further copy available to the OFT.

Duty to remedy significant harm to consumer interests.

33.(1) Where a report of the Commission has been prepared within the period permitted by section 29 and contains the decision that there is a feature, or combination of features, of a market in Gibraltar for goods or services that is significantly harming consumer interests, the Commission shall, in relation to each feature take such action as it considers to be reasonable and practicable to remedy, mitigate or prevent the significant harm concerned in so far as they have resulted from, or may be expected to result from, the significant harm to consumer interests.

(2) The decisions of the Commission under subsection (1) shall be consistent with its decisions as included in its report unless there has been a material change of circumstances since the preparation of the report or the Commission has a special reason for deciding differently.

(3) The Commission shall take no action to remedy, mitigate or prevent any significant harm to consumer interests in so far as the Commission is of the opinion that—

- (a) there is no significant harm to consumer interests; or
- (b) the significant harm is being remedied, mitigated or prevented.

PART 6 INSPECTIONS AND CP ENFORCERS

Consumer Protection Enforcers.

34. There shall be two or more Consumer Protection Enforcers (each a CP enforcer) to be appointed by the Minister under this Act, who shall have as their main role the protection of consumer interests, and shall—

- (a) visit businesses to review their practices and inspect all weighing and measuring equipment used for business;
- (b) check licences to ensure they are in place and up to date;
- (c) monitor and check advertisements for accuracy;
- (d) inspect and test goods for safety;
- (e) ensure that no person is selling goods to consumers without a licence or without suitable premises as required by Part 9 of this Act; and
- (f) act and investigate matters and conduct of business practices in Gibraltar which could or appear to harm consumer interests.

Powers exercisable on the premises.

35.(1) A CP enforcer may, in the exercise of his powers under this Act—

- (a) observe the carrying on of a business on the premises;
- (b) inspect goods or documents on the premises;
- (c) require any person on the premises to produce goods or documents within such period as the CP enforcer considers to be reasonable;
- (d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere; or
- (e) seize, remove and retain goods or documents which the CP enforcer reasonably suspects may be required as evidence of a breach of a relevant enforcement measure.

(2) The power in subsection (1)(c) to require a person to produce goods or documents includes the power to require him—

- (a) to state, to the best of his knowledge and belief, where the goods or documents are;
- (b) to give an explanation as to the goods or documents; and
- (c) to secure that any goods or documents produced are authenticated or verified in such manner as the CP enforcer considers appropriate.

(3) A CP enforcer may take copies of, or extracts from, any documents to which he has access by virtue of subsection (1).

(4) In this section document includes information recorded in any form.

(5) The reference in subsection (1)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

Power to enter premises with a warrant.

36.(1) A Magistrate may issue a warrant authorising a CP enforcer to enter premises for purposes falling within this Act if the Magistrate considers that there are reasonable grounds for believing that—

- (a) there are, on the premises, goods or documents to which a CP enforcer would be entitled to have access; and
- (b)(i) a CP enforcer has been, or would be likely to be, refused admission to the premises or access to the goods or documents;
- (ii) the goods or documents would be likely to be concealed or interfered with if an appropriate notice were given under section 24; or
- (iii) there is likely to be nobody at the premises capable of granting admission.

(2) A warrant under this section authorises the CP enforcer–

- (a) to enter the premises specified in the warrant (using reasonable force if necessary);
- (b) to search for goods or documents which the CP enforcer has required a person on the premises to produce where that person has failed to comply with such a requirement;
- (c) to the extent that it is reasonably necessary to do so, to require any person to whom subsection (3) applies to break open a container and, if that person does not comply with the requirement, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, to do so himself; and
- (d) to take any other steps which the CP enforcer considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which the CP enforcer would be entitled to have access under sections 34 and 35.

(3) This subsection applies to a person who is responsible for discharging any of the functions of the business being carried on at the premises under inspection.

(4) A warrant under this section–

- (a) is issued on information given under oath by a CP enforcer;

- (b) ceases to have effect at the end of the period of one month beginning with the day of issue; and
- (c) shall, on request, be produced to the occupier of the premises for inspection.

(5) Any reference in this section to goods or documents being interfered with includes a reference to them being destroyed.

Power to enter premises without a warrant.

37.(1) A CP enforcer who reasonably suspects that there have been, or are likely to be, business practices carried on which significantly harm consumer interests, may enter those premises to investigate whether there has been, or is likely to be, such business practice.

(2) An appropriate notice shall be given to the occupier of the premises before a CP enforcer enters under subsection (1).

(3) An appropriate notice is a notice in writing given by a CP enforcer which—

- (a) gives at least two working days' notice of entry on the premises;
- (b) sets out why the entry is necessary; and
- (c) indicates the nature of the offence created by section 25.

(4) Subsection (2) does not apply if such a notice cannot be given despite all reasonably practicable steps having been taken to do so. In that case, the CP enforcer entering the premises shall produce to any occupier that he finds on the premises a document setting out why the entry is necessary and indicating the nature of the alleged offence.

(5) In all cases, the CP enforcer entering the premises shall produce to any occupier evidence of—

- (a) his identity; and
- (b) his authorisation.

Powers of entry- persons and equipment.

38. A CP enforcer who enters premises by virtue of section 36 or 37 may take with him such persons and equipment as he considers appropriate.

Obstructing, or failing to co-operate with, powers of entry.

39.(1) A person commits an offence if, without reasonable excuse, he intentionally obstructs, or fails to co-operate with, a CP enforcer who is exercising or seeking to exercise a power under this Part.

(2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) A CP enforcer can refer any matters in the exercise of its powers under this Act to the Royal Gibraltar Police if the CP enforcer is of the opinion that a criminal offence has occurred or is likely to occur.

Retention of documents and goods.

40. No documents seized under this Part may be retained for a period of more than two months from the date they were seized unless they are reasonably required in connection with the exercise of any function of a CP enforcer and where goods are so required they may be retained for a further period of one month from the expiry of the two month period.

Advice and information.

41.(1) As soon as is reasonably practicable after the passing of this Act the OFT shall prepare and publish advice and information with a view to—

- (a) explaining the provisions of this Part to persons who are likely to be affected by them; and
- (b) indicating how the OFT expects such provisions to operate.

(2) Advice from a CP enforcer shall be put clearly and simply to a business who in the opinion of the CP enforcer is not compliant. Such advice—

- (a) shall be confirmed in writing on request;
- (b) shall explain why any remedial action is necessary and over what timescale; and

(c) shall ensure that legal requirements are distinguished from best practice guidance issued by the OFT (if relevant).

(3) The OFT may at any time publish revised or new advice or information.

(4) Advice or information published in pursuance of subsection (1) may include advice or information about the factors which the OFT may take into account in considering how to exercise the functions conferred on it by this Part.

(5) Advice or information published by the OFT under this section is to be published in such form and in such manner as it considers appropriate.

(6) In preparing advice or information under this section the OFT shall consult such persons as it thinks are representative of persons affected by this Part.

Notice of convictions and judgments to OFT.

42.(1) This section applies if–

- (a) a person is convicted of an offence by or before any court in Gibraltar, or
- (b) a judgment is given against a person by any court in civil proceedings in Gibraltar.

(2) Such court as referred to in subsection (1) may make arrangements to bring the conviction or judgment to the attention of the OFT if it appears to the relevant court–

- (a) having regard to the functions of the OFT that it is expedient for the conviction or judgment to be brought to the attention of the OFT; and
- (b) that without such arrangements the conviction or judgment may not be brought to the attention of the OFT.

(3) “Judgment” includes an order or decree and references to the giving of the judgment shall be construed accordingly.

**PART 7
ENFORCEMENT FUNCTIONS AND PROCEDURE OF THE
COMMISSION**

Enforcement orders.

43.(1) Where a Reference is made and the Commission finds that the person named in the Reference has engaged in conduct which significantly harms consumer interests, the Commission may make an enforcement order against that person.

(2) An enforcement order shall—

- (a) name the person the Commission thinks has engaged or is engaging in conduct which is significantly harmful;
- (b) indicate the nature of the conduct to which the finding under subsection (2)(a) relates; and
- (c) direct the person to comply with subsection (3).

(3) A person complies with an enforcement order if he—

- (a) does not continue or repeat the conduct; and
- (b) does not engage in such conduct in the course of his business or another business.

(4) An enforcement order may require a person against whom the order is made to publish in such form and manner and to such extent as the Commission thinks appropriate for the purpose of eliminating any continuing effects of such conduct.

(5) The Commission may also—

- (a) ask the person against whom the order is made to issue a corrective statement;
- (b) ask the person against whom the order is made for proof of compliance with the content of the order within a defined period of time from the date of the order; or

- (c) request that the person against whom the order is made take steps which the Commission believes will secure that he complies with the order.

Applications to the Commission for interim enforcement orders.

44.(1) The Commission may make an interim enforcement order against a person named in the Reference if it appears to the Commission that—

- (a) such person is engaged in conduct which is significantly harming consumer interests or is likely to engage in such conduct; and
- (b) it is expedient that the conduct is prohibited or prevented (as the case may be) immediately.

(2) An interim enforcement order shall—

- (a) indicate the nature of the alleged conduct; and
- (b) direct the person to comply with subsection (3).

(3) A person complies with an interim enforcement order if he—

- (a) does not continue or repeat the conduct;
- (b) does not engage in such conduct in the course of his business or another business; and
- (c) does not consent to or connive in the carrying out of such conduct by a body corporate with which he is a connected person.

(4) An application for an interim enforcement order may be made at any time before a Reference in respect of the same conduct is determined.

(5) An application for an interim enforcement order shall refer to all matters which are known to the OFT and are material to the application.

(6) If an application for an interim enforcement order is made by the OFT without notice the application shall state why no notice has been given.

(7) The Commission may vary or discharge an interim enforcement order on the application of—

- (a) the OFT; or
- (b) the person against whom it is made.

(8) An interim enforcement order against a person is discharged on the determination of a Reference and the issuing of an enforcement order in respect of the same conduct.

Consultation.

45.(1) The OFT shall not make a Reference unless it has engaged in appropriate consultation with the person against whom the enforcement order would be made.

(2) Appropriate consultation is consultation for the purpose of—

- (a) achieving the cessation of the significant harm described in section 43(1); or
- (b) ensuring that there will be no repetition of the conduct in a case where the significant harm has occurred.

(3) The Minister may make rules in relation to consultation under this section.

Duty of the OFT to monitor orders issued by the Commission.

46.(1) The OFT shall keep under review the carrying out of any enforcement orders issued by the Commission.

(2) The OFT shall, in particular, from time to time consider whether an enforcement order of the Commission has been or is being complied with.

(3) The OFT shall give the Commission such advice as it considers appropriate in relation to any possible variation or revocation by the Commission of an enforcement order made by the Commission.

Register of orders.

47.(1) The OFT shall compile and maintain a register of all enforcement orders made by the Commission.

(2) The register shall be kept in such form as the OFT considers appropriate.

(3) The OFT shall ensure that the following matters are entered in the register—

- (a) the provisions of any order made; and
- (b) the details of any variation, release or revocation of such an order.

(4) The Commission shall inform the OFT of any matters which are to be included in the register by virtue of subsection (3).

Publication of register of enforcement orders.

48.(1) Subject to subsection (3) the OFT may in its discretion enable the contents of the register to be made available to the public—

- (a) during (as a minimum) such hours as may be specified in an order made by the Minister; and
- (b) subject to such reasonable fees (if any) as the OFT may determine.

(2) If requested by any person to do so and subject to such reasonable fees (if any) as the OFT may determine, the OFT shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

(3) A person shall only be entered into the register made available to the public if—

- (a) there have been three or more enforcement orders made against that person or body corporate; and

- (b) the enforcement orders referred to in paragraph (a) are final and valid and have not been the subject of a successful appeal.

Right to enforce orders.

49.(1) This section applies to any order issued by the Commission.

(2) Any person to whom such an order relates shall have a duty to comply with it.

(3) The duty shall be owed to any person who may be affected by a contravention of the order.

(4) Any breach of the duty which causes such a person to sustain loss or damage shall be actionable by him.

(5) In any proceedings brought under subsection (4) against a person to whom an enforcement order relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(6) Compliance with an enforcement order shall also be enforceable by civil proceedings brought by the Commission for an injunction or for interdict or for any other appropriate relief or remedy.

(7) Subsection (6) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement order.

Appeals to the Court.

50.(1) Any person aggrieved by a decision of the OFT, the Minister or the Commission in connection with a Reference may appeal to the Court.

(2) An appeal under this section may only be brought on a question of law.

(3) Except in so far as a direction to the contrary is given by the Court, the effect of the decision is not suspended by reason of the making of the appeal.

Appeals to the Court- Timeframes.

51.(1) An appeal under Section 50(1) shall be filed within 28 days of the Commission's decision.

(2) For this purpose “decision” includes a failure to take a decision permitted or required by this Part in connection with a Reference.

Determination of a Reference.

52. A Reference is finally determined if—

- (a) the period permitted for preparing and producing a report under section 29 has expired and no such report has been prepared and produced;
- (b) such a report has been prepared and produced within the period permitted by section 29 and contains the decision that there is a significant harm to consumer interests; or
- (c) such a report has been prepared and produced within the period permitted by section 29 and contains the decision that there is no significant harm to consumer interests.

**PART 8
DISCLOSURE**

Defamation.

53. For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice or direction given, or decision or report made, by the OFT, by the Minister or by the Commission in the exercise of any of their functions.

General restriction on disclosure of information.

54.(1) This section applies to specified information which relates to—

- (a) the affairs of a natural person; or
- (b) any business of an undertaking.

(2) Such information shall not be disclosed—

- (a) during the lifetime of the natural person; or
- (b) while the undertaking continues in existence.

(3) Subsection (2) does not prevent the disclosure of any information if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene such subsection or any other enactment or rule of law prohibiting or restricting the disclosure of the information.

Information.

55.(1) Information is specified information if it comes to the OFT in connection with the exercise of any function it has under or by virtue of-

- (a) any Part of this Act; or
- (b) such subordinate legislation as the Minister may by order specify for the purposes of this subsection.

(2) It is immaterial whether information comes to the OFT before or after the passing of this Act.

Consent.

56.(1) Disclosure of information by the OFT held by it is not prohibited if the OFT obtains the required consent from the person to whom it relates.

(2) If the information was obtained by the OFT from a person who had the information lawfully and the OFT knows the identity of that person the consent of that person is required.

(3) If the information relates to the affairs of a natural person, the consent of that person is required.

(4) If the information relates to a business or undertaking the consent of the person for the time being carrying on the business or undertaking is required.

(5) For the purposes of subsection (4) consent may be given-

- (a) in the case of a company by a director, secretary or other officer of the company;
- (b) in the case of a partnership by a partner; or

- (c) in the case of an unincorporated body or association by a person concerned in the management or control of the relevant body or association.

Offences.

57.(1) A person commits an offence if he discloses information to which section 55 applies.

(2) A person commits an offence if he uses information disclosed to him under this Part for a purpose which is not permitted under this Act.

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding two months or to a fine not exceeding level 5 on the standard scale or to both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

**PART 9
BUSINESS LICENSING**

Composition of the Business Licensing Authority within the OFT.

58.(1) The functions of the Trade Licensing Authority shall be transferred and be subsumed within the remit of the OFT and shall be known as the BLA.

(2) Subject to this Act and to any regulations made under this Act, the BLA may by rules or otherwise regulate its own procedure.

Presumption to carry on business.

59.(1) There is a presumption to be able to carry on business in Gibraltar, subject to obtaining the required licence in accordance with this Act.

(2) A person shall be deemed to carry on business if he engages in or carries on any business in Gibraltar.

Issue of licences.

60.(1) The BLA shall issue licences to carry on business in Gibraltar.

(2) A licence shall authorise the person named therein to carry on business on the production of proof of premises in Gibraltar appropriate for the intended use or business to be approved by the BLA and subject to such other terms and conditions, as may be specified therein.

(3) A licence shall be in such form as may be prescribed by regulation.

(4) An application for a licence by a partnership shall be made in the names of all partners jointly.

(5) (a) An application for a licence by a company shall be made by a director and contain an up to date profile of the company from Companies House; and

(b) companies incorporated outside of Gibraltar shall also contain a copy of their Part XII or XIV Certificate of Registration.

(6) A licence shall relate to a single premises only but the BLA has a discretion to allow more than one licence over the same premises should it be of the opinion that the licences in respect of the premises can co-exist in a compatible manner.

(7) Subject to the applicant submitting all correct and relevant information to the BLA and no objections being made to the application, the BLA shall grant the applicant a licence within three business days of receipt of the full documentation.

(8) A licence shall not be granted to any premises which are residential Government premises, nor to any non-Governmental premises under which the terms of the title deeds to such premises restrict commercial activities to be carried on from such premises.

(9) The requirement of subsection (2) may be waived in cases where the BLA is of the opinion that such business does not need premises in which to operate, such as, but not limited to, online services in so far as such business does not breach subsection (8) of this section.

(10) A licence, and any consent to the transfer of a licence endorsed thereon, may be issued under the hand of any person authorised in writing in that behalf by the BLA.

Extension to scope of existing licences.

61.(1) The BLA may issue an extension to an existing licence to carry on business in Gibraltar.

(2) Subject to the applicant submitting all correct and relevant information to the BLA and no objections being made to the application for an extension of an existing licence, the BLA shall grant the applicant an extension to a licence within three business days of receipt of the full documentation.

(3) An application for an extension to the scope of an existing licence shall be in such form as may be prescribed by regulation.

Duration of licences.

62. A licence shall continue in force for one year from the date it is issued, and shall thereupon expire.

Fees.

63. There shall be payable in respect of every licence, the appropriate fee as prescribed by regulation in relation to this Act.

Financial services and persons licensed under separate legislation.

64.(1) A person carrying on investment business, a regulated activity or a controlled activity as defined in the Financial Services (Investment and Fiduciary Services) Act, a Supervisory Act or the Financial Services (Moneylending) Act shall not require a licence under this Act in addition to the licence required by law under the respective relevant sections of those Acts.

(2) Any person whose business falls outside of those listed in Schedule 3 or is a business or profession regulated by any other enactment shall not require a separate licence under this Act to carry on that business or profession.

Exceptions to carrying on business.

65. No person shall be deemed to carry on business by reason only—

- (a) that he is employed as a manager or servant by a person who carries on business;
- (b) that he is a director or shareholder of a body corporate which carries on business;
- (c) that he is a person appointed to conduct a sale of any goods in execution of an order of any court;
- (d) that he is a person who sells any goods solely as a necessary incident to the provision of any professional or other personal services; or
- (e) that he sells goods with the consent in writing of the BLA, in connection with the raising of funds for philanthropic, charitable, cultural, sporting or educational purposes.

Requirements to carry on business.

66.(1) Any person carrying on a business of a kind specified in Schedule 3 shall hold a licence and act in accordance with the terms and conditions of such licence.

(2) Any person carrying on a business of a kind specified in Schedule 3 which involves the handling of client money or the taking of deposits on behalf of clients shall have a separate client account for such purpose.

(3) Any person who has been issued with a licence under the Firearms Act or the Petroleum Act (which expression for the purposes of this subsection includes any registration which authorises the sale of any goods) shall not require a separate licence under this Act to sell the goods authorised to be sold by such licence.

Licence holders under the Leisure Areas (Licensing) Act 2001.

67.(1) Any person who has been issued with any of the following licences under the provisions of the Leisure Areas (Licensing) Act 2001 shall not require a licence under this Act to sell the goods authorised to be sold by such licence to include—

- (a) any bar, restaurant, cafeteria or other such establishment situated within a Leisure Area as defined by the Leisure Areas

(Licensing) Act 2001 engaged in the sale or provision of food, drink or intoxicating liquor for consumption within the premises or any external area of that establishment; or

- (b) any discotheque in Gibraltar, whether or not situated in a Leisure Area.

(2) A licence holder under the Leisure Areas (Licensing) Act 2001 shall apply for an extension to their existing licence in respect of the sale of any goods or items outside the scope of the licence granted under the Leisure Areas (Licensing) Act 2001 and the issue of such extension by the BLA shall be conditional on an extension first being granted under the Leisure Areas (Licensing) Act 2001.

Provisional grant of a licence: start-ups.

68.(1) This section applies to businesses which are starting up and the premises from which the business will operate are being or are to be-

- (a) constructed for the purpose of being used as premises for business in Gibraltar; or
- (b) altered for that purpose (whether or not they are already used for that purpose).

(2) The BLA may, on an application to which this section applies, waive the requirement to have premises contained in section 60(2) of this Act and provisionally grant a licence in respect of premises that satisfy the requirements of section 68(1) if the BLA is satisfied that the premises, once completed in accordance with plans deposited with and approved by the BLA, would be such that the BLA would have granted a licence for the premises, on the basis that such premises are to be fit for use by the applicant within 12 months from the date of the provisional licence granted by the BLA, following which the provisional licence will expire.

Transfer of licence by a licence holder.

69.(1) No licence shall be transferred by any licence holder to another person or to other premises without the consent of the BLA.

(2) Every consent to transfer by the BLA shall be endorsed on the licence with the details of the change of the licence holder or premises as the case may be.

Transfer where business is to remain on the same premises.

70.(1) Subject to the provisions of subsections (2) and (3) of this section, the BLA shall not refuse consent to a transfer where the transfer is to another person and the business is to be carried on at the same premises.

(2) The BLA may refuse its consent to a transfer, notwithstanding that after the transfer the business is to be carried on at the same premises, if–

- (a) the transferee is under the age of eighteen years;
- (b) the transferor is a co-operative society registered under the Cooperative Societies (SCE) Act 2007 and the transferee is not such a society;
- (c) the transferor has left or proposes to leave the premises while owing, to the Government, rent, rates, social insurance payments, duties or taxes and the transferor has not settled all amounts owing;
- (d) the transferor has been declared bankrupt;
- (e) the transferor has acted as a director of a company found to be carrying out an activity considered to be phoenixing; or
- (f) the transferor has been charged with an offence in respect of one or more goods covered by the licence.

(3) The BLA shall refuse a transfer if it would refuse the transferee a licence if he were a new applicant.

(4) The BLA shall–

- (a) in the case of the death of a licence holder and if so requested by their executor, transfer the licence to the beneficiary, as stated within the testament within 12 months from the date of the death of the licence holder subject to there being a clear testamentary disposition to one expressly named beneficiary;
- (b) in the case where there is no clear testamentary disposition or there is more than one potential beneficiary, direct the relevant parties involved to refer the matter to Court for directions and

will not transfer the licence without an order from the Court or an agreement in writing to be signed by all beneficiaries signifying their approval to the transfer of the licence to the proposed singular transferee;

- (c) in the case of the bankruptcy of the licence holder, transfer the licence to the lawfully appointed trustee if so requested by the trustee;
- (d) where a licence holder is a company in liquidation, administration or administrative receivership, transfer the licence to the lawfully appointed liquidator, administrator or receiver if so requested; or
- (e) in any case where a licence holder becomes subject to any legal disability, transfer the licence to any person lawfully appointed to administer his affairs, if so requested by such person.

Transfer where business is to be carried on at other premises.

71.(1) The BLA shall, before granting or refusing its consent to the transfer of a licence to other premises, require the applicant to give notice of intention of the proposed transfer in the same way, *mutatis mutandis*, as notice of intention to apply for a new licence is required.

(2) The BLA may refuse its consent to the transfer of the licence to other premises for any of the reasons set out in section 70(2).

(3) The BLA shall refuse its consent to transfer a licence to other premises where a building permit has been granted by the Development and Planning Commission in respect of the licence holder's current premises and the transfer would conflict with the provisions of such permit.

Register of licences.

72.(1) The BLA shall cause to be kept a register of licences in such form and containing such particulars as may be prescribed and there shall be entered in such register the details of any licence issued and of any consent to transfer granted.

(2) The register of licences shall be available for inspection by any member of the public during such hours as may be prescribed on the payment of the appropriate fee.

Notice of intention.

73.(1) Any person who intends to apply for a new licence or extend an existing licence, unless the application is for the renewal of a licence, shall give notice of such intention in accordance with the provisions of subsection (2).

(2) A notice of intention shall be in the prescribed form and shall, not less than seven days before the application is made, be published in the Gazette and in at least one newspaper circulating in Gibraltar.

Objections.

74.(1) Where a notice of intention to apply for a licence has been published in accordance with the provisions of section 73, any person who wishes to object to the issue of such licence, shall give notice of his objection within seven days from the date the application is published in the prescribed form to the BLA with the appropriate fee, and to the person named as the applicant of such intention.

(2) No objection under this section shall be considered by the BLA in respect of an application for a licence unless—

- (a) the grounds of such objection are stated;
- (b) notice thereof is given within the time prescribed under subsection (1); and
- (c) the filing fee mentioned at subsection (1) is received by the BLA annexed to the notice.

(3) The filing fee mentioned in subsection (1) shall not be required to be paid in respect of any objection lodged by HM Customs, the Department of Town Planning & Building Control, the Accountant General, Land Property Services Limited or any government entity.

Hearings.

75.(1) Hearings of the BLA shall be held at a minimum of fortnightly intervals.

(2) Where a notice of objection has been received by the BLA it shall consider the application and objection at a hearing of which not less than five days' notice in writing has been given to both the applicant and the objector.

(3) The composition of the BLA shall consist of a Chairman and six other members appointed by the Government, one of whom shall be appointed after consultation with the Gibraltar Chamber of Commerce, one after consultation with the Gibraltar Trades Council and one after consultation with the Gibraltar Federation of Small Businesses.

(4) Four members shall constitute a quorum at any meeting of the BLA.

(5) At all meetings of the BLA the Chairman, or in his absence such other member as the members present shall appoint, shall preside.

(6) All decisions of the BLA shall be decided by a majority vote of the persons present at any meeting, and in the case of an equality of votes the person presiding at the meeting shall have a second or casting vote.

(7) No decision of the BLA shall be invalid by reason only of there being a vacancy among the members of the BLA.

(8) Both the applicant and the objector and their professional legal advisers shall have the right to attend such hearing, give evidence and call witnesses, cross-examine witnesses for the other party and address the BLA.

(9) The applicant or his professional legal advisor shall have the right to address the panel of the BLA first.

(10) The applicant and the objector shall not be present during any deliberation of the BLA after the evidence and addresses, if any, have been concluded.

(11) It shall be the duty of all members of the BLA at a hearing under subsection (1) who are in any way, whether directly, or indirectly, interested

in the licence application to be heard to declare the nature of their interest prior to such hearing.

(12) The BLA shall not allow any member of the BLA to participate at a hearing under subsection (1) who has a ‘disqualifying interest’ in the application to be heard, being for reasons of financial interest, having an interest in a competing business, organisational relationships or personal relationships. The BLA shall not only be impartial in fact but shall be seen to be impartial and shall be alert to the risk of conflicts arising at all times.

Consideration of applications.

76.(1) All applications shall be considered by the BLA in an objective and non-arbitrary manner.

(2) The BLA shall call for a hearing only if the BLA in its discretion deems it necessary for the purpose of considering the application and/or objections have been received by the BLA to the application.

(3) If, having dispensed with a hearing, the BLA is proposing to refuse an application for a licence it shall give notice in writing to the applicant that it is proposing so to do and shall, by the same notice, give the applicant the opportunity to be heard before it at such place and at such time and date, being not less than seven days from the date of the notice, as may be specified in such notice.

Powers of the BLA in considering applications.

77.(1) The BLA shall, for the purpose of considering an application for a licence, have the power to—

- (a) take evidence on oath or affirmation and, for that purpose, to administer oaths or affirmations;
- (b) summon by notice in such form as it may consider appropriate any person to give evidence in respect of such application or to produce any book, plan or document relating thereto; or
- (c) make such investigation as may be necessary in order to ascertain any of the matters which it is required to consider;

Provided that the BLA shall not require an applicant to produce any book or account or voucher or receipt directly relating to his business.

(2) Every oath or affirmation shall be administered by the Chairman or other person presiding.

(3) Without prejudice to the provisions of section 75 at any hearing the applicant and/or his professional legal adviser shall have the right to attend such hearing, give evidence and call witnesses, cross-examine any witness not called by him but summoned by the BLA and to address the BLA but shall not have the right to be present during any deliberations of the BLA after the evidence and addresses, if any, have been concluded.

(4) A person who knowingly—

- (a) gives any false information to the BLA in connection with an application for or objection to a licence; or
- (b) makes any false entry in the prescribed form in respect of an application for or objection to a licence—

is guilty of an offence and liable to a fine of up to level 3 on the standard scale.

General principles affecting issue of licences.

78. Subject to the provisions of paragraphs (a) to (f) of this section and of section 81, the BLA may only refuse to issue a licence, if it is satisfied that—

- (a) the applicant is under the age of eighteen;
- (b) the issue of such licence is likely to cause nuisance or annoyance to persons residing or occupying premises in the neighbourhood of the premises in respect of which the licence is sought;
- (c) the premises on which the applicant intends to conduct his business would not conform to the requirements of any enactment;
- (d) there is already in force a licence in respect of the premises, or any part of the premises, on which the applicant intends to

conduct his business and the new application for a second licence over those premises would not, in the opinion of the BLA, be compatible with the initial licence granted;

- (e) the issue of such licence would conflict with any town planning scheme approved by the Development and Planning Commission; or
- (f) the issue of such licence would operate against the public interest.

No discrimination.

79.(1) In considering and deciding on applications for licences, including the terms and conditions of licences, the BLA shall-

- (a) ease freedom of establishment for providers and the freedom of provision of services in Gibraltar;
- (b) adhere to the principles of non-discrimination and proportionality; and
- (c) not discriminate between persons established in Gibraltar and persons established in a Member State.

(2) Where the BLA require an applicant for a licence from a Member State to provide a certificate, attestation or other document proving that a requirement has been satisfied, the BLA shall accept any document from a Member State which serves an equivalent purpose or from which it is clear that the requirements in question have been satisfied.

(3) The Minister may give directions to the BLA generally with respect to the exercise of his functions under this Act in relation to matters which affect the public interest and the BLA shall give effect to any such directions.

(4) If a licence is refused on the grounds of public interest the BLA shall so state this in its decision and set out the reasons why.

Licence under the Development Aid Act.

80.(1) No licence granted under the provisions of the Development Aid Act shall entitle any person to a licence under the provisions of this Act unless it is specified in the former licence that the applicant or any person deriving

title from the applicant is entitled to a licence under the provisions of this Act.

(2) Notwithstanding subsection (1), where–

- (a) before the commencement of this Act a development aid licence was issued to a person under the Development Aid Act; and
- (b) the development aid licence remains in force and is being complied with–

that person shall be entitled and shall be deemed at all times since the commencement of this Act to have been entitled to a licence under the provisions of this Act for the development aid project to which the development aid licence relates.

(3) Nothing in subsection (1) shall entitle a person to a licence under this Act if he is precluded from holding a licence under sections 78 or 81.

General restrictions on power to issue licences.

81.(1) The BLA shall refuse to issue a licence to any person who–

- (a) is an undischarged bankrupt or has entered into a composition or a scheme of arrangement with his creditors which is still binding;
- (b) has, within a period of five years immediately preceding the date of the application, been convicted of an offence under the Insolvency Act; or
- (c) in respect of the licence class applied for cannot demonstrate to the BLA that he has received suitable training and/or qualification in the business he is applying for a licence in respect of.

(2) Without prejudice to the provisions of subsection (1), the BLA shall refuse to issue a licence to a partnership if any partner therein is a person referred to in subsection (1)(a) or (b).

(3) Without prejudice to the provisions of subsection (1) and section 66 (3); where a person applies for a licence under this Act and is required under

another Act of Gibraltar to first hold a licence in respect of that business, any licence issued by the BLA under this Act shall be conditional on the applicant first obtaining a valid licence under that other enactment.

Issue of licence subject to conditions.

82.(1) The BLA may issue a licence, subject to such terms and conditions as it considers necessary.

(2) Without prejudice to the generality of subsection (1), the BLA may issue a licence subject to the condition–

- (a) that goods may only be sold by wholesale and not by retail; or
- (b) that goods may only be sold by retail and not by wholesale–

from the premises to which the licence relates.

(3) No terms or conditions may be imposed in the renewal of a licence which restrict the type of goods which may be sold, if this would prevent the licensee from selling any goods which he was previously authorised to sell under the relevant licence to be renewed.

Mandatory issue of licences in certain cases.

83.(1) Subject to sections 78 and 81, a person who has been awarded a contract which is required to be advertised in the Official Journal of the European Union by reason of the value of the contract shall, upon application, be granted a licence under this Act to enable him to carry out such contract.

(2) Notwithstanding anything contained in this Act, a licence issued under the provisions of subsection (1) shall–

- (a) be for the period of the contract; and
- (b) relate to the contract only.

Renewal.

84.(1) A licence granted under this Act shall be subject to renewal and shall be granted by the BLA, unless–

- (a) any matter supplied in the application for the licence was false or incomplete in a material particular; or
- (b) the applicant in respect of whom the licence was issued no longer meets the conditions required for the original business licensing application.

(2) The BLA may in its discretion delegate to the person authorised by it under section 60 to issue licences the power to issue renewals of licences.

(3) Nothing in this section shall permit the renewal of a licence–

- (a) if the issue of a licence would be precluded under sections 78 or 81;
- (b) authorising the sale of a type of goods different to those authorised in the licence to be renewed;
- (c) on terms or conditions different from those contained in the licence to be renewed;
- (d) in respect of a different type of business from that to which the licence to be renewed relates;
- (e) to a person other than the licence holder of the licence to be renewed; or
- (f) in premises different from those to which the licence to be renewed relates.

Revocation where licensee ceases to carry on business or non-renewal.

85.(1) Where a licence has been issued in respect of a business and such business has not been carried on for a period of at least 6 months the BLA shall revoke the licence.

(2) Where a licence has been issued in respect of more than one business class and all the types of business class for which it was issued have not been carried on for 6 months from the date of issue, the BLA shall revoke the licence entirely or revoke the business classes which have not been carried on.

(3) Where a licence has been issued in respect of a business and the licence holder has vacated the premises to which the licence relates, the BLA shall, after giving the licence holder the opportunity to be heard, decide whether to revoke the licence.

(4) Where 6 months from the date of the expiry of the licence has passed and the licence holder has not applied to the BLA for a renewal of that licence the BLA shall revoke the licence.

(5) The BLA shall, before revoking any licence, give the holder 30 days to show cause against the revocation.

Display of licences.

86.(1) Where a licence is issued in respect of any premises under this Act, the licence holder shall ensure that such licence is displayed at all times in a prominent position on such premises.

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

Entry on premises and production of licences.

87.(1) Any member of the BLA, a CP enforcer or any person authorised in writing by the Government, may on production of evidence of his identity and authority to any person enter and inspect any premises.

(2) If a licence holder fails to produce a licence upon being lawfully required to do so under subsection (1) or hinders or obstructs the procedure set out in subsection (1) the licence holder shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) On the conviction of the holder of the licence under subsection (2), the BLA shall revoke the licence held by that licence holder.

(4) In the event that the person at the premises is carrying on business without a licence, the BLA shall have the discretion to refuse any future applications made by that business, company, associated natural persons or those premises for up to a maximum of 3 years from the date that record is taken by the BLA of the relevant licence not being in place.

Duplicate licences.

88.(1) Where any licence is lost, destroyed or defaced, the licence holder shall make an application in the prescribed form to the BLA for a duplicate of such licence, and the BLA shall, if satisfied that such licence is lost, destroyed or defaced and has not expired, issue a duplicate thereof to the licence holder.

(2) An application under this section shall be accompanied by the appropriate fee.

Penalties.

89.(1) A person who is guilty of an offence against this Act for which no punishment is specifically provided, is liable upon summary conviction to a fine on level 3 of the standard scale and in addition, where the offence is a continuing offence, to a fine not exceeding £50 for each day during which the offence continues after such conviction.

(2) Where, in a prosecution for an offence against this Act, it is alleged that a person is the holder of a licence, the burden of proof is on the licence holder to prove that he is not the holder of the licence.

(3) Where any offence against this Act is committed by a body corporate, any person who, at the time of the commission of the offence, was a director, general manager or secretary or other similar officer of such body corporate or who was, at that time, acting or purporting to act in any such capacity, is guilty of such offence unless he proves—

- (a) that the offence was committed without his knowledge or consent; and
- (b) that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity.

Giving of notice.

90. Any notice which is required to be given by this Act, other than a notice which is required to be published in the Gazette, shall include notice by email and fax and shall be deemed to have been properly given if it has been sent to the person to whom it is directed at his last known address, fax number or email address.

Regulations.

91.(1) The Minister may make regulations prescribing all matters, which by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) regulations may provide for—

- (a) prescribing forms of applications and the procedure to be followed with respect to any matter under this Act;
- (b) prescribing any additional information to be submitted in support of any application under this Act;
- (c) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act;
- (d) the keeping of books, documents, accounts and records with respect to any matter under this Act;
- (e) regulating and controlling the sale and delivery of goods or provision of services by or to any person or any class or classes of persons required to hold a licence under this Act;
- (f) the manner in which applications for licences may be made and the forms to be used in connection therewith;
- (g) subject to the provisions of this Act, the procedure to be followed in the making of objections;
- (h) the form of licences;
- (i) the form of the register of licences required to be kept by the BLA;
- (j) the charging of fees in respect of any matter falling within this Act as the Minister may deem appropriate;

- (k) the issue of codes of conduct or consumer codes for categories of licence holders to follow as guidance in their business practice.

Enforcement powers.

92.(1) If the BLA is of the opinion that a licensee has not or is not keeping to the terms of its licence, it can refer the matter to the CP enforcer for review.

(2) If a licensee has not renewed its licence for 6 months following its renewal date or, the BLA or the CP enforcer shall prepare a report proposing revocation of the licence and the Commission shall grant such revocation.

(3) The Commission shall have the power to fine a licensee and to suspend or revoke any licence previously granted on the ground that any condition subject to which the licence was granted has not been complied with, and, without prejudice to the generality of the foregoing, a licence may be suspended, revoked or not renewed—

- (a) where the holder of the licence has changed the nature of their business to a degree that would render the licence in respect of the original business activity for which it was granted no longer applicable to the current business activity;
- (b) where the holder of the licence has failed to comply with any condition attached to the licence; or
- (c) for any reasonable cause brought to the Commission's attention.

(4) The Commission shall, before revoking any licence, give the holder 30 days to show cause against the revocation.

(5) The fee scale under this Part shall be prescribed by notice in the Gazette.

Establishment of the Single Point of Contact.

93.(1) There shall be an office of the BLA known as the Single Point of Contact which shall form part of the OFT.

(2) In managing its affairs the Single Point of Contact shall have regard, in addition to any relevant general guidance as to the governance of public bodies, to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the BLA and the OFT.

Function of the Single Point of Contact.

94.(1) The establishment of the Single Point of Contact is aimed at–

- (a) simplifying existing licensing application procedures and formalities in cases where a person wishes to set up a permanent establishment in Gibraltar; and
- (b) facilitating the establishment of businesses in Gibraltar.

(2) The following forms may be obtained from and submitted to the Single Point of Contact–

- (a) town planning, development and environmental agency permits;
- (b) registration of a business, trade or profession with the Department of Employment;
- (c) registration for a licence;
- (d) registration with the Income Tax Office;
- (e) the contact details of any association or authority from which the applicant may require or obtain practical assistance; and
- (f) any other specific licences or permits as the Minister may prescribe by order to be issued by the Single Point of Contact.

(3) Licences and permits, once ready, may be collected from the Single Point of Contact.

Co-operation with other authorities.

95. In carrying out its functions the Single Point of Contact may carry out research and shall co-operate with HM Customs, the Department of Employment, the Income Tax Office the Environmental Agency, Land

Property Services Limited, the Statistics Office, the Treasury and any government entity.

Remit of the Single Point of Contact.

96.(1) All those wishing to establish a business whose prospective activities fall within Schedule 3 to this Act shall be entitled to make use of the Single Point of Contact.

(2) A business falling outside the scope of Schedule 3 may still make use of the Single Point of Contact.

Licensing categories.

97.(1) Each of the business classes listed in Schedule 3 shall require a separate licence fee, notwithstanding a single licence certificate being issued for multiple business classes.

(2) Any category listed in Schedule 3 whose business involves handling client monies or holding financial deposits of any kind for clients shall be required to evidence to the BLA that such business has a client account and uses the same when handling client monies or holding financial deposits of any kind for clients.

(3) A business of a class which requires a separate client account shall have 3 months from the date of the licence in which to submit proof of the same to the BLA. Failure to do so within 3 months from the date of the licence shall result in a revocation of that licence by the BLA.

Duty to provide an electronic assistance facility.

98.(1) The BLA shall provide a facility for the completion by electronic means of procedures and formalities relating to the business activity requiring a licence.

(2) The facility referred to in subsection (1) shall include the provision of help and support (electronically or by telephone) for its users.

(3) The facility referred to in subsection (1) may also be used for the following purposes—

- (a) the provision of information and guidance by governmental and regulatory authorities in Gibraltar in relation to the matters specified in subsection (4);
- (b) communications with those authorities in relation to those matters;
- (c) the completion of procedures and formalities relating to those matters.

(4) The matters referred to in subsection (3) are–

- (a) regulatory matters affecting business; and
- (b) support for business.

(5) In this section, references to procedures or formalities do not include procedures or formalities consisting of–

- (a) the inspection of premises or equipment by the BLA; or
- (b) physical examination of the capability or professional integrity of–
 - (i) a provider of the service by the BLA; or
 - (ii) the staff of such a provider by the BLA.

(6) Where appropriate, advice set out by the BLA on its electronic portal shall include simple step-by-step guides and shall be in plain and intelligible language.

Repeal.

99. The Trade Licensing Act and any subsidiary legislation made thereunder is repealed.

Savings and transitional provisions.

100.(1) Notwithstanding the repeal of the Trade Licensing Act (the repealed Act) by section 99–

- (a) a licence issued under the repealed Act shall be deemed to have been issued under this Act and shall remain valid for the period in respect of which it was issued;
- (b) an application for a transfer, variation or extension of a licence issued under the repealed Act shall, if permitted under this Act, be determined in accordance with the provisions of this Act;
- (c) an application for a licence made under the repealed Act, which on the date of the commencement of this Act has not been determined, shall be determined in accordance with the provisions of the repealed Act; and
- (d) an appeal filed prior to the commencement of this Act shall be determined in accordance with the provisions of the repealed Act.

(2) Proceedings for an offence under the repealed Act that had commenced before the commencement of this Act must continue under the repealed Act as if it had not been repealed.

(3) If proceedings for an offence committed under the repealed Act have not been commenced at the commencement of this Act—

- (a) if there is an equivalent offence under this Act – proceedings must be brought under this Act; or
- (b) if there is no equivalent offence - proceedings cannot be brought.

SCHEDULE 1 THE OFFICE OF FAIR TRADING

Section 7

Membership.

1.(1) The OFT shall consist of a Chairman and no fewer than four other members, appointed by the Minister.

(2) The Minister shall consult the Chairman before appointing any other member.

Term and determination of office.

2.(1) Subject to this Schedule, the Chairman and other members shall hold and vacate office in accordance with the terms of their respective appointments.

(2) The terms of appointment of the Chairman and other members shall be determined by the Minister.

Term of office of Chairman.

3.(1) An appointment of a person to hold office as Chairman or other member shall be for a term not exceeding five years.

(2) A person holding office as Chairman or other member—

- (a) may resign that office by giving notice in writing to the Minister; or
- (b) may be removed from office by the Minister on the ground of incapacity or misbehaviour.

(3) A previous appointment as Chairman or other member does not affect a person's eligibility for appointment to either office.

Allowances of Chairman and members.

4. The OFT shall reimburse to the Chairman and other members travel expenses reasonably incurred and incidental to their post, as determined by the Minister.

Staff.

5.(1) The Minister shall, after consulting the Chairman, appoint a person (who may, subject to subparagraph (2), also be a member of the OFT) to act as chief executive of the OFT on such terms and conditions as the Minister may think appropriate.

(2) A person appointed as chief executive after the end of the transitional period may not at the same time be Chairman.

(3) In subparagraph (2) “the transitional period” means the period of two years beginning with the day on which this paragraph comes into force.

(4) The OFT may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service, appoint such other staff as it may determine.

Membership of committees or sub-committees of the OFT.

6. The members of a committee or sub-committee of the OFT may include persons who are not members of the OFT (and a sub-committee may include persons who are not members of the committee which established it).

Proceedings.

7.(1) The OFT may regulate its own procedure (including quorum).

(2) The OFT shall consult the Minister before making or revising its rules and procedures for dealing with conflicts of interest.

(3) The OFT shall from time to time publish a summary of its rules and procedures for dealing with conflicts of interest.

Validity of the OFT’s actions.

8. The validity of anything done by the OFT is not affected by a vacancy among its members or by a defect in the appointment of a member.

Application of the OFT seal.

9. The application of the seal of the OFT shall be authenticated by the signature of—

- (a) any member; or
- (b) some other person who has been authorised for that purpose by the OFT, whether generally or specially.

Performance of functions.

10. A document purporting to be duly executed under the seal of the OFT, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, be taken to be so executed or signed.

Supplementary powers.

11.(1) Anything authorised or required to be done by the OFT (including exercising the power under this paragraph) may be done by–

- (a) any member or employee of the OFT who is authorised for that purpose by the OFT, whether generally or specially; or
- (b) any committee of the OFT which has been so authorised.

(2) Subparagraph (1)(b) does not apply to a committee whose members include any person who is not a member or employee of the OFT.

(3) The OFT has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

**SCHEDULE 2
THE OFT COMMISSION**

Section 11

Appointment of Chairman.

1. A person is not eligible for appointment as Chairman of the Commission unless he appears to the Minister to have appropriate experience and knowledge of consumer law and practice.

Appointment of Chairmen.

2. The panel of chairmen shall be appointed by the Minister and are selected and appointed on the basis of their experience and knowledge of consumer law and practice.

Appointment of ordinary members.

3.(1) Members are appointed by the Minister and are selected and appointed on the basis of their experience and knowledge of consumer law and practice.

(2) The members appointed shall hold and vacate office in accordance with their terms of appointment, subject to the following provisions.

(3) A person may not be a Chairman of the Commission for more than 8 years (but this does not prevent a temporary re-appointment for the purpose of continuing to act as a member of the Commission as constituted for the purposes of any proceedings instituted before the end of his term of office).

(4) The Chairman of the Commission may resign his office by notice in writing to the Minister.

(5) The Chairman of the Commission may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be removed except in accordance with subparagraph (5).

**SCHEDULE 3
BUSINESS LICENSING CLASSES**

Section 64, 66, 96 and 97

A. Trade, to include, but not limited to, the buying or selling whether by wholesale or retail, of any goods by way of business and also means the importing of any goods into Gibraltar in commercial quantities.

B. Services, to include, but not limited to–

- (i) construction services road transport contracting and crafts;
- (ii) business-related services to include office maintenance, management consultancy, event organisation, debt recovery, advertising and recruitment services;
- (iii) tourism services to include travel agents;
- (iv) leisure services to include sports and amusement centres;
- (v) installation and maintenance of equipment;
- (vi) online services provided from Gibraltar;
- (vii) information society services to include publishing – print and web, news agencies, computer programming;
- (viii) accommodation and food services to include hotels, restaurants and caterers;
- (ix) training and education services;
- (x) rentals and leasing services to include car rental;
- (xi) real estate services;
- (xii) beauty therapists and hairdressers;

- (xiii) car repair workshops;
- (xiv) builders/ carpenters/plumbers/ electricians and decorators; and
- (xv) self-employed persons who provide services.

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