

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4,424 of 21st December, 2017

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**B. 26/17**

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**B. 26/17**

**BILL**

**FOR**

**AN ACT** to make fresh provision in Relation to Immigration and Asylum and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

**PART 1  
PRELIMINARY**

**Title.**

1. This Act may be cited as the Immigration and Asylum Act 2018.

**Commencement.**

2.(1) This Act comes into operation on the day appointed by the Minister by notice in the Gazette.

(2) Different dates may be appointed under subsection (1) for different provisions and for different purposes.

**Interpretation.**

3. In this Act-

“1962 Act” means the Immigration, Asylum and Refugee Act;

“Biometric information” means-

- (a) information about a person's external physical characteristics (including in particular photographs, fingerprints and features of the iris); and
- (b) any other information about a person's physical characteristics specified in regulations made by the Minister;

"British Nationality Act 1981" means the British Nationality Act 1981 passed by the Parliament at Westminster;

"British Overseas Territories Citizen" has the same meaning as in the British Nationality Act 1981;

"continuing leave" means leave to enter or remain in Gibraltar which continues to apply in accordance with section 9(4) or (5);

"crew", in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain, and "member of the crew" is to be construed accordingly;

"enforceable Community right" has the same meaning as in the European Communities Act;

"entry clearance" means a visa, entry certificate or other document which, in accordance with the immigration rules, is to be taken as evidence of a person's eligibility for entry into Gibraltar;

"excluded person" means a person excluded from Gibraltar under section 15;

"Gibraltarian" means a person who is registered or entitled to be registered in the register of Gibraltarians under the Gibraltarian Status Act;

"immigration officer" means a person appointed as immigration officer in accordance with the Schedule;

"immigration rules" means the rules published by the Minister in the Gazette in accordance with section 8;

"indefinite leave" means leave under this Act to remain in Gibraltar which has no specified duration;

“limited leave” means leave under this Act to enter or remain in Gibraltar which is limited as to duration;

“mental disorder” has the meaning given by the Mental Health Act 2016;

“Minister” means the Minister with responsibility for personal status;

“passport” means a valid passport satisfactorily establishing identity and nationality;

“police officer” means a member of the Royal Gibraltar Police, as constituted by the Police Act 2006;

“refugee” has the meaning given in section 21;

“valid” means in force at the relevant time;

“visa national” means a person specified as being a visa national in the immigration rules;

“Visiting Forces Act 1952” means the Visiting Forces Act 1952 passed by the Parliament at Westminster.

**Strategic Policy Committee.**

4.(1) The Minister may provide in regulations for the establishment of a Strategic Policy Committee to monitor and advise the Minister, and the Governor in respect of his responsibilities, on the operation of this Act.

(2) The functions of the committee are to include the provision to the Minister, and Governor as appropriate, of—

- (a) analyses of trends in immigration and asylum;
- (b) analyses of the impact on Gibraltar of different categories of migrant;
- (c) advice on whether and how to encourage the growth or reduction of particular categories of migrant; and
- (d) advice on such other policy issues in relation to immigration and asylum as the Minister or Governor may require the committee to consider.

(3) Regulations under this section may–

- (a) provide for the appointment of a chair of the committee;
- (b) make provision about the membership and proceedings of the committee; and
- (c) contain such incidental and supplemental provision as the Minister considers appropriate.

(4) Provision made under subsection (3) may include conferring a function on the Minister or any other person specified in the Regulations.

## **PART 2 ADMINISTRATION OF CONTROL**

### **General principles**

5.(1) A person who has the right of abode in Gibraltar is to be free to live in, and to come and go into and from, Gibraltar without let or hindrance except such as may be required under and in accordance with this Act to enable his right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in Gibraltar by permission and subject to such regulation and control of their entry into, stay in and departure from Gibraltar as is imposed by or under this Act.

(3) A person does not under the provisions of this Act require leave to enter or remain in Gibraltar in any case where he is entitled to do so by virtue of an enforceable Community right or any provision made under section 69(1)(c) of this Act or section 23(g) of the Interpretation and General Clauses Act.

(4) A person enjoying temporary protection in Gibraltar under the Temporary Protection Act 2005 is not to be treated as an unauthorised person within the meaning of section 63.

(5) The Minister must make rules as to the practice to be followed in the administration of this Act for regulating the entry into and stay in Gibraltar of persons not having the right of abode and such rules must include provisions for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of

study, or as visitors, or as dependants of persons lawfully in or entering Gibraltar.

(6) No decision may be taken under this Act in contravention of the rights of a person affected by that decision under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

**Constitutional responsibilities of the Governor.**

6.(1) Nothing in this Act or in any regulations, rules and orders made under this Act is to derogate from the responsibility of the Governor under the Constitution for external affairs, defence, internal security or any other matter for which the Governor may have responsibility under the Constitution.

(2) Given the Governor's Constitutional responsibilities for these matters, the Minister shall give such directions as are required of him by the Governor, where matters relating to the external affairs, defence and internal security of Gibraltar are concerned.

**Statement of right of abode in Gibraltar.**

7.(1) A person has the right of abode in Gibraltar if he comes within subsection (2) or (3).

(2) He is a British Overseas Territories Citizen and at least one of the following criteria is applicable to him and he fulfils all of the following criteria which are applicable to him-

- (a) where his birth in an overseas territory is a material qualification, that he was born or is deemed under the British Nationality Act 1981 to have been born in Gibraltar;
- (b) where the citizenship of one of his parents is a material qualification, that that parent is or was at the relevant time or is deemed under the British Nationality Act 1981 to have been at the relevant time a British Overseas Territories citizen having a connection with Gibraltar;
- (c) where the fact that one of his parents has at any time settled in an overseas territory is a material qualification, that that parent is or was settled at the relevant time or is deemed under the

British Nationality Act 1981 at the relevant time to have been settled in Gibraltar;

- (d) where Crown service under the Government of an overseas territory is a material qualification, that the overseas territory is Gibraltar;
- (e) where the person is a British Overseas Territories citizen by virtue of registration, or by virtue of an adoption order, that he was so registered in Gibraltar or, as the case may be, that the adoption order was made in Gibraltar;
- (f) where the person is a British Overseas Territories citizen by virtue of naturalisation, that he was naturalised in Gibraltar and that Gibraltar was the relevant territory for the purposes of Schedule 1 to the British Nationality Act 1981;
- (g) where the residence or presence of any person in an overseas territory is a material qualification, that the overseas territory is Gibraltar;
- (h) where the citizenship of a spouse is at any time a material qualification, that the spouse is at that time a British Overseas Territories citizen having a connection with Gibraltar;
- (i) where an appropriate qualifying connection with an overseas territory, within the meaning of the British Nationality Act 1981, is a material qualification, that the overseas territory is Gibraltar;
- (j) in the case of a person who acquired British Overseas Territories citizenship on commencement of the British Nationality Act 1981, where the birth, naturalisation or registration of the person or his parent or grandparent or any other relevant person in an overseas territory is a material qualification, that the overseas territory was Gibraltar.

(3) He is registered under the Gibraltarian Status Act.

(4) For the purposes of subsection (2), “material qualification” means any matter that it is necessary for a person to establish in order to be entitled or eligible to be a British Overseas Territories citizen, whether or not it is the only such qualification.

**Immigration rules.**

8. The immigration rules are a statement of the practice to be followed in the administration of this Act for regulating the entry into and stay in Gibraltar of persons required by this Act to have leave to enter or remain; and

- (a) may include rules as to the period for which leave is to be given and the conditions to be attached in different circumstances;
- (b) may make different provision for different cases or purposes;
- (c) may in particular make different provision on the basis of a person's citizenship or nationality; and
- (d) must be published by the Minister in the Gazette, including statements of any changes in the rules.

**General provisions for regulation and control.**

9.(1) A person seeking to enter Gibraltar and claiming to have the right of abode there or to come within section 5(3) must prove it by producing such documents as may be specified in the immigration rules.

(2) Except as otherwise provided by or under this Act, a person seeking to enter Gibraltar who does not have the right of abode in Gibraltar and who does not come within section 5(3)–

- (a) must produce to an immigration officer a valid passport;
- (b) if he comes within section 11, must produce to an immigration officer a Gibraltar visa or other form of entry clearance issued to him for the purpose for which he seeks entry;
- (c) may not enter Gibraltar unless given leave to do so in accordance with the provisions of, or made under, this Act;
- (d) may be given leave to enter Gibraltar for a limited period;
- (e) if given leave to enter Gibraltar, may be given such leave subject to all or any of the following conditions–

- (i) a condition restricting his employment or occupation in Gibraltar,
- (ii) a condition restricting studying in Gibraltar;
- (iii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds,
- (iv) a condition about residence,
- (v) a condition requiring him to report to the police, an immigration officer or the Minister,
- (vi) such other conditions as are provided for in the immigration rules.

(3) A person who has been given leave to enter in accordance with the provisions of, or made under, this Act—

- (a) may not remain in Gibraltar after his leave to enter has expired unless he has leave to remain;
- (b) may be given leave to remain in Gibraltar—
  - (i) for a limited or an indefinite period, and
  - (ii) if for a limited period, subject to any relevant conditions specified in the immigration rules.

(4) A person's leave to enter or limited leave to remain in Gibraltar continues to apply if he travels outside Gibraltar during the period of that leave.

(5) The immigration rules may make provision about the continuation of a person's indefinite leave to remain in Gibraltar (whether for a specified period or otherwise) if he travels outside Gibraltar.

(6) In the case of leave to enter or limited leave to remain in Gibraltar, a person's leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave will cease to apply.

(7) A person's leave may be cancelled at the border or when he is outside Gibraltar.

(8) The Minister may make provision in regulations for leave to be extended where—

- (a) a person who has limited leave to enter or remain in Gibraltar applies for variation of the leave;
- (b) the application for variation is made before the leave expires; and
- (c) the leave expires without the application for variation having been decided.

(9) Regulations under subsection (8) may—

- (a) make provision for determining when an application for variation is decided for the purposes of this section, and this may take account of a period when an appeal against that decision could be brought or is pending;
- (b) provide for circumstances in which leave will not be extended;
- (c) provide for circumstances in which leave so extended may be cancelled;
- (d) contain such incidental, supplemental, consequential and transitional provision as the Minister considers appropriate; and
- (e) make different provision for different cases or purposes.

(10) The Minister may make provision in regulations for a person's leave to be extended where that person's leave to enter or remain in Gibraltar—

- (a) is varied with the result that he has no leave to enter or remain in Gibraltar, or
- (b) is revoked.

(11) Regulations under subsection (10) may—

- (a) provide for the extension of leave during any period when an appeal could be brought, while the person is in Gibraltar, against the decision to vary or revoke, or while any such appeal, brought while the person is in Gibraltar, is pending;
- (b) provide for circumstances in which leave will not be extended;
- (c) provide for circumstances in which leave so extended may be cancelled;
- (d) contain such incidental, supplemental, consequential and transitional provision as the Minister considers appropriate; and
- (e) make different provision for different cases or purposes.

**Revocation of leave to remain.**

10.(1) The Minister may revoke a person's indefinite leave to remain in Gibraltar if the person—

- (a) is liable to deportation; but
- (b) cannot be deported for legal reasons.

(2) The Minister may revoke a person's indefinite leave to remain in Gibraltar if—

- (a) the leave was obtained by deception;
- (b) the person would be liable to removal; but
- (c) the person cannot be removed for legal or practical reasons.

(3) The Minister may revoke a person's indefinite leave to remain in Gibraltar if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—

- (a) voluntarily availing himself of the protection of his country of nationality;
- (b) voluntarily re-acquiring a lost nationality;

- (c) acquiring the nationality of another country and availing himself of its protection; or
- (d) voluntarily establishing himself in a country in respect of which he was a refugee.

(4) In this section—

“liable to deportation” has the meaning given by section 65(1); and

“removed” means removed from Gibraltar under section 63.

**Entry clearance (including visas) and entry clearance (including visa) waiver.**

11.(1) A person comes within this section if he does not have continuing leave and either—

- (a) is a visa national; or
- (b) is seeking entry for a period exceeding 90 days or is seeking entry for a purpose for which prior entry clearance is required under the immigration rules.

(2) Except as otherwise provided by or under this Act, the Minister must authorise the issue of an entry clearance to any person who—

- (a) requires an entry clearance to enter Gibraltar; and
- (b) meets the requirements of the immigration rules.

(3) Subject to subsection (5), a person who is—

- (a) employed in Gibraltar in the service of the Government of the United Kingdom to work in support of any of Her Majesty’s forces, whilst so employed; or
- (b) the spouse or civil partner, an unmarried child under 18 or dependant of any such person residing with him in Gibraltar,

is exempt from the requirement to hold an entry clearance.

(4) A person subject to regulation and control in accordance with section 9(2) and who comes within subsection (3) is deemed to have leave to enter or remain during the period of such employment.

(5) The Minister may from time to time, by notice in the Gazette, declare that the provisions of subsection (3) do not apply to any class or category of person and any reference in this Act to section 11 is to be construed as a reference to subsection (3) as varied in its effect by any such notice.

(6) The Minister may issue an entry clearance waiver in accordance with and in the circumstances set out in the immigration rules.

(7) Any such waiver may be revoked or modified by the Minister at any time and from time to time and may impose restrictions on the period that such persons or categories of person may remain in Gibraltar.

**Administration of control.**

12.(1) The power under this Act to give or refuse leave to enter Gibraltar is to be operated by immigration officers and the power to give or refuse leave to remain in Gibraltar, or to vary any leave under section 9(6) is to be exercised by the Minister.

(2) Subject to subsection (3), those powers—

- (a) are to be exercised by notice in writing given to the person affected; and
- (b) where exercised to grant leave to enter or remain, may take the form of a stamp in a person's passport or any other form as the immigration rules may provide.

(3) In circumstances set out in the immigration rules leave may take the form of deemed leave, without any requirement for notice in writing.

(4) The provisions of the Schedule to this Act (powers conferred on immigration officers, the Minister and police officers) have effect.

**Biometric information.**

13.(1) The Minister may by regulations—

- (a) require an immigration application to be accompanied by biometric information;
  - (b) enable an authorised person to require an individual who makes an immigration application to provide biometric information;
  - (c) enable biometric information to be taken by an authorised person in circumstances specified in the regulations.
- (2) In subsection (1) “immigration application” means an application for–
- (a) entry clearance;
  - (b) leave to enter or remain in Gibraltar; or
  - (c) variation of leave to enter or remain in Gibraltar.
- (3) Provision made under subsection (1)(c) may include specifying a period during which biometric information may be taken in particular sets of circumstances.
- (4) Regulations under subsection (1) may, in particular–
- (a) require, or enable an authorised person to require, the provision of information in a specified form;
  - (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which information is obtained or recorded;
  - (c) make provision about the effect of failure to provide information or to submit to a process (which may, in particular, include provision for an application to be disregarded or dismissed if a requirement is not satisfied);
  - (d) confer a function (which may include the exercise of a discretion) on an authorised person;
  - (e) require an authorised person to have regard to a code (with or without modification);

- (f) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Minister;
- (g) make provision about the use, retention and destruction of information provided (which may include provision permitting the use of information for specified purposes which do not relate to immigration);
- (h) make provision which applies generally or only in specified cases or circumstances;
- (i) make different provision for different cases or circumstances;
- (j) contain such incidental or supplemental provision as the Minister considers appropriate.

(5) In this section-

“authorised person” means-

- (a) a police officer;
- (b) an immigration officer;
- (c) a prison officer;
- (d) a person authorised by the Minister for the purpose;

“code” means any code of practice for the time being in force under the Criminal Procedure and Evidence Act 2011.

(6) Insofar as regulations provide for biometric information to be taken from a person under the age of sixteen, they must contain provision equivalent to paragraph 8(5) to (7) of the Schedule.

**Exemption from immigration control for seamen, aircrews and other special cases.**

14.(1) Where a person arrives in Gibraltar as a member of the crew of a ship or aircraft, or for the purpose of joining a ship or aircraft as a member of the crew, with the correct documentation for onward travel and under an engagement requiring him to leave on that ship or aircraft as a member of the crew, then unless either-

- (a) there is in force a deportation order made against him; or
- (b) he is an excluded person; or
- (c) he has at any time been refused leave to enter Gibraltar and has not since then been given leave to enter or remain in Gibraltar,

he may without leave enter Gibraltar, remain in Gibraltar and from time to time re-enter Gibraltar for the aforesaid purpose only until the departure of the ship or aircraft on which he is required by his engagement to leave.

(2) The Minister may by regulations exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the regulations, from all or any of the provisions of this Act relating to those who do not have the right of abode.

(3) The provisions of this Act relating to those who do not have the right of abode in Gibraltar do not apply to any person so long as he is entitled to—

- (a) privileges and immunities under the Diplomatic Privileges (International Organisations) Act; or
- (b) consular privileges and immunities in Gibraltar by any other law or otherwise.

(4) The provisions of this Act relating to those who do not have the right of abode in Gibraltar, other than the provisions relating to deportation, also do not apply to any person so long as—

- (a) he is subject, as a member of the UK home forces, to service law; or
- (b) being a member of a Commonwealth force or of a force raised under the law of any Overseas Territory, protectorate or protected state, he is undergoing or about to undergo training in Gibraltar with any body, contingent or detachment of the UK home forces; or
- (c) he is serving or posted for service in Gibraltar as a member of a visiting force or of any force raised as aforesaid; or

- (d) he is the spouse or civil partner, unmarried child under 18 or dependant of a person within paragraphs (a) to (c), who is residing with that person in Gibraltar.

(5) Where a person having limited leave to enter or remain in Gibraltar becomes entitled to an exemption under this section, that leave continues to apply after he ceases to be entitled to the exemption, unless it has by then expired.

(6) If a person who is exempt as a result of this section-

- (a) ceases to be exempt, and
- (b) requires leave to enter or remain in Gibraltar as a result,

he is to be treated as if he had been given leave to remain in Gibraltar for a period of 30 days beginning on the day on which he ceased to be exempt.

(7) If-

- (a) a person who is exempt as a result of this section ceases to be exempt, and
- (b) there is in force in respect of him leave for him to enter or remain in Gibraltar which expires before the end of the period mentioned in subsection (6),

his leave is to be treated as expiring at the end of that 30 day period.

(8) In this section-

“the UK home forces” means any of Her Majesty’s forces other than a Commonwealth force or a force raised under the law of any Overseas Territory other than Gibraltar, protectorate or protected state;

“Commonwealth force” means a force of any country to which provisions of the Visiting Forces Act 1952 apply without an Order in Council under section 1 of that Act; and

“visiting force” means a body, contingent or detachment of the forces of a country to which any of those provisions apply, being a body, contingent or detachment for the time being present in Gibraltar on

the invitation of Her Majesty's Government in the United Kingdom.

(9) Where the Governor is satisfied that any person who would, but for his inability to comply with the requirements of paragraphs 5(2)(c) or 7(c) of Schedule 1 to the British Nationality Act 1981, be otherwise eligible to apply for naturalisation as a British Overseas Territories citizen under the provisions of section 18 of the British Nationality Act 1981 the Governor may, in his discretion, by order exempt any such person from compliance with the requirements of section 9(3)(a).

(10) Any order made under subsection (9) may be revoked by the Governor, acting in his discretion, if-

- (a) the person exempted by such order fails to apply for naturalisation as a British Overseas Territories citizen under section 18 of the British Nationality Act 1981 within three months of the date of the making of the order; or
- (b) any such application for naturalisation as a British Overseas Territories citizen under section 18 of the British Nationality Act 1981 is refused.

(11) Where an order is revoked under subsection (10) and the person exempted by the order requires leave to enter or remain in Gibraltar as a result, he is to be treated as if he had been given leave to remain in Gibraltar for a period of 30 days beginning on the day on which he ceased to be exempt.

**Persons excluded from Gibraltar.**

15.(1) A person is an excluded person if-

- (a) the Minister has personally directed that the exclusion of that person from Gibraltar is conducive to the public good on grounds of public order, public security or national security;
- (b) his entry into Gibraltar has been prohibited under any law pursuant to any European Union or international obligation binding Gibraltar; or
- (c) he is a person to whom subsection (2) applies.

(2) This subsection applies to a person if he is-

- (a) named by or under; or
- (b) of a description specified in,

a designated instrument.

(3) The Minister may by regulations designate an instrument if it is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it—

- (a) requires that a person is not to be admitted to Gibraltar (however that requirement is expressed); or
- (b) recommends that a person should not be admitted to Gibraltar (however that recommendation is expressed).

(4) The Minister must designate such an instrument at the request of the Governor if the reason for the request relates to the external affairs, defence or internal security of Gibraltar, given the Governor's constitutional responsibilities for those matters.

(5) An excluded person must be refused—

- (a) an entry clearance to enter Gibraltar;
- (b) leave to enter Gibraltar; and
- (c) leave to remain in Gibraltar.

(6) A person's leave to enter or remain in Gibraltar is cancelled on his becoming an excluded person.

(7) A person's exemption from the provisions of this Act as a result of section 14(1) to (4) ceases on his becoming an excluded person.

(8) A direction by the Minister that the exclusion of a person is conducive to the public good—

- (a) must be in writing;
- (b) must state the period for which a person is excluded from Gibraltar; and

- (c) may be cancelled at any time by a further direction of the Minister.

**Entry by land.**

16.(1) No person who seeks to enter or exit Gibraltar overland may enter or exit other than-

- (a) through the pedestrian or vehicular gates at the frontier; or
- (b) through the commercial gates at the frontier at a time when it is open for authorised commercial traffic under the supervision and control of an immigration officer.

(2) A person who seeks to enter Gibraltar overland otherwise than in accordance with subsection (1) may be required to enter through the frontier point by an immigration officer.

**Entry by sea.**

17.(1) The owners or agents of a vessel may not, without the approval of the Minister, arrange for the vessel to call at a place in Gibraltar other than a port of entry for the purpose of disembarking passengers, if any of the passengers on board may not enter Gibraltar without leave, or for the purpose of embarking passengers unless the owners or agents have reasonable cause to believe all of them to have the right of abode.

(2) Subsection (1) does not apply in such circumstances, if any, as the Minister may by regulations prescribe.

(3) The responsible authority for a port of entry, where such authority exists, must notify the Minister in writing (or in such other form as may be prescribed) of any vessel which arrives at that port of entry for the purpose of disembarking passengers if any of those passengers may not enter Gibraltar without leave.

(4) The notification to be given under subsection (3)-

- (a) must be given in advance or within a prescribed period of the vessel arriving in Gibraltar (if any such period is prescribed); and

(b) must contain-

- (i) the date and time, or as the case may be expected time, of arrival of the vessel in Gibraltar,
- (ii) the prescribed details in relation to the vessel,
- (iii) the prescribed details in relation to the passengers, and
- (iv) any other prescribed information.

(5) The captain of a vessel arriving in Gibraltar at a port of entry in respect of which there is no responsible authority, for the purpose of disembarking passengers, must give the Minister notification in writing (or in such other form as may be prescribed) if any of those passengers may not enter Gibraltar without leave.

(6) The notification to be given under subsection (5) must be-

- (a) submitted in advance or within a prescribed period of the vessel arriving in Gibraltar (if any such period is prescribed); and
- (b) must contain-
  - (i) the date and time, or as the case may be expected time, of arrival of the vessel in Gibraltar,
  - (ii) the prescribed details in relation to the vessel,
  - (iii) the prescribed details in relation to the passengers, and
  - (iv) any other prescribed information.

(7) Provided the requirements of subsection (3) or, as the case may be, (5) are complied with, a person disembarking from a vessel in Gibraltar, who may not enter Gibraltar without leave, is deemed to have leave for a period of 24 hours from the time the passenger disembarked.

(8) A person with deemed leave under subsection (7) may nevertheless be questioned by an immigration officer and refused leave to enter Gibraltar under paragraph 5(1) of the Schedule and, if he is refused leave, any such deemed leave no longer applies.

(9) Subsection (7) does not apply in such circumstances, if any, as the Minister may by regulations prescribe.

(10) In this section—

“port of entry” means the Port of Gibraltar (including the dry docks and associated berthing facilities) and each of the marinas;

“responsible authority” means—

- (a) in the case of the Port of Gibraltar, the Gibraltar Port Authority;
- (b) in the case of the dry docks and associated berthing facilities referred to above, the managing director of any commercial undertaking or any person or body operating those facilities;
- (c) in the case of a marina, the body responsible for operating the marina, where such body exists; and

“prescribed” means prescribed by the Minister in regulations.

**Entry by air.**

18.(1) The Minister may from time to time give to any person concerned with the management of Gibraltar Civil Airport written notice—

- (a) designating control areas for the embarkation or disembarkation of passengers in the airport; and
- (b) specifying the conditions and restrictions (if any) to be observed in any control area.

(2) Where a control area is for the time being designated in accordance with subsection (1), the persons notified must take all reasonable steps to secure that passengers do not embark or disembark, as the case may be, at the airport outside the control area and that any conditions or restrictions notified to them are observed.

(3) The Minister may from time to time give written notice to the owners or agents of any civil aircraft—

- (a) specifying designated control areas at Gibraltar Civil Airport for the embarkation or disembarkation of passengers;

- (b) specifying the conditions and restrictions (if any) to be observed in any control area in Gibraltar Civil Airport;
- (c) specifying the conditions and restrictions (if any) to be observed where passengers are embarked or disembarked in Gibraltar other than in a control area in Gibraltar Civil Airport.

(4) The owners or agents notified must take all reasonable steps to secure that—

- (a) where a control area is for the time being designated in accordance with subsection (3), in the case of their aircraft, passengers do not embark or disembark, as the case may be, at the airport outside the control area; and
- (b) any conditions or restrictions notified to them under subsection (3)(b) or (c) are observed.

**Construction of references to entry and other phrases relating to travel.**

19.(1) For the purposes of this Act, a person arriving in Gibraltar by sea or air—

- (a) is deemed not to enter Gibraltar unless and until he disembarks; and
- (b) on disembarkation, is deemed not to enter Gibraltar so long as he remains in such area (if any) at the port or airport as may be approved for this purpose by an immigration officer.

(2) A person who has not otherwise entered Gibraltar is deemed not to do so as long as he is detained, or temporarily admitted while liable to detention under the powers conferred by the Schedule.

**PART 3  
ASYLUM AND HUMANITARIAN PROTECTION**

**Interpretation.**

20. In this Part—

“applicant” means a person who has made an application for asylum and whose application is outstanding; an application remains outstanding where an appeal has been lodged in relation to the decision on the application and any decision consequential on the appeal has not yet been made and during any period in which the applicant would (without applying for an extension of time) be entitled to lodge such an appeal;

“application for asylum” means a request by a person which can be understood as a request for international protection under this Part;

“country of origin” means an applicant’s country or countries of nationality or, in relation to stateless applicants, country of former habitual residence;

“dependent family member” means—

- (a) in respect of a dependent family member of an applicant, a family member—
  - (i) who has not made an independent application for asylum,
  - (ii) who, if he is aged 18 years or over, has expressly consented to be included within the application made by the principal applicant, and
  - (iii) whose claim for asylum or humanitarian protection is dependent on that of the applicant;
- (b) in respect of a dependent family member of a person with refugee or humanitarian protection status, a family member whose claim for asylum or humanitarian protection is dependent on the person who has been granted asylum or humanitarian protection;

“ECHR” means the European Convention for the Protection of Human Rights and Fundamental Freedoms;

“family member” means, in so far as the family already existed in the country of origin or former habitual residence, the following who are present in Gibraltar in connection with an application for asylum-

- (a) the spouse or civil partner of an applicant, where that status had been acquired in the country of origin or former habitual residence;
- (b) the unmarried partner of an applicant, where they were in their country of origin or former habitual residence, and remain, in a stable relationship akin to marriage;
- (c) any unmarried and dependent children under the age of 18 of an applicant, including adopted children;

“Geneva Convention” means the Convention of 28<sup>th</sup> July 1951 relating to the status of refugees, as amended by the New York Protocol of 31<sup>st</sup> January 1967;

“humanitarian protection status” means the status granted in Gibraltar under section 37(b) or (d);

“international protection” means refugee or humanitarian protection status;

“person” means any person who is not a British citizen or person to whom section 7 of this Act applies;

“refugee status” means the status granted in Gibraltar under section 37(a) or (c);

“stateless person” means a person who is not considered as a national by any State under the operation of its law;

“UNHCR” means the United Nations High Commissioner for Refugees.

**Definition of a refugee.**

21. A “refugee” means-

- (a) a person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside his country of nationality and is unable or, owing to such fear, unwilling to avail himself of the protection of that country; or
- (b) a stateless person who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of his former habitual residence and is unable or, owing to such fear, unwilling to avail himself of the protection of that country.

**Refugees sur place.**

22. A well-founded fear of being persecuted within the meaning of the definition of a refugee in section 21 may be based on-

- (a) events which have taken place since the applicant left the country of origin or previous habitual residence; or
- (b) activities which have been engaged in by the applicant since he left the country of origin, in particular where those activities constitute the expression and continuation of convictions or orientations held in the country of origin or previous habitual residence.

**Definition of persecution.**

23.(1) For the purpose of the definition of a refugee in section 21, persecution means an act or acts which-

- (a) are sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular (but not limited to)-
  - (i) Article 2 ECHR (right to life),

- (ii) Article 3 ECHR (prohibition of torture, inhuman or degrading treatment or punishment),
  - (iii) Article 4.1 ECHR (prohibition of slavery and servitude),
  - (iv) Article 7 ECHR (no punishment without law); or
- (b) are an accumulation of various measures, including violations of human rights which are sufficiently severe as to affect an individual in a similar manner as mentioned in paragraph (a).
- (2) Acts of persecution set out in subsection (1), include omissions and may take the form of, but are not limited to-
- (a) acts of physical or mental violence, including acts of sexual violence;
  - (b) legal, administrative, police or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;
  - (c) prosecution or punishment, which is disproportionate or discriminatory;
  - (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;
  - (e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion provisions set out in section 27(2);
  - (f) acts of a gender-specific or child-specific nature.

**Actors of persecution.**

24.(1) “Actors of persecution” means the perpetrators of persecution.

(2) Persecution, as defined in section 23, may be perpetrated by-

- (a) a State;

- (b) parties or organisations controlling a State or a substantial part of the territory of a State;
- (c) non-State actors, if the actors mentioned in paragraphs (a) and (b), including international organisations, are unable or unwilling to provide protection against the persecution (as defined in section 23) or serious harm (as defined in section 32); or
- (d) persons acting on behalf of an actor of persecution listed in paragraphs (a) to (c).

(3) For the purpose of subsection (2), there is a rebuttable presumption that protection is generally provided when—

- (a) the actors mentioned in subsection (2)(a) or (2)(b) take reasonable steps to prevent the persecution or suffering of serious harm including by operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm; and
- (b) the applicant has access to such protection.

**Reasons for persecution.**

25.(1) For the purpose of the definition of a refugee in section 21—

- (a) “for reasons of” means that there must be a connection between the feared acts of persecution and one or more of the reasons for persecution listed in the definition of a refugee;
- (b) a person may fear persecution for more than one reason; and
- (c) a reason for persecution listed in the definition of a refugee need not be the sole reason.

(2) The reasons for persecution listed in the definition of a refugee in section 21 are—

- (a) race, which includes considerations of colour, descent, or membership of a particular ethnic group;
- (b) religion, which includes—

- (i) the holding of theistic, non-theistic and atheistic beliefs,
    - (ii) the participation in, or abstention from, formal worship in private or in public, either alone or in community with others,
    - (iii) other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;
  - (c) nationality, which is not confined to citizenship or lack of citizenship, but includes membership of a group determined by its cultural, ethnic, or linguistic identity, common geographical or political origins or its relationship with the population of another State;
  - (d) political opinion, which includes the holding of an opinion, thought or belief on a matter related to the potential actors of persecution mentioned in section 24 or to their policies or methods, whether or not that opinion, thought or belief has been acted upon by the applicant;
  - (e) membership of a particular social group, and “particular social group” includes groups where—
    - (i) members of that group share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and
    - (ii) that group has a distinct identity in the relevant country, because it is perceived as being different by the surrounding society.
- (3) For the purpose of subsection (2)(e)–
- (a) a particular social group might, depending on the circumstances in the applicant’s country of origin, include a group based on a common characteristic of sexual orientation;

- (b) sexual orientation cannot be understood to include acts considered to be criminal in accordance with the laws of Gibraltar;
- (c) gender and gender-related aspects may be taken into consideration in determining whether a group is a particular social group.

(4) For the purposes of determining whether an applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the racial, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

**Internal protection – refugees.**

26.(1) An applicant may be considered not to be in need of protection as a refugee if, on return to his country of origin or habitual residence—

- (a) he would have no well-founded fear of being persecuted or suffering serious harm in a part of that country; and
- (b) he can reasonably be expected to stay in that part of the country.

(2) In examining whether there is a part of the country of origin or habitual residence which satisfies the requirements of subsection (1), regard must be had to-

- (a) the circumstances prevailing in that part of the country; and
- (b) the personal circumstances of the applicant.

**Exclusion from refugee status.**

27.(1) An applicant is excluded from being granted refugee status where he falls within the scope of Article 1D of the Geneva Convention relating to protection or assistance from organs or agencies of the United Nations other than the UNHCR but a person is not to be excluded from being granted refugee status when such protection or assistance has ceased for any reason, without the position of such persons being definitely settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations.

(2) An applicant is excluded from being granted refugee status where there are serious reasons for considering that he-

- (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) has committed a serious non-political crime outside Gibraltar prior to being granted refugee status in Gibraltar; for the purpose of this paragraph particularly cruel actions, even if committed with an allegedly political objective, may be classified as serious non-political crimes; or
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations.

(3) Subsection (2) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned.

**Grounds for refusal of application for refugee status.**

28.(1) This section applies where-

- (a) there are reasonable grounds for regarding a person as a danger to the internal security of Gibraltar; or
- (b) the person has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of Gibraltar.

(2) Where this section applies, a person's application for refugee status may be refused.

**Cessation of refugee status.**

29.(1) A person ceases to be a refugee as defined in section 21, if that person-

- (a) has voluntarily re-availed himself of the protection of his country of nationality;
- (b) having lost his nationality, has voluntarily reacquired it;

- (c) has acquired a new nationality, and enjoys the protection of the new country of nationality;
- (d) has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution;
- (e) can no longer, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, continue to refuse to avail himself of the protection of his country of nationality; or
- (f) being a stateless person with no nationality, is able, because the circumstances in connection with which he has been recognised as a refugee have ceased to exist, to return to the country of former habitual residence.

(2) Subsections (1)(e) and (f) apply where there has been a change of circumstances in the country of nationality or former habitual residence which is of such a significant and non-temporary nature that the refugee's fear of persecution can no longer be regarded as well founded.

*Humanitarian protection*

**Definition of person eligible for humanitarian protection.**

30. For the purposes of this Act, a person is a person eligible for humanitarian protection if-

- (a) he does not qualify as a refugee;
- (b) substantial grounds have been shown for believing that, if returned to his country of origin or, in the case of a stateless person, to his country of former habitual residence, he would face a real risk of suffering serious harm as defined in section 32;
- (c) he is unable or, owing to such risk as is mentioned in paragraph (b), unwilling to avail himself of the protection of that country; and
- (d) section 35 does not apply to that person.

**Humanitarian protection needs arising sur place.**

31. A real risk of suffering serious harm may be based on—

- (a) events which have taken place since the applicant left the country of origin or previous habitual residence;
- (b) activities which the applicant has been engaged in since leaving the country of origin, in particular where the activities constitute the expression and continuation of convictions or orientations held in the country of origin or previous habitual residence.

**Definition of serious harm.**

32. Serious harm within the definition of person eligible for humanitarian protection consists of—

- (a) death penalty or execution;
- (b) torture or inhuman or degrading treatment or punishment of an applicant in the country of origin; or
- (c) serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict.

**Actors of serious harm.**

33.(1) Actors of serious harm means the perpetrators of serious harm as defined in section 32.

(2) Serious harm may be perpetrated by the actors listed in section 24(2) and the provisions of section 24(3) apply equally in relation to actors of serious harm and the provision of protection as in relation to actors of persecution.

**Internal protection - humanitarian protection.**

34.(1) An applicant may be considered not to be in need of humanitarian protection if, on return to his country of origin or habitual residence—

- (a) there would be no real risk of his suffering serious harm in a part of that country; and

(b) he can reasonably be expected to stay in that part of the country.

(2) In examining whether there is a part of the country of origin or habitual residence which satisfies the requirements of subsection (1), regard shall be had to-

- (a) the circumstances prevailing in that part of the country; and
- (b) the personal circumstances of the applicant.

**Exclusion from humanitarian protection status.**

35.(1) An applicant is excluded from being granted humanitarian protection status where there are serious reasons for considering that he-

- (a) has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- (b) has committed a serious crime;
- (c) has been guilty of acts contrary to the purposes and principles of the United Nations as set out in the Preamble and Articles 1 and 2 of the Charter of the United Nations; or
- (d) constitutes a danger to the internal security of Gibraltar.

(2) Subsection (1) applies to persons who instigate or otherwise participate in the commission of the crimes or acts mentioned therein.

(3) An applicant may be excluded from being granted humanitarian protection status, if-

- (a) prior to entry into Gibraltar that applicant has committed one or more crimes, outside the scope of subsection (1), which would be punishable by imprisonment if committed in Gibraltar; and
- (b) that applicant left his country of origin solely in order to avoid sanctions resulting from these crimes.

**Cessation of humanitarian protection status.**

36.(1) A person ceases to be eligible for humanitarian protection status if the circumstances which led to the granting of humanitarian protection status have ceased to exist or have changed to such a degree that protection is no longer required and subsection (2) applies.

(2) This subsection applies if the change of circumstances is of such a significant and non-temporary nature that the person eligible for humanitarian protection no longer faces a real risk of serious harm.

*Grant, refusal and revocation of refugee and humanitarian protection status*

**Grant of refugee or humanitarian protection status.**

37. The immigration rules must provide for-

- (a) the grant of refugee status in Gibraltar to an applicant who is a refugee in accordance with this Part provided section 27 does not apply;
- (b) the grant of humanitarian protection status to an applicant who is a person eligible for humanitarian protection under this Part provided section 35 does not apply;
- (c) the grant of refugee status to dependent family members;
- (d) the grant of humanitarian protection status to dependent family members; and
- (e) the grant of leave to enter or remain in Gibraltar to an applicant or dependent family member who is granted refugee or humanitarian protection status.

**Revocation of or refusal to renew refugee or humanitarian protection status.**

38.(1) The immigration rules may provide for circumstances in which the Minister may-

- (a) revoke refugee or humanitarian protection status; or
- (b) refuse to renew refugee or humanitarian protection status.

(2) Provision under subsection (1) may include in particular circumstances where—

- (a) there are reasonable grounds for regarding the person as a danger to the internal security of Gibraltar; or
- (b) the person has been convicted by a final judgment of a particularly serious crime and constitutes a danger to the community of Gibraltar.

**No removal of applicant and dependent family members.**

39. An applicant, while he remains so, or a dependent family member of an applicant, while he remains such, may not be—

- (a) removed from Gibraltar in accordance with a provision of this Act, or
- (b) required to leave Gibraltar in accordance with a provision of this Act.

**Defences based on refugee status.**

40.(1) It is a defence for a person who has been granted refugee status charged with an offence under section 440 of the Crimes Act to show that, having come to Gibraltar directly from a country where his life or freedom was threatened (within the meaning of the Refugee Convention), he—

- (a) presented himself to the authorities in Gibraltar without delay,
- (b) showed good cause for his illegal entry or presence; and
- (c) made an application for asylum as soon as was reasonably practicable after his arrival in Gibraltar.

(2) If, in coming from the country where his life or freedom was threatened, the refugee stopped in a country outside Gibraltar, subsection (1) applies only if he shows that he could not reasonably have expected to be given protection under the Refugee Convention in that other country.

(3) A person who has made an application for asylum is not entitled to the defence provided by subsection (1) in relation to any offence committed by him after making that application.

(4) The Minister may by regulations amend subsection (1) by including further offences within the provision.

**Inadmissible applications for asylum.**

41.(1) Immigration rules may make provision about—

- (a) circumstances in which the Minister may decide that an application for asylum is inadmissible; and
- (b) the effect of a decision being inadmissible.

(2) Provision under subsection (1)(a) may include in particular where—

- (a) the Minister considers that another country is a first country of asylum for the applicant to which the applicant can return;
- (b) the Minister considers that a country is a safe third country for the applicant to which the applicant can return;
- (c) the applicant is or has been given leave to enter or remain in Gibraltar on other grounds which affords him equivalent rights and benefits;
- (d) the application is materially the same as one previously made by the applicant and which has been the subject of a final decision; or
- (e) a family member of the applicant, whose claim for asylum or humanitarian protection is dependent on that of the applicant, lodges an application for asylum after he has expressly consented to be included within the application made by the principal applicant.

**Immigration rules: asylum and humanitarian protection.**

42.(1) The immigration rules may provide for—

- (a) procedures for the consideration of applications for refugee status or humanitarian protection status;
- (b) procedures for granting and withdrawing refugee status and humanitarian protection status;
- (c) the grant of refugee family reunion.

(2) The immigration rules may make different provision for different cases or purposes.

(3) Without prejudice to the generality of subsection (2), the rules may provide for prioritised or expedited procedures, in particular—

- (a) where the Minister considers a third country is a safe country of origin for a particular applicant; or
- (b) in the case of further representations or a subsequent application for asylum.

**Asylum regulations.**

43.(1) The Minister may make provision in regulations for—

- (a) reception conditions for applicants;
- (b) the content of refugee status and humanitarian protection status;
- (c) the availability of legal assistance and representation in respect of an appeal to the Supreme Court (but not any onward appeal) against a refusal of an application for asylum.

(2) Regulations under subsection (1) may—

- (a) amend primary legislation; and
- (b) apply primary legislation with or without modifications.

(3) Regulations under subsection (1) may contain such transitional and consequential provisions as appear to the Minister to be necessary or expedient.

**PART 4**  
**NOTIFICATION OF IMMIGRATION DECISIONS AND APPEALS**

**Interpretation.**

44.(1) In this Part “immigration decision” means -

- (a) refusal of leave to enter or leave to remain;
- (b) cancellation of leave to enter;
- (c) refusal of entry clearance;
- (d) refusal of an application for asylum;
- (e) a decision that an application for asylum is inadmissible;
- (f) a decision to revoke or refuse to renew refugee status or humanitarian protection status;
- (g) refusal to vary a person’s leave to enter or remain where the applicant had extant leave to enter or remain when he applied to vary that leave and where the refusal to vary is made after the expiration of the person’s original grant of leave (ignoring any automatic extension of that leave triggered by making the application to vary);
- (h) variation of a person’s leave if when the variation takes effect the person has no leave to enter or remain;
- (i) revocation of a person’s indefinite leave to remain;
- (j) a decision that a person is to be removed from Gibraltar by way of directions under section 63(4)(b) or an order under section 63(4)(a);
- (k) the making of a deportation order under section 65(6);
- (l) refusal to revoke a deportation order under section 65(8);
- (m) a decision to give a direction under section 15(1)(a) that the exclusion of a person is conducive to the public good; or

- (n) refusal to cancel a direction under section 15(8)(c) that the exclusion of a person is conducive to the public good.

(2) In this Part—

- (a) prior to the commencement of Part 3—
  - (i) “application for asylum” and “refugee status” have the same meaning as in the Asylum Regulations 2008, and
  - (ii) “humanitarian protection status” has the same meaning as “subsidiary protection status” in the Asylum Regulations 2008;
- (b) after the commencement of Part 3 “application for asylum”, “refugee status” and “humanitarian protection status” have the same meaning as in Part 3.

**Notification of immigration decisions.**

45. A person in respect of whom an immigration decision is made is to be informed in writing of—

- (a) the decision;
- (b) the reasons for the decision (unless in the opinion of the Minister or the Governor to do so would be contrary to the internal security of Gibraltar);
- (c) where applicable, their right to appeal to the Supreme Court against the decision;
- (d) the time limits for lodging any such appeal; and
- (e) where applicable, the date by which they are required to leave Gibraltar.

**Service of notice and appeal form**

46.(1) A notice under section 45 is to be—

- (a) where relevant, accompanied by an appeal form in the form specified by the Minister in regulations; and
- (b) served in the manner prescribed by the Minister in regulations.

(2) Provision made in regulations under subsection (1)(b) may include presumptions about service.

**Appeals against EEA decisions.**

47.(1) The Minister may provide in regulations for an appeal to be brought in respect of an EEA decision.

(2) Regulations under subsection (1) may in particular—

- (a) provide for any provision of this Part to apply, with or without modifications; and
- (b) make equivalent provision.

(3) In this section—

“EEA decision” means a decision under regulations made under section 69(1)(c) that concerns –

- (a) a person’s entitlement to be admitted to Gibraltar;
- (b) a person’s entitlement to reside in Gibraltar or to be issued with, have renewed, or not to have revoked, a registration certificate, residence card, derivative residence card, document certifying residence or permanent residence or permanent residence card or other such document;
- (c) removal from Gibraltar; or
- (d) the cancellation of a person’s right to reside in Gibraltar.

**Grounds of appeal.**

48. Subject to section 49, where an immigration decision is made in respect of a person he may appeal to the Supreme Court on one or more of the following grounds—

- (a) that the decision is not in accordance with the immigration rules;
- (b) that the decision is not in accordance with the law;
- (c) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
- (d) that removal of the appellant from Gibraltar in consequence of the immigration decision would be unlawful as being incompatible with the appellant's Constitutional rights.

**Exceptions to right of appeal.**

49.(1) An appeal against an immigration decision in respect of a person may not be brought or continued if the Minister certifies that the decision is or was taken—

- (a) by the Minister wholly or partly on a ground listed in subsection (2); or
- (b) in accordance with a direction of the Minister which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2).

(2) The grounds mentioned in subsection (1) are that the person's exclusion or removal from Gibraltar is—

- (a) in the interests of internal security; or
- (b) in the interests of international relations.

(3) An appeal against an immigration decision may not be brought or continued if the Minister certifies on the recommendation of the Governor that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public—

- (a) in the interests of internal security,
- (b) in the interests of international relations, or
- (c) otherwise in the public interest.

(4) An appeal may not be brought against–

- (a) a refusal of entry clearance for the purpose of entering Gibraltar as a visitor; or
- (b) a refusal of leave to enter Gibraltar as a visitor;
- (c) a refusal of leave to remain in Gibraltar where the person is applying for leave for a different purpose from that for which the previous leave was granted.

(5) An appeal may not be brought against a refusal of entry clearance for the purpose of entering Gibraltar as a student–

- (a) in order to follow a course of study for which the prospective student has been accepted and which will not last more than six months, or
- (b) in order to study but without having been accepted for a course.

(6) An appeal may not be brought on a ground certified under paragraph (7) and such a ground may not be relied on in an appeal brought under this Part.

(7) The Minister may certify a ground for the purposes of subsection (6) if it has been considered in a previous appeal brought under this Part or under regulations made under section 47.

**Appeal from within Gibraltar.**

50.(1) Subject to subsection (2), a person may not appeal under this Part from within Gibraltar against an immigration decision–

- (a) to refuse him entry clearance or leave to enter Gibraltar; or
- (b) to cancel or revoke his leave or to vary or refuse to vary his leave, where that decision is taken at a time when he is outside Gibraltar.

(2) Subsection (1)(a) does not apply where the person is in Gibraltar and has made an application for asylum or a claim that the immigration officer or Minister, as the case may be, has acted in breach of the person's rights under the European Convention on Human Rights (or both), unless the Minister has certified that the application, the claim or both is or are clearly unfounded.

**Notice of intention to appeal.**

51.(1) A person must file a notice of appeal to the Supreme Court with the court within a specified period of the day on which notice of the decision was served on him under section 46.

(2) In this section, “specified” means specified in Rules of Court.

**No removal while appeal pending.**

52.(1) If a person in Gibraltar files a notice of appeal to the Supreme Court against an immigration decision, any removal order made by the Minister or any removal directions given by an immigration officer under Part 5 for the removal of the person from Gibraltar has no effect while the appeal is pending.

(2) Subsection (1) does not apply if the appeal may not be brought or continued by virtue of section 49 or 50.

**Hearing of the appeal.**

53.(1) The following are entitled to appear and be represented at the hearing of an appeal—

- (a) the Minister;
- (b) the appellant, save that a person to whom section 50(1) applies is not entitled to enter Gibraltar for the purposes of the appeal.

(2) The Supreme Court is to consider all the facts and circumstances of the case and must—

- (a) allow the appeal if it considers—
  - (i) that the decision against which the appeal has been brought is not in accordance with the law or the immigration rules or facts,
  - (ii) where the decision involves the exercise of a discretion, that the discretion should have been exercised differently; and
- (b) in any other case, dismiss the appeal.

(3) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purpose of subsection (2)(a)(ii).

**Onward appeals.**

54. A decision of the Supreme Court under this Part is final as to any question of fact, but an appeal lies on a point of law from decisions of the Supreme Court to the Court of Appeal with the leave of the Supreme Court or of the Court of Appeal and thence to Her Majesty in Council with the leave of the Court of Appeal.

**Meaning of “pending”.**

55.(1) For the purposes of section 52 an appeal is pending during the period—

- (a) beginning when a notice of appeal is filed, and
- (b) ending when the appeal is finally determined, withdrawn or abandoned.

(2) An appeal is not finally determined for the purposes of subsection (1)(b) while—

- (a) an application to the Supreme Court or the Court of Appeal for permission to appeal to the Court of Appeal or to Her Majesty in Council could be made (ignoring for this purpose the possibility of applying to extend any relevant time limit) or is awaiting determination; or
- (b) an appeal to the Court of Appeal or to Her Majesty in Council could be made (ignoring for this purpose the possibility of applying to extend any relevant time limit) or is awaiting determination (not including determination of any application made to extend time).

(3) An appeal under section 48 brought by a person while he is in Gibraltar is to be treated as abandoned if the appellant leaves Gibraltar.

**PART 5  
CRIMINAL OFFENCES, DETENTION, REMOVAL  
AND DEPORTATION**

*Criminal offences*

**Illegal entry and similar offences.**

56.(1) A person who does not have the right of abode in Gibraltar commits an offence in any of the following cases—

- (a) if contrary to this Act he enters or attempts to enter Gibraltar in breach of a deportation order or without leave;
- (b) if, having only a limited leave to enter or remain in Gibraltar (including any deemed leave), he either –
  - (i) remains beyond the time limited by the leave, or
  - (ii) fails to observe a condition of the leave;
- (c) if, having lawfully entered Gibraltar without leave by virtue of section 5(3), he ceases to come within that section and remains without leave;
- (d) if, without reasonable excuse, he fails to comply with any requirement imposed on him under the Schedule to submit to examination by a medical practitioner and any medical treatment as may be advised by a medical practitioner;
- (e) if he disembarks in Gibraltar from a ship or aircraft after being placed on board under section 67 with a view to his removal from Gibraltar.

(2) A person commits an offence under subsection (1)(b)(i) on the day after his leave expires and continues to commit it throughout any period during which he is in Gibraltar thereafter.

(3) A person is not to be prosecuted under subsection (1)(b)(i) more than once in respect of the same unbroken period of overstaying.

(4) In proceedings for an offence against subsection (1)(a) of entering Gibraltar without leave—

- (a) any stamp purporting to have been imprinted on a passport or other travel document by an immigration officer on a particular date for the purpose of giving leave is to be presumed to have been duly so imprinted, unless the contrary is proved;
- (b) proof that a person had leave to enter Gibraltar is to lie on the defence if, but only if, he is shown to have entered within six months before the date when the proceedings were commenced.

(5) A person who commits an offence under this section is liable on summary conviction to imprisonment for 6 months or to a fine at level 3 on the standard scale or both.

(6) Any person required by this Act to hold a visa, other form of entry clearance or residence permit who fails without reasonable excuse to produce his entry clearance or permit when required to do so by an immigration officer or police officer may be presumed to be a person unlawfully within Gibraltar, unless the contrary is proved.

**Facilitating a breach of the Act.**

57.(1) A person commits an offence if he—

- (a) does an act which facilitates the commission of a breach of this Act by a person who comes within subsection (2); and
- (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of this Act by the individual.

(2) A person comes within this subsection if he requires leave to enter or remain in Gibraltar and does not have such leave.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for 3 months or to a level 2 on the standard scale, or both, and on conviction on indictment to imprisonment for 6 months or a fine, or both.

(4) Nothing in subsection (1) applies to anything done to assist an asylum claimant by a person in the course of his employment by a bona fide

organisation, if the purposes of that organisation include assistance to persons in the position of the asylum claimant.

- (5) “Asylum claimant” means a person who intends to make-
- (a) a claim that it would be contrary to Gibraltar’s obligations under any international agreement or treaty extended to Gibraltar or, prior to the commencement of Part 3, the Asylum Regulations 2008 for him to be removed from, or required to leave Gibraltar; or
  - (b) after the commencement of Part 3, an application for asylum or humanitarian protection under Part 3.
- (6) Subsection (1) applies to anything done-
- (a) in Gibraltar;
  - (b) outside Gibraltar by an individual who is Gibraltarian as defined by the Gibraltarian Status Act;
  - (c) outside Gibraltar by a body incorporated under the law of Gibraltar; or
  - (d) outside Gibraltar by an individual who is ordinarily resident in Gibraltar.

**Assisting illegal immigration into a State.**

58.(1) A person commits an offence if he-

- (a) intentionally assists a person to enter or to transit across the territory of a State of which he is neither a national nor a resident in breach of the immigration law of that State.
- (b) attempts, aids, abets, counsels or procures the commission of an offence under paragraph (a).

(2) A person who commits an offence under subsection (1) is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both and on conviction on indictment to imprisonment for 1 year or a fine, or both.

- (3) A person commits an offence if he—
- (a) intentionally, for financial gain, assists a person to enter or to transit across the territory of a State of which he is neither a national nor a resident in breach of the immigration law of that State and either—
    - (i) the offence was committed as part of the activities of a criminal organisation; or
    - (ii) when the offence was committed, the lives of the persons the subject of the offence were endangered;
  - (b) intentionally, for financial gain, assists a person to reside in a state of which he is not a national in breach of that State's immigration law;
  - (c) attempts, aids, abets, counsels or procures the commission of an offence under paragraph (a) or (b).
- (4) A person who commits an offence under subsection (3) is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale or both and on conviction on indictment to imprisonment for 8 years or a fine, or both.
- (5) A document issued—
- (a) by the government of a Member State certifying a matter of law in that State—
    - (i) is admissible in proceedings for an offence under this section, and
    - (ii) is conclusive as to the matter certified;
  - (b) by a government of a state which is not a Member State—
    - (i) is admissible in proceedings for an offence under this section, and
    - (ii) may be relied upon as to the matter certified, unless sufficient evidence is adduced to raise an issue as to its validity or effect.

(6) Subsections (1) and (3) apply to anything done-

- (a) in Gibraltar;
- (b) outside Gibraltar by an individual who is Gibraltarian as defined by the Gibraltarian Status Act;
- (c) outside Gibraltar by a body incorporated under the law of Gibraltar; or
- (d) outside Gibraltar by an individual who is ordinarily resident in Gibraltar.

(7) For the purposes of this section-

- (a) “a criminal organisation” means a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by imprisonment of 4 years or more;
- (b) “immigration law” means a law which has effect in the relevant State and which controls, in respect of some or all persons who are not nationals of that State, entitlement to-
  - (i) enter the State,
  - (ii) transit across the State, or
  - (iii) be in the State;
- (c) “Member State” means a Member State of the European Union, Norway, Iceland, Switzerland and Liechtenstein.

**Forfeiture of vehicle, ship or aircraft.**

59.(1) This section applies where a person is convicted on indictment of an offence under section 57 or 58.

(2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person-

- (a) owned the vehicle at the time the offence was committed;

- (b) was at that time a director, secretary or manager of a company which owned the vehicle;
- (c) was at that time in possession of the vehicle under a hire-purchase agreement;
- (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or
- (e) was driving the vehicle in the course of commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

- (a) owned the ship or aircraft at the time the offence was committed;
- (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;
- (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;
- (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;
- (e) was at that time a charterer of the ship or aircraft;
- (f) committed the offence while acting as captain of the ship or aircraft.

(4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—

- (a) in the case of a ship, if subsection (5) or (6) applies;
- (b) in the case of an aircraft, if subsection (5) or (7) applies.

(5) This subsection applies where—

- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants; and
- (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 57 or 58.

(6) This subsection applies where a ship's gross tonnage is less than 500 tons.

(7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

(8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.

(9) In the case of an offence under section 57, the reference in subsection (5)(a) to an illegal entrant means a person who unlawfully enters or seeks to enter Gibraltar without leave.

(10) In the case of an offence under section 58, the reference in subsection (5)(a) to an illegal entrant means an individual who seeks to enter a State in breach of immigration law (within the meaning of section 58).

#### **Helping asylum claimant to enter Gibraltar.**

60.(1) A person commits an offence if-

- (a) he knowingly and for gain facilitates the arrival in or the entry into Gibraltar of an individual; and
- (b) he knows or has reasonable cause to believe that the individual is an asylum claimant.

(2) In this section "asylum claimant" has the same meaning as in section 57(5).

(3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—

- (a) aims to assist asylum claimants; and
- (b) does not charge for its services.

(4) Subsection (1) does not apply to the provision of legal advice and assistance.

(5) Section 58(6) applies for the purpose of the offence in subsection (1) as it applies for the purpose of the offence in subsections (1) and (3) of that section.

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

- (a) on summary conviction to imprisonment for 6 months or to a fine at to level 3 on the standard scale, or both;
- (b) on conviction on indictment to imprisonment for 8 years or a fine or both.

**Deception.**

61.(1) A person who does not have the right of abode commits an offence if, by means which include deception by him—

- (a) he obtains or seeks to obtain leave to enter or remain in Gibraltar; or
- (b) he secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him.

(2) “Enforcement action”, in relation to a person, means—

- (a) the giving of directions or an order for his removal from Gibraltar;
- (b) the making of a deportation order against him; or
- (c) his removal from Gibraltar in consequence of directions or an order for his removal or a deportation order.

- (3) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for 6 months or a fine at level 3 on the standard scale, or both;
  - (b) on conviction on indictment, to imprisonment for 2 years or a fine, or both.

**Other offences.**

- 62.(1) A person commits an offence if he—
- (a) knowingly answers untruthfully any question lawfully put to him by an immigration officer;
  - (b) whether in or outside Gibraltar knowingly makes any false declaration, return or statement for the purpose of obtaining or assisting another person to obtain leave to enter or remain in Gibraltar under this Act;
  - (c) alters any entry clearance, permit, endorsement or other document issued or made under or for the purposes of this Act or any copy thereof;
  - (d) obstructs or impedes an immigration officer in the exercise of his duty;
  - (e) misleads or attempts to mislead an immigration officer seeking, in the exercise of his duty, information in relation to any material matter;
  - (f) knowingly has in his possession any forged or irregular passport, entry clearance, permit, or other document on which any visa or endorsement has been forged, or any passport, entry clearance, permit, pass or other document which has been altered or issued without lawful authority;
  - (g) without reasonable excuse refuses or fails to produce any information in his possession, or any documents in his possession or control, which he is required to furnish or produce under the Schedule to this Act;

- (h) contravenes any of the provisions of sections 17 or 18;
- (i) aids or abets any person in committing any of the offences in paragraphs (a) to (h).

(2) A person who commits an offence under this section is liable on summary conviction to imprisonment for 6 months or a fine at level 3 on the standard scale, or both.

*Detention, removal and deportation*

**Unauthorised persons.**

63.(1) For the purpose of this Part and the Schedule “an unauthorised person” means–

- (a) a person attempting to enter Gibraltar contrary to the provisions of this Act;
- (b) a person who is refused leave to enter Gibraltar;
- (c) a person found in Gibraltar who is required by this Act to have leave to enter or remain in Gibraltar and does not have leave.

(2) For the purposes of subsection (1)(c), any leave to enter or remain in Gibraltar which is obtained by deception is to be disregarded.

(3) An immigration officer may detain an unauthorised person, or a person who, on reasonable grounds, he suspects is an unauthorised person, for a period of time not exceeding 72 hours.

(4) An unauthorised person may be removed from Gibraltar–

- (a) by order of the Minister; or
- (b) pursuant to directions given by an immigration officer.

(5) Where a person is liable to be or has been removed from Gibraltar under subsection (4), a member of his family who meets the following three conditions may also be removed from Gibraltar–

- (a) by order of the Minister; or

(b) pursuant to directions given by an immigration officer.

(6) The first condition is that the family member is–

- (a) his partner,
- (b) his child, or a child living in the same household as him in circumstances where he has care of the child,
- (c) in a case where he is a child, his parent, or
- (d) his adult dependent relative.

(7) The second condition is that–

- (a) in a case where the family member has leave to enter or remain in Gibraltar, that leave was granted on the basis of his family life with such person;
- (b) in a case where the family member does not have leave to enter or remain in Gibraltar, in the opinion of the Minister or immigration officer the family member–
  - (i) would not, on making an application for such leave, be granted leave in his own right, but
  - (ii) would be granted leave on the basis of his family life with the person, if such person had leave to enter or remain.

(8) The third condition is that the family member does not have the right of abode in Gibraltar and does not come within section 5(3).

(9) An order or directions given to a family member under subsection (5) invalidates any leave to enter or remain in Gibraltar previously given to the family member.

(10) An unauthorised person or a family member in respect of whom an order has been made or directions given as provided in subsection (4) or (5) may be–

- (a) detained in such manner as may be directed by the Minister or immigration officer until so removed; or

- (b) subject to the imposition of any conditions which are necessary to ensure that the unauthorised person does not abscond or pose a threat to public order, public security or public policy, issued with limited leave to remain.

(11) A person who is detained under subsection (3) or (10) must be informed promptly and in writing of the reasons for his detention.

(12) Directions for detention given under subsection (10)(a) may not authorise the detention of an unauthorised person or a family member for a period exceeding 28 days, but such directions may be renewed from time to time.

(13) Where a person is detained under this section he may appeal against his detention to the Supreme Court.

(14) Immigration rules may set out a period of time during which a person who has been removed under subsection (4) or (5) may not enter Gibraltar and different periods may be provided for in different cases.

**Detention powers in respect of excluded persons.**

64. An excluded person present in Gibraltar may be detained and removed from Gibraltar in the same manner as an unauthorised person under section 63.

**Deportation.**

65.(1) A person who does not have the right of abode is liable to deportation from Gibraltar if-

- (a) the Minister deems his deportation to be conducive to the public good; or
- (b) another person to whose family he belongs is or has been ordered to be deported; or
- (c) the Minister gives directions for his deportation at the request of the Governor for a reason related to the external affairs, defence or internal security of Gibraltar.

(2) Without prejudice to the operation of subsection (1), a person who does not have the right of abode is also liable to deportation from Gibraltar if he is convicted of an offence for which he is punishable with imprisonment and on his conviction is recommended for deportation by a court empowered by this Act or the Criminal Procedure and Evidence Act 2011 to do so.

(3) Where a person is under subsection (1) or (2) liable to deportation, then subject to the following provisions of this Act, the Minister may make a decision to deport him.

(4) Where a decision to deport a person is made in accordance with subsection (3), the Minister must inform the person of the decision and his right to make representations as to why he should not be deported.

(5) Any representations under subsection (4) must be received by the Minister within one month of the Minister giving notice of the decision to deport.

(6) After consideration of any representations made in accordance with subsection (5) the Minister may, if he thinks fit, make a deportation order; that is an order requiring the person to leave and prohibiting him from re-entering Gibraltar.

(7) A deportation order against a person invalidates any leave to enter or remain in Gibraltar given to him before the order is made or while it is in force.

(8) A deportation order against a person may at any time be revoked by a further order of the Minister.

(9) A deportation order may not be made against a person as belonging to the family of another person if more than eight weeks have elapsed since the other person left Gibraltar after the making of the deportation order against him; and a deportation order made against a person on that ground ceases to have effect if he ceases to belong to the family of the other person, or if the deportation order made against the other person ceases to have effect.

(10) A deportation order may not be made on the basis of a court recommendation so long as any appeal is pending against the recommendation of the court or against the conviction on which the recommendation of the court was made.

(11) For purposes of deportation the following are to be regarded as belonging to another person's family—

- (a) where that other person is a man, his spouse or civil partner and his or her children under the age of 18; and
- (b) where that other person is a woman, her spouse or civil partner, and her or his children under the age of 18;

and for the purposes of this subsection an adopted child, whether legally adopted or not, may be treated as the child of the adopter and, if legally adopted, is to be regarded as the child only of the adopter; an illegitimate child (subject to the foregoing rule as to adoptions) is to be regarded as the child of the mother; and spouse includes each of two or more wives.

(12) Where a recommendation for deportation made by a court is in force in respect of any person, and that person is not detained in pursuance of the sentence or order of any court, he is to be detained pending the making of a deportation order in pursuance of the recommendation, unless the Minister directs him to be released pending further consideration of his case.

(13) Where—

- (a) a recommendation for deportation made by a court on conviction of a person is in force in respect of him; and
- (b) he appeals against his conviction or against that recommendation,

the powers that the court determining the appeal may exercise include power to direct him to be released without setting aside the recommendation.

(14) Where the release of a person recommended for deportation is directed by a court, he is to be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police as the court may direct.

(15) Where notice of a decision to deport a person has been given under subsection (4) and he is not detained in pursuance of the sentence or order of a court, he may be detained by order of the Minister pending the making of the deportation order.

(16) A person in respect of whom a deportation order is in force may be removed from Gibraltar by order of the Minister and—

- (a) detained in such manner as may be directed by the Minister until so removed; or
- (b) subject to the imposition of any conditions which are necessary to ensure that the person does not abscond or pose a threat to public order, public security or public policy, issued with limited leave to remain.

(17) A person who is detained under subsection (12), (15) or (16) must be informed promptly and in writing of the reasons for his detention.

(18) An order of the Minister under subsection (15) or (16) may not authorise the detention of a person for a period exceeding 28 days, but such an order may be renewed from time to time.

(19) Where a person is detained under this section he may appeal against his detention to the Supreme Court.

(20) The provisions of this section do not apply to—

- (a) a person who is exercising an enforceable Community right;
- (b) an applicant; or
- (c) a dependent family member of an applicant.

(21) In this section—

- (a) prior to the commencement of Part 3, “applicant” and “dependent family member” have the same meaning as in the Asylum Regulations 2008; and
- (b) after the commencement of Part 3, have the same meaning as in that Part.

**Recommendations by court for deportation.**

66.(1) If a person who—

- (a) does not have the right of abode in Gibraltar; and

(b) has attained the age of 18 years,

is convicted of an offence for which he is punishable with imprisonment, he may be recommended for deportation by any court having power to sentence him for the offence, unless the court commits him to be sentenced or further dealt with for that offence by another court.

(2) A court may not recommend a person for deportation unless he has been given not less than 7 days' notice in writing stating that a person is not liable to deportation if he has right of abode in Gibraltar and describing that status, but the court may, after convicting an offender, adjourn the case for the purpose of enabling a notice to be given to him under this subsection or, if a notice was given to him less than 7 days previously, for the purpose of enabling the necessary 7 days to elapse.

(3) For the purpose of subsection (1)–

- (a) a person is deemed to have attained the age of 18 years at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court making or considering a request for deportation;
- (b) the question whether an offence is one for which a person is punishable with imprisonment must be decided without regard to any enactment restricting the imprisonment of young offenders or persons who have not previously been sentenced to imprisonment; and
- (c) if a person on being charged with an offence is found to have committed it he is, notwithstanding any enactment to the contrary and even if the court does not proceed to conviction, to be regarded as a person convicted of the offence, and references to conviction are to be construed accordingly.

(4) A recommendation for deportation may be made in respect of an offender who is sentenced to imprisonment for life.

(5) If a court recommends or purports to recommend a person for deportation, the validity of the recommendation is not to be called in question except on an appeal against the recommendation or against the conviction on which it is made, but the recommendation is to be treated as a sentence for the purpose of any enactment providing an appeal against sentence.

(6) Nothing in this section empowers a court to recommend the deportation of any person who is exercising an enforceable Community right, except in a case in which that person may be refused leave, removed or deported in accordance with regulations made under section 69(1)(c) of this Act.

**Means of removal.**

67.(1) An unauthorised person may be placed in any vessel or aircraft about to leave Gibraltar by the Minister or an immigration officer and is to be deemed to be in lawful custody until such vessel or aircraft leaves Gibraltar.

(2) The master of any vessel or the captain of any aircraft about to call at any place other than Gibraltar must, if so required by the Minister or an immigration officer receive an unauthorised person and his dependants, if any, on board such vessel or aircraft, and afford him and them a passage to that place and proper accommodation and maintenance during the voyage or flight.

(3) The Minister or an immigration officer may, if he thinks fit, apply any money or property of an unauthorised person in payment of the whole or any part of the expenses of or incidental to the voyage or flight from Gibraltar and the maintenance until departure of that person and his dependants; except in so far as they are so defrayed any such expenses are payable out of the Consolidated Fund, but without prejudice to any right of the Minister to recover any sums so paid from any person liable to repay them.

(4) The master of any vessel or the captain of any aircraft who refuses to comply with any requirement under subsection (2), commits an offence under this section and may be arrested without a warrant.

(5) A person who commits an offence under this section is liable, on summary conviction, to a fine at level 3 on the standard scale.

(6) The provisions of this section apply to—

- (a) a person in respect of whom a deportation order is in force; and
- (b) an excluded person,

as they apply to an unauthorised person.

**Detention of deportees from other countries.**

68.(1) The Minister may, if he is satisfied that any person entering Gibraltar has been the subject of an order of deportation by the government of any other State or territory and is in transit to the country to which he is to be deported, order that such person—

- (a) is detained in custody for up to 28 days, renewable from time to time by further order; or
- (b) is granted leave to enter on such conditions as are necessary to ensure that the person does not abscond and does not commit any offences.

(2) A person—

- (a) detained under subsection (1) is entitled to appeal to the Supreme Court after being detained for 48 hours;
- (b) granted leave to enter under subsection (1) is entitled to apply for a variation of conditions and to appeal to the Supreme Court against the conditions imposed.

**PART 6  
MISCELLANEOUS PROVISIONS**

**Regulations.**

69.(1) The Minister may make regulations or rules generally for carrying out any of the purposes or provisions of this Act or any matters incidental or consequential to those purposes as appear to the Minister to be necessary or proper for giving full effect to this Act (including any transitional or saving provisions) and in particular may make regulations—

- (a) prescribing the manner in which applications under this Act must be made;
- (b) prescribing the fees to be charged in respect of the exercise of functions in connection with immigration, including in particular in connection with—

- (i) an application made under this Act or under the immigration rules, and
  - (ii) the issue of a document under this Act;
- (c) to give effect in Gibraltar to the law of the European Union or to any provision of a relevant international agreement or convention which applies to Gibraltar relating to any of the matters contained in or dealt with under this Act and this power includes the power for the provision to come into operation although the law, agreement or convention, as the case may be, has not yet come into operation; and
- (d) modifying or waiving, on a transitional basis, any of the provisions about entry clearance set out in sections 9(2)(b) and 11(1).

(2) Regulations made under subsection (1)(b) may relate to something done outside Gibraltar.

(3) The power in subsection (1) is in addition to and does not derogate from any other power to make regulations conferred by this Act.

**Rules of court.**

70. The Chief Justice may make rules of court providing for the hearing of appeals to the court under this Act.

**Repeals and savings.**

71.(1) The 1962 Act, except for section 55, is repealed.

(2) Section 55 of the 1962 Act is repealed.

(3) Section 496 of the Criminal Procedure and Evidence Act 2011 is repealed.

(4) Subject to subsection (5), any subsidiary legislation made under the 1962 Act continues in force as if made under the corresponding provision of this Act until amended or replaced under this Act.

(5) If there is no corresponding provision of this Act under which any subsidiary legislation could be made, such legislation is repealed, except that

it continues to have effect in relation to proceedings that had commenced before the repeal as provided in subsection (9).

(6) Any rules made under section 67 of the 1962 Act continue in force, insofar as they relate to matters dealt with in regulations under section 55 of that Act, until Part 3 of this Act is commenced, notwithstanding the repeal of section 67.

(7) Any direction, exemption, notice or other non-legislative instrument made or issued by any person or body under the 1962 Act which could be made or issued by an equivalent person or body under this Act continues to have effect as if made or issued by that person or body under this Act until varied or revoked under this Act.

(8) Any delegation made, direction given or other action taken by a person under the 1962 Act which could be taken by an equivalent person under this Act continues to have effect as if taken by that person under this Act.

(9) Proceedings for an offence under the 1962 Act that had commenced before the repeal of the relevant provisions of that Act are to continue in accordance with the relevant provisions as if they had not been repealed.

(10) All sentences of imprisonment (including suspended sentences), fines, conditional discharges, disqualifications and forfeitures imposed in accordance with the 1962 Act continue to have effect as if that Act had not been repealed.

(11) Proceedings for an appeal under section 55V of the 1962 Act that had commenced before the repeal of that provision are to continue in accordance with that provision as if it had not been repealed.

(12) For purposes of this section—

- (a) proceedings for an offence commence on—
  - (i) arrest without warrant,
  - (ii) the issue of a warrant for arrest,
  - (iii) the issue of a summons to appear,
  - (iv) the service of an indictment or other document specifying the charge,

- (v) an oral charge,  
in respect of the offence; and
- (b) proceedings for an appeal commence on the filing of a notice of application for leave to appeal to the Supreme Court.

**Transitional provisions.**

72.(1) The documents specified in subsection (3), issued under the 1962 Act before the coming into force of this Act, remain valid for the period for which they were issued.

(2) The holder of such a document is deemed to have leave under this Act of the same duration and subject to the same conditions (if any) as applied to the right to enter or, as the case may be, remain to which he was entitled by virtue of such document.

(3) The specified documents are—

- (a) an entry permit;
- (b) a residence permit; and
- (c) a certificate of permanent residence.

(4) A person who has refugee status under the Asylum Regulations 2008 is for the purposes of this Act to be treated as if that status had been granted under Part 3 of this Act.

(5) A person who has subsidiary protection status under the Asylum Regulations 2008 is for the purposes of this Act to be treated as if he had been granted humanitarian protection status under Part 3 of this Act.

(6) An application for refugee status made under the Asylum Regulations 2008, which has not been determined at the time Part 3 of this Act comes into force, is to be treated as if it had been made under Part 3 of this Act.

(7) An application for subsidiary protection status made under the Asylum Regulations 2008, which has not been determined at the time Part 3 of this Act comes into force, is to be treated as if it were an application for humanitarian status made under Part 3 of this Act.

(8) A person who, immediately before this Act comes into force, is a prohibited immigrant by virtue of section 52 of the 1962 Act is to be treated as a person who is an excluded person by virtue of section 15(1)(a) of this Act.

(9) Any documentation issued under Part 4 of the 1962 Act has effect as if issued under the corresponding provision of regulations made under section 69(1)(c) of this Act.

**Consequential amendments.**

73.(1) A reference in any other enactment to the 1962 Act is, to the extent possible, to be read as a reference to the corresponding provision of this Act.

(2) The Minister may by regulations make such modifications or amendments of any enactment as appear to him necessary or expedient in consequence of the repeal of the 1962 Act.

(3) Regulations under subsection (2) may make such transitional and consequential provisions as appear to the Minister to be necessary or expedient.

(4) In this section “enactment” includes both primary legislation and subsidiary legislation.

**Service of documents.**

74.(1) Any notice or other document required or authorised by or under this Act or by the immigration rules to be served on any person may be served on him by delivering it to him, by leaving it at his proper address or by sending it by post.

(2) Any notice or other document so required or authorised to be served on a corporate body is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of this section, and of section 8 of the Interpretation and General Clauses Act in its application to this section, the proper address of any person is, in the case of the secretary or clerk of a body corporate, that of the registered or principal office of that body, and in any other case is the last address of the person to be served which is known to the Minister.

**SCHEDULE**

**(Section 12(4))**

**POWERS CONFERRED ON IMMIGRATION OFFICERS, THE  
MINISTER AND POLICE OFFICERS**

**Part 1 – General**

1.(1) Immigration officers for the purposes of this Act are to be appointed by the Minister by notice in the Gazette.

(2) In the exercise of their functions under this Act immigration officers are to act in accordance with such instructions (not inconsistent with the immigration rules) as may be given them by the Minister.

**Part 2 – Powers of immigration officers**

2. For the purposes of this Act immigration officers have–

- (a) the powers set out in this Part; and
- (b) any powers held by the Minister under this Act which are delegated to them by the Minister.

3. An immigration officer may require any person to produce the document authorising such person to enter or be within Gibraltar.

4. An immigration officer may require any person to produce his passport, identification card or other identification documents and examine such documents.

5.(1) An immigration officer may question any person who has arrived in Gibraltar for the purpose of determining–

- (a) whether that person has the right of abode;
- (b) whether, if not, he may enter Gibraltar without leave; and
- (c) whether, if he may not–
  - (i) he has been given leave which is still in force,

- (ii) he should be given leave and for what period or on what conditions (if any), or
- (iii) he should be refused leave.

(2) A person, on being questioned under sub - paragraph (1) by an immigration officer, may be required in writing by him to submit to further questioning.

6.(1) An immigration officer may question any person who has arrived in Gibraltar with continuing leave for the purpose of establishing—

- (a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled;
- (b) whether that leave was obtained as a result of false information given by him or his failure to disclose material facts; or
- (c) whether there are medical grounds on which that leave should be cancelled.

(2) A person within this paragraph may also be questioned by an immigration officer for the purpose of determining whether it would be conducive to the public good for that leave to be cancelled.

(3) A person questioned under this paragraph may be required by the immigration officer to submit to further questioning.

(4) An immigration officer questioning a person under this paragraph may by notice in writing suspend his leave to enter until the questioning is completed.

(5) An immigration officer may, on the completion of any questioning of a person under this paragraph, cancel his leave to enter.

(6) Cancellation of a person's leave under subparagraph (5) is to be treated for the purposes of this Act as if he had been refused leave to enter.

7.(1) An immigration officer may question any person who is embarking or seeking to embark in Gibraltar for the purpose of determining whether he has the right of abode and, if not, for the purpose of establishing—

- (a) his identity;
- (b) whether he entered Gibraltar lawfully;
- (c) whether he has complied with any conditions of leave to enter or remain in Gibraltar;
- (d) whether his return to Gibraltar is prohibited or restricted.

(2) If a person is questioned under subparagraph (1), an immigration officer may require the person, by notice in writing, to submit to further questioning by an immigration officer for a purpose specified in that subparagraph.

8.(1) It shall be the duty of any person questioned under paragraph 5, 6 or 7 to furnish to the immigration officer all such information in his possession as the immigration officer may require for the purpose of his functions under that paragraph.

(2) A person questioned under paragraph 5, 6 or 7 must, if so required by the immigration officer—

- (a) produce either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and
- (b) declare whether or not he is carrying or conveying, or has carried or conveyed, documents of any relevant description specified by the immigration officer and produce any documents of that description which he is carrying or conveying.

In paragraph (b), “relevant description” means any description appearing to the immigration officer to be relevant for the purposes of the questioning.

(3) Where a passport or other document is produced to or found by an immigration officer the immigration officer may examine it and detain it—

- (a) for the purpose of examining it, for a period not exceeding 7 days;
- (b) for any purpose, until the person to whom the document relates is given leave to enter Gibraltar or is about to depart or be

removed following refusal of leave or until it is decided that the person does not require leave to enter;

- (c) after a time described in paragraph (b), while the immigration officer thinks that the document may be required in connection with proceedings in respect of an appeal under this Act or in respect of an offence.

(4) For the purpose of ascertaining that a passport or other document produced or found in accordance with this paragraph relates to a person questioned under paragraph 5, 6 or 7, an immigration officer may require the person being questioned to provide biometric information (whether or not by submitting to a process by means of which information is obtained or recorded).

(5) A person who is under 16 may not be required to provide biometric information under this paragraph unless the information is provided in the presence of a person of full age who is—

- (a) his parent or guardian, or
- (b) a person who for the time being takes responsibility for him.

(6) The person mentioned in subparagraph (5)(b) may not be an immigration officer.

(7) Subparagraph (5) does not prevent an immigration officer requiring the provision of biometric information by a person the immigration officer reasonably believes to be 16 or over.

(8) Where under subparagraph (2)(b) a person has been required to declare whether or not he is carrying or conveying, or has carried or conveyed, documents of any description—

- (a) he and any baggage or vehicle belonging to him or under his control; and
- (b) any vessel, aircraft or vehicle in which he arrived in Gibraltar,

may be searched by an immigration officer with a view to ascertaining whether he is doing or, as the case may be, has done so.

9. Where a person questioned by an immigration officer under paragraph 5 is to be given a limited leave to enter Gibraltar or is to be refused leave, the notice giving or refusing leave must be given not later than 24 hours after the conclusion of his questioning (including any further questioning under that paragraph).

10. An immigration officer may require any person to complete such form as is necessary for the purposes of this Act.

11. An immigration officer may require the production of any proof or evidence necessary to substantiate any statement made for the purpose of obtaining any leave under this Act or making any application under this Act.

12. An immigration officer may require any person who he reasonably suspects may be suffering from a contagious or infectious disease or mental disorder which makes his presence in Gibraltar potentially dangerous to members of the public to submit to examination by a registered medical practitioner and ensure access to any medical treatment as may be advised.

13. An immigration officer may, for the purpose of carrying out his duties under this Act, request information from any person who may reasonably be expected to have it as to the abode or whereabouts of any other person.

14. Subject to paragraph 15, an immigration officer may request any person seeking leave to enter Gibraltar to deposit such sum as specified or furnish security for such amount as he may deem necessary to effect that person's repatriation from Gibraltar if necessary.

15. Paragraph 14 does not apply where a sum of money has been deposited or security furnished for that purpose to the Director of Employment under regulation 7(3)(g) of the Employment Regulations 1994.

16. An immigration officer may require the master of any vessel or the captain of any aircraft or the person in charge of any vehicle entering or leaving Gibraltar to furnish a list of names of all persons, or persons of any class or category, in the vessel, aircraft or vehicle and such other information as the immigration officer may specify.

17.(1) A person who may be required to submit to questioning under paragraph 5 may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter for a period not exceeding 48 hours.

(2) A person whose leave to enter has been suspended under paragraph 6 may be detained under the authority of an immigration officer pending—

- (a) completion of his questioning under that paragraph; and
  - (b) a decision on whether to cancel his leave to enter,
- for a period not exceeding 48 hours.

(3) A person who has been required to submit to further questioning under paragraph 7(2) may be detained under the authority of an immigration officer, for a period not exceeding 12 hours, pending the completion of the questioning.

(4) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under section 63(4)(b) that person may be detained under the authority of an immigration officer pending—

- (a) a decision whether or not to give such directions;
- (b) his removal in pursuance of such directions.

18.(1) Persons may be detained under paragraph 17 in such places as the Minister may direct.

(2) Where a person is detained or liable to be detained under paragraph 17, an immigration officer, police officer or prison officer may take such steps as may be reasonably necessary (including using such force as may be reasonably necessary) for photographing, measuring or otherwise identifying him.

(3) The power conferred by subparagraph (2) includes power to take biometric information (whether or not by submitting to a process by means of which information is obtained or recorded).

(4) Paragraph 8(5) to (7) applies to subparagraph (2) as it applies to paragraph 8(4).

(5) Any person detained under paragraph 17 may be taken in the custody of a police officer or an immigration officer to and from any place where his attendance is required for the purpose of ascertaining his citizenship or nationality or of making arrangements for his admission to a country or territory, or where he is required to be for any other purpose connected with the operation of this Act.

(6) A person is deemed to be in legal custody at any time when he is detained under paragraph 17.

19.(1) Where a person is refused leave to enter Gibraltar and directions are given in respect of him under section 63(4), the owners or agents of the ship or aircraft in which he arrived are liable to pay the Minister on demand any expenses incurred by the latter in respect of the custody, accommodation or maintenance of that person for any period (not exceeding 14 days) after his arrival while he was detained or liable to be detained under paragraph 17.

(2) Subparagraph (1) does not apply to expenses in respect of a person who, when he arrived in Gibraltar, held a current entry clearance or was the person named in a current work permit; and for this purpose a document purporting to be an entry clearance or work permit is to be regarded as being one unless its falsity is reasonably apparent.

20.(1) A person liable to detention or detained under paragraph 17(1), (2) or (4) may, under the written authority of an immigration officer, be temporarily admitted to Gibraltar without being detained or be released from detention; but this does not prejudice a later exercise of the power to detain him.

(2) So long as a person is at large in Gibraltar by virtue of this paragraph, he is to be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by an immigration officer.

(3) The provisions that may be included in restrictions as to residence imposed under subparagraph (2) include provisions of such a description as may be prescribed by regulations made by the Minister.

(4) Regulations under subparagraph (3) may make different provision for different cases.

(5) Subparagraph (6) applies where a person who is at large in Gibraltar by virtue of this paragraph is subject to a restriction as to reporting to an immigration officer with a view to the conclusion of his questioning under paragraph 5 or 6.

(6) If the person fails at any time to comply with that restriction—

- (a) an immigration officer may direct that the person's questioning is to be treated as concluded at that time; but

- (b) nothing in paragraph 9 requires the notice giving or refusing him leave to enter Gibraltar to be given within 24 hours after that time.

21. An immigration officer-

- (a) may arrest without a warrant—
  - (i) any person whom he reasonably suspects of having contravened or of being about to contravene any provisions of this Act,
  - (ii) any person whom he reasonably suspects of being an excluded immigrant, an unauthorised person or a person in respect of whom a deportation order is in force; and
- (b) may detain any person arrested under subparagraph (a) for up to 72 hours.

22. An immigration officer may without a search warrant enter and search any vessel, aircraft or vehicle in Gibraltar.

23.(1) This paragraph applies if a person is arrested under this Part.

- (2) An immigration officer may enter and search any premises—
  - (a) occupied or controlled by the arrested person; or
  - (b) in which that person was when he was arrested, or immediately before he was arrested,

for relevant documents.

- (3) The power in subparagraph (2) may be exercised—
  - (a) only if the officer has reasonable grounds for believing that there are relevant documents on the premises; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering relevant documents.

(4) An immigration officer may conduct a search under subparagraph (2) before taking the arrested person to a place where he is to be detained if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents.

(5) The officer conducting the search must make a record in writing of—

- (a) the grounds for the search; and
- (b) the nature of the documents that were sought.

(6) If, on an application made by an immigration officer, a justice of the peace is satisfied that—

- (a) there are reasonable grounds for believing that relevant documents may be found on premises not within subparagraph (2) which are specified in the application; and
- (b) any of the conditions in subparagraph (7) is met,

the justice of the peace may issue a warrant authorising an immigration officer to enter and search the premises.

(7) The conditions are that—

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the relevant documents;
- (c) entry to the premises will not be granted unless a warrant is produced;
- (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.

(8) An officer searching premises under this paragraph may seize any documents he finds which he has reasonable grounds for believing are relevant documents.

(9) But subparagraph (8) does not apply to documents which the officer has reasonable grounds for believing are subject to legal privilege.

(10) An immigration officer may retain a document seized under subparagraph (8) while the officer has reasonable grounds for believing that-

- (a) the arrested person may be liable to removal from Gibraltar in accordance with a provision of this Act; and
- (b) retention of the document may facilitate the person's removal.

(11) "Relevant documents" means any documents which might-

- (a) establish the arrested person's identity, nationality or citizenship; or
- (b) indicate the place from which he has travelled to Gibraltar or to which he is proposing to go.

24.(1) This paragraph applies if a person is arrested under this Schedule.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(3) The officer may search the arrested person for-

- (a) anything which he might use to assist his escape from lawful custody; or
- (b) any document which might-
  - (i) establish his identity, nationality or citizenship,
  - (ii) indicate the place from which he has travelled to Gibraltar or to which he is proposing to go, or
  - (iii) constitute evidence that relates to an offence under Part 5 of this Act.

(4) The power conferred by subparagraph (3) may be exercised-

- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subparagraph; and
- (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under subparagraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under subparagraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.

(8) An officer searching a person under subparagraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that subparagraph.

(9) Nothing seized under subparagraph (6) or (7) may be retained when the person from whom it was seized-

- (a) is no longer in custody; or
- (b) is in the custody of a court but has been released on bail.

(10) The officer carrying out a search under this paragraph must be of the same sex as the person searched.

### **Part 3 - Powers of the Minister**

25. For the purposes of this Act the Minister has the powers set out in this Part without prejudice to his powers under this or any other Act.

26. The Minister may require any person to produce his passport, identification card or other identification documents and examine such documents.

27. The Minister may-

- (a) question any person who has made an application under this Act, for the purpose of deciding whether to grant the application or to cancel any leave or permit which has been granted; and
- (b) require any person to complete such form as is necessary for the purposes of this Act.

28. The Minister may require the production of any proof or evidence necessary to substantiate any statement made for the purpose of extending or renewing any leave under this Act or making any application under this Act.

29. The Minister may require any person who he reasonably suspects may be suffering from a contagious or infectious disease or mental disorder which makes his presence in Gibraltar potentially dangerous to members of the public to submit to examination by a registered medical practitioner and ensure access to any medical treatment as may be advised by such medical practitioner.

30. The Minister may, for the purpose of carrying out his duties under this Act, request information from any person who may reasonably be expected to have it as to the abode or whereabouts of any other person.

31. The Minister may request that a police officer take such steps as are required to assist in the enforcement of this Act including, but not limited to, by arresting, detaining, photographing, fingerprinting or otherwise identifying a person who requires leave or makes any application under this Act.

#### **Part 4 - Powers of police officers**

32. For the purpose of this Act a police officer without prejudice to his other powers under this or any other Act, has the powers set out in this Part.

33. A police officer may require any person to produce the document authorising such person to enter or be within Gibraltar.

34. A police officer may require any person to—

- (a) produce his passport, identification card or other identification documents and examine such documents; and
- (b) declare whether or not he is carrying or conveying, or has carried or conveyed, any other documents relevant to his identity, nationality or citizenship and produce any such documents which he is carrying or conveying.

35. Where under paragraph 34(b) a person has been required to declare whether or not he is carrying or conveying, or has carried or conveyed, documents,

- (a) he and any baggage or vehicle belonging to him or under his control; and
- (b) any vessel, aircraft or vehicle in which he arrived in Gibraltar,

may be searched by a police officer with a view to ascertaining whether he is doing or, as the case may be, has done so.

36. A police officer may, without search warrant, enter any hotel, lodging house, room or apartment let as lodgings, for the purpose of ascertaining the identity and identity details of persons lodging there; and may request information of any person on such premises.

37. A police officer may, without search warrant, enter and search any vessel, aircraft or vehicle in Gibraltar if he has reason to believe that any person may be harboured or concealed contrary to the provisions of this Act and may search for and take into custody any person found to be there contrary to the provisions of this Act.

38.(1) A police officer may arrest without warrant a person liable to be detained under paragraph 17.

(2) If a justice of the peace is by written information on oath satisfied that there is reasonable ground for suspecting that a person liable to be arrested under this paragraph is to be found on any premises, he may grant a warrant authorising a police officer to enter, if need be by reasonable force, the premises named in the warrant for the purpose of searching for and arresting that person.

39. A police officer—

- (a) may arrest without a warrant—
  - (i) any person whom he reasonably suspects of having contravened or of being about to contravene any provisions of this Act,
  - (ii) any person whom he reasonably suspects of being an excluded immigrant, an unauthorised person or a person in respect of whom a deportation order is in force; and
- (b) may detain any person arrested under subparagraph (a) for up to 72 hours.

40.(1) A police officer may search a person who is detained under paragraph 17 for anything which such person might use—

- (a) to cause physical injury to himself or others; or
- (b) to assist his escape from legal custody.

(2) The power to search such person—

- (a) unless subparagraph (3) applies, does not include power to require him to remove any clothing other than an outer coat, jacket or glove; but
- (b) includes power to search a person's mouth.

(3) This subparagraph applies if a police officer has reasonable grounds to believe that there is concealed on such person anything which he might use as mentioned in subparagraph (1).

(4) The power to search him may be exercised only to the extent reasonably required for the purpose of discovering anything which he might use as mentioned in subparagraph (1).

(5) An intimate search (as defined in section 77(1) of the Criminal Procedure and Evidence Act 2011) may not be conducted under this paragraph.

(6) A police officer may seize and retain anything found on a search of such person if the officer has reasonable grounds to believe he might use it as mentioned in subparagraph (1).

(7) Nothing seized under subparagraph (6) may be retained when he is released from detention under paragraph 17.

41.(1) A police officer may cause such steps to be taken, using such force as may be reasonably necessary, to photograph, measure, fingerprint and otherwise identify any person who is in lawful custody under the provisions of this Act.

(2) The officer carrying out a search under this paragraph must be of the same sex as the person searched.

#### **Part 5 – Regulations**

42.(1) The Minister may make provision in regulations about the exercise of the power in paragraphs 8(4), 18(3) and 41 of this Schedule to require a person to provide biometric information.

(2) Regulations under paragraph (1) may in particular–

- (a) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which information is obtained or recorded;
- (b) make provision about the effect of failure to provide information or to submit to a process;
- (c) require an authorised person to have regard to a code (with or without modification);
- (d) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Minister;
- (e) make provision about the use, retention and destruction of information provided (which may include provision permitting the use of information for specified purposes which do not relate to immigration);

- (f) make provision which applies generally or only in specified cases or circumstances;
- (g) make different provision for different cases or circumstances;
- (h) contain such incidental or supplemental provision as the Minister considers appropriate.

(3) In this paragraph-

“authorised person” means–

- (a) an immigration officer;
- (b) a police officer;
- (c) a person authorised by the Minister for the purpose;

“code” means any code of practice for the time being in force under the Criminal Procedure and Evidence Act 2011.

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### **EXPLANATORY MEMORANDUM**

This Bill updates and streamlines Gibraltar’s immigration and asylum legislation, in particular by replacing the Immigration, Asylum and Refugee Act 1962, to make clearer and more transparent the requirements of Gibraltar’s immigration systems and, looking ahead to the outcome of the UK’s departure from the European Union, to provide a framework which will be adaptable for the future. The Act is intended to provide a clear and positive framework for those foreign nationals whom Gibraltar welcomes as key contributors to its workplace and economy, to provide an asylum and humanitarian protection regime based on the highest international standards but at the same time to provide a robust system for the refusal of entry and residence and the removal of those persons whose contribution to or presence in Gibraltar is not acceptable or a threat to the safety and security of our community. The Act comprises 6 Parts and one Schedule.

**Part 1**

Part 1 sets out the title to the Act, provisions for commencement, the interpretation of the terms used in the Act and provision for the establishment of a Strategic Policy Committee to advise on the operation of the Act.

**Part 2**

Part 2 sets out the general principles concerning the systems governing the operation of the Act and the status of persons under the Act, including provision for exemption from immigration control in certain circumstances. It introduces provisions for a comprehensive entry clearance system for those coming to Gibraltar for a period and purpose over and above a visit, building on the current visa requirement for visa nationals. It provides for the publication of immigration rules to set out the practice to be followed in the administration of the Act and in particular to specify the periods and conditions of leave under the Act in different cases and for different purposes. It also makes provision about excluded persons.

**Part 3**

Part 3 makes provision for the granting of refugee and humanitarian protection status. It will, on the UK's exit from the EU, replace the current Asylum Regulations 2008 and Asylum (Procedures) Regulations 2012 which derive from EU obligations.

**Part 4**

Part 4 provides for the notification of immigration decisions and for an appeal system which will extend the right of appeal, currently restricted to asylum applicants and those seeking residence under EU law, to the generality of applicants, with certain limited exceptions, notably in the interests of internal security, international relations or otherwise in the public interest.

**Part 5**

Part 5 makes provision for criminal offences for immigration purposes, for the detention of persons prior to their removal from Gibraltar and for the removal and deportation of unauthorised persons, including those recommended for deportation by the courts following conviction for a criminal offence.

**Part 6**

Part 6 contains technical provisions for repeal, savings, transitional and consequential amendments resulting from the Act.

**Schedule**

The Schedule sets out the powers conferred variously on immigration officers, the Minister with responsibility for personal status and police officers.

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