

C06/2015



**Command Paper on
a draft Bill for an Act to make provision for establishing
the Gibraltar Consultative Council and the governing of
its functions and duties, and prescribing the terms of
membership of the same**

**Presented to Parliament by
the Chief Minister**

**by Command of Her Majesty
23rd April 2015**

1. Draft Bill

2. Draft Explanatory Memorandum

Comments on this Command Paper should be sent by email to

commandpapers@gibraltar.gov.gi or delivered to

Command Papers Consultation c/o Kevin Warwick, Ministry of Education,
Justice and International Exchange of Information, Suite 771, Europort,
Gibraltar, no later than 7 May 2015.

Any comments received later than 7 May 2015 may not be taken into
account for the purposes of the relevant consultation.

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AN ACT ESTABLISHING THE GIBRALTAR CONSULTATIVE COUNCIL AND GOVERNING ITS FUNCTIONS AND DUTIES, AND PRESCRIBING THE TERMS OF MEMBERSHIP OF THE SAME.

Short title and commencement.

1.(1) This Act may be cited as the Gibraltar Consultative Council Act.

(2) This Act shall come into operation on a date to be appointed by the Chief Minister, by notice published in the Gazette, and different days may be appointed under this subsection for different provisions; and any reference in any provision to the commencement of this Act shall be construed as a reference to the day appointed under this subsection for the coming into operation of that provision.

PART I.
PRELIMINARY PROVISIONS.

Interpretation.

2.(1) In this Act, unless the context otherwise require—

“Ad Hoc Member” means an Ad Hoc Member of the Gibraltar Consultative Council;

“Chief Justice” means the Chief Justice of the Supreme Court of Gibraltar;

“Chief Secretary” means the Chief Secretary of Her Majesty’s Government of Gibraltar;

“Constitution” means the Gibraltar Constitution Order 2006;

“Gazette” means the Gibraltar Gazette;

“Life Member” means a Life Member of the Gibraltar Consultative Council;

“Member” means a member of the Gibraltar Consultative Council and includes reference to Ad Hoc Members, Life Members and Post-Holder Members;

“Post-Holder Member” means a Post-Holder Member of the Gibraltar Consultative Council.

PART II

ESTABLISHMENT AND MEMBERSHIP

Establishment of Gibraltar Consultative Council.

3.(1) There shall be a Council to aid and advise in the Government of Gibraltar, to be styled the Gibraltar Consultative Council and the persons who are Members of that Council shall from time to time be summoned by the Chief Minister and sworn in as Councillors.

(2) The Gibraltar Consultative Council shall be chaired by the Chief Minister and be composed of Post-Holder Members, Life Members and Ad Hoc Members as prescribed in this section.

(3) The following shall be Members of the Gibraltar Consultative Council:

(a) As Post-Holder Members:

- a. The Chief Minister who shall Chair the Gibraltar Consultative Council and have such other functions as may be stipulated herein;
- b. The Deputy Chief Minister;
- c. The Minister for Justice;
- d. The Leader of the Opposition

(b) As Life Members:

- a. All individuals who have held the post of Chief Minister;
- b. All individuals who have held the post of Deputy Chief Minister;

(c) As Ad Hoc Members any person or persons, not exceeding ten as may be appointed by the Chief Minister

(4) On the coming into effect of this Act there shall be an inaugural meeting of the Gibraltar Consultative Council at which all members shall take the Oath of Appointment set out in Schedule 1 and be duly appointed as members of the Gibraltar Consultative Council

(5) Any person taking up membership of the Gibraltar Consultative Council after the inaugural meeting prescribed in sub-section (4) shall first take the Oath of Appointment set out in Schedule 1 and be duly appointed as a member of the Gibraltar Consultative Council.

(6) The Secretary of the Gibraltar Consultative Council and the Chief Secretary shall take the oaths set out in Schedule 2 and 3 respectively.

(7) Oaths of Appointment under sub-sections (4), (5) and (6) shall be administered by the Chief Justice or such other Judge of the Supreme Court as the Chief Justice may determine.

PART III

TENURE AND MEMBERSHIP

Tenure and Membership.

4. Subject to section 9, Post-Holder Members shall hold membership of the Gibraltar Consultative Council for such time as they hold the particular post that entitles them to membership of the Gibraltar Consultative Council.
5. Subject to section 9, Life Members shall hold membership of the Gibraltar Consultative Council for their life-time.
6. Subject to section 9, Ad Hoc Members shall hold membership of the Gibraltar Council for such period as may be specified in the Notice of Appointment published in the Gazette or until the next dissolution of Parliament after their appointment. .
7. Membership of the Gibraltar Consultative Council shall not be remunerated.
8. Persons who hold membership of the Gibraltar Consultative Council may, for such period that they remain members, use the pre-nominal style “The Right Honourable.”

Disqualification, Suspension and Termination of Membership of the Gibraltar Consultative Council

9.(1) No person shall be qualified to serve as a member of the Gibraltar Consultative Council and a serving member of the Gibraltar Consultative Council shall not so serve if he:

- (a) is by virtue of his own act under any acknowledgment of allegiance, obedience or adherence to a foreign power or State; or
- (b) has been adjudged or otherwise declared bankrupt under any law in force in or outside Gibraltar and has not been discharged; or
- (c) is a member of the regular armed forces of Her Majesty; or
- (d) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Gibraltar; or
- (e) is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by a court of law or substituted by a competent authority for some other sentence imposed on him by such a court or is under such a sentence of imprisonment the execution of which has been suspended.

(2) The reference in sub-section 1(c) to a member of the regular armed forces of Her Majesty shall not include a reference to an officer of the Reserve of Officers of the Royal Gibraltar Regiment or to a member of the Reserve of that Regiment or other Reserve of Officers except while he is called for actual military or naval service.

- (3) For the purposes of sub-section 1(e):
- (a) Two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms;
 - (b) No account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.
- (4) Membership of the Gibraltar Consultative Council of any individual Member shall be suspended:
- (a) on the happening of any event prescribed in sub-section 1 and for such period as the prescribed situation subsists; or
 - (b) if the Member being a Life-Member has accepted a judicial post as defined in the Judicial Service Commission Act 2007.
- (5) Membership of any Ad Hoc Member of the Gibraltar Consultative Council shall cease either:
- (a) on the expiry of the period of appointment specified in the Notice of Appointment or
 - (b) if the Ad Hoc Member is either:
 - (i) elected as an Elected Member of the Parliament and does not otherwise become qualified as a Post-Holder Member provided that membership of the Gibraltar Consultative Council shall not be suspended in the case of any such person who has been appointed as a Minister under s45(4) of the Constitution if the Chief Minister so prescribes;
 - (ii) accepts a judicial post as defined in the Judicial Service Commission Act 2007
- (6) Membership of any Post-Holder Member of the Gibraltar Consultative Council shall cease on his vacating the post qualifying that person for membership of the Gibraltar Consultative Council unless that person is otherwise qualified by virtue of entitlement to appointment by meeting the criteria for Life Membership or Ad Hoc Membership.
- (7) During the time of suspension or on cessation of membership of the Gibraltar Consultative Council the particular member shall not be entitled to any rights and privileges deriving from membership but shall continue to be bound by the duties of confidentiality arising from membership.
- (8) Any Member may resign his membership of the Gibraltar Consultative Council by notice in writing addressed to the Chief Minister.
- (9) Any Life Member or Ad Hoc Member may be removed from membership of the Gibraltar Consultative Council by the Chief Minister if all Post-Holder Members and two-thirds of other Members so agree.

Secretary.

10. The Chief Minister shall appoint a public officer to be the secretary of the Gibraltar Consultative Council.

PART III

FUNCTIONS, MEETINGS, DUTIES AND PROCEDURES

Meetings

11.(1) The Chief Minister shall convene a plenary meeting of the Gibraltar Consultative Council at least once every 12 calendar months.

(2) Notwithstanding sub-section (1) a plenary meeting of the Gibraltar Consultative Council shall be convened at least once within four months of the appointment of a Chief Minister under s45(3) of the Constitution.

12. The Chief Minister may in his discretion from time to time:

- (a) convene such other plenary meetings of all members of the Gibraltar Consultative Council as he determines the governance of Gibraltar or the public interest requires;
- (b) constitute and convene sub-committees of members of the Gibraltar Consultative Council as he determines necessary; or
- (c) consult individual members or groups of members of the Gibraltar Consultative Council on such questions or matters as he considers necessary.

13.(1) It shall be the principal duty of the Gibraltar Consultative Council to carry out such functions conferred upon it by this Act so far as practicable.

(2) Without prejudice to the generality of sub-section (1) it shall be the duty of the Gibraltar Consultative Council and the Members thereof to advise Her Majesty's Government of Gibraltar and specifically the Chief Minister on any issue on which advice is requested by him via the structures and mechanisms laid out in this Act in respect of:

- (a) the governance of Gibraltar;
- (b) the public interest of Gibraltar;
- (c) the conduct of or performance of public policy;
- (d) the international obligations of Gibraltar;
- (e) any matter touching upon the public affairs, peace, order and good government of Gibraltar.

14. The validity of the proceedings of the Gibraltar Consultative Council shall not be affected by any defect in the appointment of a member thereof.

15. (1) The quorum at all plenary meetings of the Gibraltar Consultative Council shall be five.

(2) At all meetings of the Gibraltar Consultative Council the Chief Minister, or in his absence, the Deputy Chief Minister shall preside.

(3) The Chief Minister shall, after consultation with Members, regulate the procedures of the Gibraltar Consultative Council.

(4) The Secretary of the Gibraltar Consultative Council may, with the approval of the Chief Minister, make standing orders with respect to the quorum, proceedings and place of meetings of the Gibraltar Consultative Council or any sub-committee thereof but subject to any standing orders the quorum, proceedings or place of meetings shall be as specified in this Act or if not so specified as the Chief Minister may approve.

(5) Minutes of plenary and sub-committee meetings of the Gibraltar Consultative Council shall be kept by the Secretary who shall following approval by members provide a copy to the Chief Secretary.

16. No personal liability shall attach to any member of the Gibraltar Consultative Council in respect of anything done or advice tendered under the provisions of this Act.

PART V CONFIDENTIALITY, PUBLICATION AND DISCLOSURE

17. All deliberations of the Gibraltar Consultative Council and advice tendered by any member to the Chief Minister shall be tendered and received in absolute confidence.

18. Any member of the Gibraltar Consultative Council shall be required on appointment to signify on such form approved by the Chief Secretary for that purpose that he agrees to be bound by the Official Secrets Act for the purposes of receiving information and documents and the carrying out of duties under the provisions of this Act.

19. (1) No member nor any other person shall without the consent in writing of the Chief Minister publish or disclose to any unauthorised person or otherwise than in the course of duties under this Act the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties under this Act and a person who knowingly acts in contravention of this sub-section is guilty of an offence and is liable on conviction on indictment to imprisonment for up to one year and to a fine not exceeding level 4 on the standard scale or to both.

(2) A person who having possession of any information which to his knowledge has been published or disclosed in contravention of sub-section (1) publishes or communicates to any other person any such information otherwise than for the purpose of any prosecution under this Act or in the course of his duty is guilty of an offence and is liable on conviction on indictment to imprisonment for up to one year and to a fine not exceeding level 4 on the standard scale or to both.

20. No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, that has taken place

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(a) between the Chief Minister, any member of the Gibraltar Consultative Council, the secretary, the Chief Secretary or a public officer; or

(b) between any persons who are members of the Gibraltar Consultative Council or the Secretary or Chief Secretary in the exercise of or in connection with the exercise of their functions

unless the Chief Secretary, acting after consultation with the Chief Minister, consents in writing to such production or disclosure.

PART VI GENERAL

Regulations.

21. The Chief Minister may by regulations provide for any matter that is necessary or incidental to the administration of the provisions of this Act and specifically for all or any of the following purposes:

- (a) for such other matters as may be prescribed under this Act;
- (b) for such other matters as may be necessary for or incidental to the due administration of this Act;
- (c) to repeal, replace, amend or vary the Schedules to this Act.

SCHEDULE 1

Section 3

OATH OF APPOINTMENT FOR MEMBERS

I [name] do solemnly and sincerely swear [declare] that I shall truly and faithfully serve the interests of Gibraltar as a member of the Gibraltar Consultative Council. I will in all things to be treated, debated and resolved in Council honestly and truly declare my mind and my opinion. I will freely, without fear or favour provide my counsel and advice to the Chief Minister in connection with such matters as may be referred to the Gibraltar Consultative Council and I shall keep secret all matters committed and revealed to me in this capacity or that shall be secretly treated of in Council. I will not directly or indirectly reveal to any unauthorised person or otherwise than in the course of duty the contents of any documents, communications or information whatsoever which may come to my knowledge in the course of my duties [so help me God]

Sworn [or Made] before me this day of 20

Chief Justice

SCHEDULE 2

Section 3

I [name] having been called upon to exercise the functions of Secretary of the Gibraltar Consultative Council do solemnly and sincerely swear [declare] that I shall keep secret all matters committed and revealed to me in this capacity or that shall be secretly treated of in Council and I will not directly or indirectly reveal to any unauthorised person or otherwise than in the course of duty the contents of any documents, communications or information whatsoever which may come to my knowledge in the course of my duties as such Secretary [so help me God].

Sworn [or Made] before me this day of 20

Chief Justice

SCHEDULE 3

Section 3

I [name] having been called upon to exercise the functions of Chief Secretary of Her Majesty's Government of Gibraltar do solemnly and sincerely swear [declare] that I shall keep secret all matters committed and revealed to me in this capacity or that shall be secretly treated of in Council and I will not directly or indirectly reveal to any unauthorised person or otherwise than in the course of duty the contents of any documents, communications or information whatsoever which may come to my knowledge in the course of my duties as such Secretary [so help me God].

Sworn [or Made] before me this day of 20

Chief Justice

Note

Her Majesty's Government of Gibraltar has today published a Command Paper for a Gibraltar Consultative Council Act. The proposed Act reflects the decision of the Chief Minister, the Hon Fabian Picardo QC, to propose a body for Gibraltar which would be similar to the Privy Council in UK. This proposal was included within the Chief Minister's Budget Speech in June 2014.

In last year's Budget Speech, Mr Picardo said, 'When a nation such as ours finds that there are issues that affect the national Interest, there needs to be a body above party politics that can provide an opportunity for consideration of those issues.'

Members of the Gibraltar Consultative Council (GCC) will be:
As Post-Holders:

The Chief Minister, who will act as Chairman
The Deputy Chief Minister
The Minister for Justice
The Leader of the Opposition

As Life Members:

All individuals who have held the post of Chief Minister
All individuals who have held the post of Deputy Chief Minister

As Ad Hoc Members, any person (but exceeding ten) as may be appointed by the Chief Minister.

When the Act comes into effect, there will be an inaugural meeting of the GCC at which all members will take an Oath of Appointment. After that, the Chief Minister will convene a plenary meeting of the Council at least once every 12 months. A plenary meeting will be convened at least once within four months of the appointment of a new Chief Minister who may, at his discretion, convene a meeting of the GCC as he determines necessary. The Chief Minister may wish to consult individuals or groups of members of the GCC on any matters as and when he considers it necessary.

Members of the GCC may use the pre-nominal style, 'The Right Honourable'. However, they will not receive any remuneration.

The Chief Minister said, 'This is a seminal piece of legislation. I think it is important that there should be a permanent forum created which allows for the best brains in Gibraltar to work together on issues that can affect all of our community regardless of party political allegiance. I believe that the UK Privy Council model is a good one for us to follow in establishing such a body. I committed myself to doing this in my Budget speech last year and I am very happy that I have been able to see the draft Bill produced in time for publication now. I am very keen indeed to see this Bill on the statute book as an Act which makes provision for us to have the proper forum for confidential discussion between our Nation's leaders on matters where cannot afford to quarrel and bicker. I sincerely believe this is the right thing to do and I hope the whole of the community will support this initiative and that the Consultative Council will become a permanent and enduring feature for the good governance of Gibraltar.'