

ARMED FORCES (GIBRALTAR) ACT 2018**Principal Act**

Act. No. 2018-23 *Commencement with the exception of*
s,2(2)(a)(ii), (iii), (b)(ii)(B), (c), (d) 10.12.2018¹
Assent 18.11.2018

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¹ Notice of Commencement – LN. 2018/276

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AN ACT TO MAKE PROVISION FOR THE APPLICATION IN GIBRALTAR OF CERTAIN PROVISIONS OF THE UK ARMED FORCES ACT 2006, FOR THE APPLICATION OF THAT ACT TO THE ROYAL GIBRALTAR REGIMENT, FOR THE EXERCISE IN GIBRALTAR OF JURISDICTION, POWERS AND COMPETENCES BY SERVICE AUTHORITIES AND COURTS IN CERTAIN CIRCUMSTANCES, FOR THE CREATION UNDER GIBRALTAR LAW OF CERTAIN OFFENCES RELATING TO THE ARMED FORCES AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

PART 1

PRELIMINARY

Title and commencement.

1.(1) This Act may be cited as the Armed Forces (Gibraltar) Act 2018.

(2) This Act comes into operation on the day appointed by the Chief Minister, in agreement with the Governor, by Notice in the Gazette and different days may be appointed for different provisions and for different purposes.

Interpretation.

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

“Armed Forces Act” means the Armed Forces Act 2006 of the United Kingdom;

“civilian” means a person who is not a person subject to this Act;

“civilian authorities” means competent authorities under the laws of Gibraltar other than this Act and, without prejudice to the generality of the foregoing, includes the Attorney General and other prosecuting authorities and police officers;

“civilian court” means any court established under the laws of Gibraltar, other than a service court;

“civilian custody” means custody by the Royal Gibraltar Police or in HM Prison Gibraltar in accordance with the laws of Gibraltar other than this Act;

“civilian judge” means a magistrate or judge of a civilian court;

“civilian offence” means an offence under the laws of Gibraltar, other than an offence in respect of which a service authority or service court has exclusive jurisdiction by virtue of this Act;

“civilian subject to service discipline” has the meaning given by subsection (2)(b);

“Commissioner of Police” means the Commissioner of the Royal Gibraltar Police Force established under section 28 of the Police Act 2006;

“Constitution” means the Gibraltar Constitution Order 2006;

“forces law” means the Armed Forces Act, the Reserve Forces Acts, section 113 of the Police and Criminal Evidence Act 1984 of the United Kingdom, and any subordinate legislation made under powers conferred by any of those Acts or that section;

“forces offence” means an offence under forces law in respect of which a service authority or service court has jurisdiction under forces law;

“Her Majesty’s aircraft” means all aircraft belonging to or used for the purposes of any of Her Majesty’s forces;

“Her Majesty’s ships” means all ships belonging to or used for the purposes of any of Her Majesty’s forces;

“Ministry of Defence Property” means Crown Lands in Gibraltar which are at the relevant time in the possession, occupation, use or control of the Ministry of Defence or the Secretary of State for Defence;

“Ministry of Defence Premises” means Her Majesty’s ships, Her Majesty’s aircraft and Ministry of Defence Property;

“person subject to this Act” means-

- (a) a person subject to service law,
- (b) a civilian subject to service discipline, or
- (c) a person formerly subject to service law or formerly a civilian subject to service discipline who is reasonably suspected of having committed a service offence while he was a person subject to service law or a civilian subject to service discipline;

“police officer” means a member of the Royal Gibraltar Police Force established under section 28 of the Police Act 2006;

“primacy of jurisdiction” means the right to exercise jurisdiction, powers, functions or competences in priority over and (unless waived by the authority having priority) to the exclusion of its exercise by any other authority lawfully entitled to exercise it under this Act or any other law of Gibraltar;

“Reserve Forces Acts” means the Reserve Forces Act 1980 and the Reserve Forces Act 1996 of the United Kingdom;

“Royal Gibraltar Regiment” means the military force established by section 3(1) of the Gibraltar Regiment Act 1998;

“service authority” means any person who, with or without the authority of any other person, may exercise jurisdiction, powers, functions or competences under the Armed Forces Act and, without prejudice to the generality of the foregoing, shall include the Director of Service Prosecutions, service policemen and commanding officers;

“service court” means a court established under forces law, or any other court to which an appeal is taken from such a court;

“service law”, in the expression “person subject to service law” and related expressions, has the meaning given by subsection (2)(a);

“service police force” means-

- (a) the Royal Navy Police;
- (b) the Royal Military Police; or
- (c) the Royal Air Force Police.

“service policeman” means a member of a service police force.

(2) In this Act-

- (a) the expression “person subject to service law” means-
 - (i) all persons subject to service law under section 367 of the Armed Forces Act;
 - (ii) all members of the Regular Element of the Royal Gibraltar Regiment, at all times; and
 - (iii) all members of the Volunteer Reserve of the Royal Gibraltar Regiment while undertaking duties or service as set out in section 17 of the Gibraltar Regiment Act

1998 or while performing duties following a call-out under section 18 of the Gibraltar Regiment Act 1998,

and related expressions are to be construed accordingly;

- (b) the expression “civilian subject to service discipline” means a person who-
 - (i) is not subject to service law; and
 - (ii) is within any paragraph of Part 1 of Schedule 15 to the Armed Forces Act amended to apply in Gibraltar as follows-
 - (A) paragraph 4 (Crown servants working in support of Her Majesty’s forces) does not apply to a person who is a resident of Gibraltar or a frontier worker and, in both cases, is registered in Gibraltar as an employee under the terms of the Employment Act;
 - (B) paragraph 8 (persons residing or staying with a person subject to service law) does not apply to persons who are residing or staying with a person who is subject to service law by virtue of being a member of the Regular Element or Volunteer Reserve of the Royal Gibraltar Regiment; and
 - (C) paragraph 9 (persons residing or staying with person falling within paragraphs 4 or 6) does not apply to persons who are residing or staying with a person who is excluded from the application of the Armed Forces Act in Gibraltar by virtue of subparagraph (A) above;
- (c) in this section the terms “Regular Element” and “Volunteer Reserve” shall have the meanings ascribed to them in section 2 of the Gibraltar Regiment Act 1998;
- (d) in applying the Armed Forces Act to members of the Royal Gibraltar Regiment that Act must be interpreted with such modifications as are set out in a Schedule to this Act which may, where necessary, amend the Gibraltar Regiment Act 1998;

- (e) for the purpose of subsection (b)(ii)(A), the term “frontier worker” means a person who resides in Spain and works in Gibraltar.

(3) In the definition of “primacy of jurisdiction” in subsection (1) the word “waived” means written confirmation by or on behalf of a civilian authority or by or on behalf of a service authority, as the case may be, having jurisdiction, power or competence in respect of any matter that it does not intend to exercise it (whether or not by reason of a preference or contentment that it be exercised by any other authority) signed, in the case of any civilian authority, by or on behalf of the Attorney General or the Commissioner of Police, and, in the case of any service authority, by or on behalf of the Commander British Forces, Gibraltar, or signified by way of certificate issued by or on behalf of the Governor, and the word “waive” in section 10 shall be construed accordingly.

(4) A word or term used but not defined in this Act but which is defined in the Armed Forces Act shall when used in this Act have the meaning ascribed to it in the Armed Forces Act unless the context shall otherwise require.

(5) A word or term used and defined in this Act shall have the meaning ascribed to it in this Act regardless of whether it may have been ascribed a different meaning in the Armed Forces Act and that Act shall apply to and in Gibraltar as if the meaning ascribed to a word or term in this Act were ascribed to it in the Armed Forces Act in substitution for the meaning ascribed to it in that Act.

(6) For the purposes of this Act—

- (a) a reference to an enactment of the United Kingdom is a reference to that enactment as from time to time amended, excluding any provision that is extended (with or without modification) to Gibraltar;
- (b) “amend”, in relation to such an enactment, includes repeal; and
- (c) if a provision of such an enactment is repealed or expires, and is re-enacted (with or without modification), a reference in this Act to the repealed or expired provision is to be construed as a reference to the provision so re-enacted.

(7) Notwithstanding any provision of any other law, it shall be lawful for a service policeman, when performing his duties as such pursuant to this Act, to be armed with batons, handcuffs and incapacitant sprays.

PART 2

**APPLICATION OF THE ARMED FORCES ACT IN GIBRALTAR
AND
JURISDICTION OF SERVICE COURTS AND SERVICE
AUTHORITIES**

Application of Armed Forces Act in Gibraltar.

3. The Armed Forces Act applies in Gibraltar by virtue of, and in accordance with, the provisions of this Act.

Armed Forces Act does not apply to civilians.

4.(1) Nothing in this Act is to be construed as permitting the exercise by any service court or service authority of any jurisdiction, powers, functions or competences under the Armed Forces Act over a person who is a civilian.

(2) The exercise of any jurisdiction, powers, functions or competences under the Armed Forces Act in Gibraltar does not limit any right of a civilian in relation to any civilian property.

(3) For the purpose of subsection (2)–

- (a) “civilian property” means any premises in relation to which the service authorities have no power of entry, search and seizure under the Armed Forces Act; and
- (b) the reference to a right in relation to civilian property includes a right of an owner or tenant of premises that are entered or searched, a right of an owner or hirer of a vehicle that is stopped or searched, a right of an owner of an item or document that is found or seized in a search, and any other right in relation to any other civilian property.

(4) Save as in this Act specifically provided, nothing in this Act or in the Armed Forces Act as applied in Gibraltar by virtue of this Act, shall impose any duty or obligation on a civilian, unless ordered to do so by a civilian court and no such order shall be made that requires a civilian to do anything outside Gibraltar.

(5) Save as in this Act specifically provided, the offences created by the Armed Forces Act as applied in Gibraltar by virtue of this Act shall not apply to a person who is a civilian, and nothing in the Armed Forces Act shall enable or be interpreted as enabling any person who is a civilian to be charged or howsoever else proceeded against in Gibraltar for the commission of any offence under the Armed Forces Act or any other forces law.

(6) Save as in this Act specifically provided, nothing in this Act or in the Armed Forces Act as applied in Gibraltar by virtue of this Act, shall or shall be interpreted as permitting any service court or service authority to make any order of any kind under the Armed Forces Act or any other forces law against, or in relation to, or which in any way obliges, any civilian in Gibraltar.

(7) Without prejudice to the generality of the foregoing, section 353 of and Schedule 13 to the Armed Forces Act (relating to the protection of children of service families by service courts and service authorities) shall not apply in and to Gibraltar to the children of-

- (a) a person who is excluded from the application of Schedule 15 to the Armed Forces Act pursuant to section 2(2)(b);
- (b) a member of the Regular Element or Volunteer Reserve of the Royal Gibraltar Regiment.

(8) Where the parents of a child are any of the persons referred to in paragraphs (a) and (b) of subsection (7) and a member of Her Majesty's forces, section 353 of and Schedule 13 to the Armed Forces Act shall apply to that child where the United Kingdom is, or has been in the preceding three months, the place of habitual residence of the child.

Exercise of powers under the Armed Forces Act.

5.(1) Subject to the other provisions of this Act, the service courts and service authorities may within Gibraltar exercise, over a person subject to this Act, all the jurisdiction, powers, functions and competences exercisable under forces law by those courts and authorities over those persons.

(2) A certificate issued by or on behalf of the Commander of British Forces, Gibraltar stating that, at a time specified in the certificate, a person so specified either was or was not a person subject to this Act is to be taken as sufficient evidence of the fact so stated for all the purposes of this Act, unless the contrary is proved.

Cooperation between civilian authorities and service authorities.

6.(1) The civilian authorities shall notify the services authorities as soon as reasonably practicable of the arrest of any person subject to this Act.

(2) Anything found and seized by a police officer upon a search of any premises, vehicle or person may, if the Commissioner of Police considers that it is relevant to a forces offence, be transferred by the police officer to the custody of a service policeman.

(3) The custody of an accused person who is a person subject to this Act and over whom the civilian authorities are to exercise jurisdiction shall, if he is in the hands of the service authorities, remain with the service authorities but only for as long as it is necessary to arrange for the transfer into the custody of the civilian authorities.

Exclusive jurisdiction.

7.(1) The service courts and the service authorities shall have the right to exercise exclusive jurisdiction over a person subject to this Act with respect to offences punishable under forces law but not otherwise under the laws of Gibraltar.

(2) The civilian courts and civilian authorities shall have the right to exercise exclusive jurisdiction over a person subject to this Act with respect to offences punishable under the laws of Gibraltar but not otherwise under forces law.

Primacy of jurisdiction for service courts and authorities.

8.(1) The service courts and the service authorities shall have primacy of jurisdiction over a person subject to this Act with respect to offences within subsection (2) or (3).

(2) An offence is within this subsection if-

- (a) it is not within section 7 of this Act, and
- (b) it arose out of and in the course of that person's duty as a member of Her Majesty's forces or as a civilian subject to service discipline (as the case may be); or
- (c) it is a sexual offence or any other offence against the person, and the person or, if more than one, each of the persons in relation to whom it is alleged to have been committed, had at the time thereof a relevant association with Her Majesty's forces ; or
- (d) it is an offence against property, and the whole of the property in relation to which it was alleged to have been committed (or, in cases where different parts of that property were differently owned, each part of the property) was at the time thereof the property either of a department of the Government of the United Kingdom or of some other authority of the United Kingdom or of Her Majesty's forces or of the Navy, Army and Air Force Institutes or of any other institution or organization operating for the benefit of Her Majesty's forces that is

prescribed by order of the Governor or the property of a person having a relevant association with Her Majesty's forces.

(3) An offence is within this subsection if-

- (a) it is not within section 7 of this Act; and
- (b) it is an offence against the security of the United Kingdom.

(4) In determining whether an offence is within subsection (2), a certificate issued by or on behalf of the Commander of British Forces, Gibraltar, stating that the alleged offence, if committed by the person subject to this Act, arose out of and in the course of his duty as a member of HM forces or as a civilian subject to service discipline, as the case may be, shall be sufficient evidence of that fact unless the contrary is proved.

(5) For the purposes of subsection (2), where the charge (by whatever words expressed) is a charge of attempting or conspiring to commit an offence, or of aiding, abetting, procuring or being accessory to the commission of an offence, paragraphs (c) and (d) of subsection (2) shall have effect as if references in those paragraphs to the offence were references to the offence which the person charged is alleged to have attempted or conspired to commit or, as the case may be, the offence as respects which it is alleged that he aided, abetted, procured or was accessory to the commission thereof; and references in those paragraphs to persons in relation to whom, or property in relation to which, the offence is alleged to have been committed shall be construed accordingly.

(6) For the purposes of subsection (2), the reference to a person's having at any time a relevant association with Her Majesty's forces is a reference to that person being at that time a person of one or other of the following descriptions, that is to say-

- (a) a member of Her Majesty's forces or a civilian subject to service discipline;
- (b) a person who is a dependant of a person referred to in paragraph (a).

(7) For the purposes of subsection (3), an offence against the security of the United Kingdom shall include-

- (a) treason;
- (b) sabotage, espionage or violation of any law relating to official secrets of the United Kingdom, or secrets relating to the national defence of the United Kingdom.

Primacy of jurisdiction for civilian courts and authorities.

9.(1) The civilian courts and the civilian authorities shall have primacy of jurisdiction over a person subject to this Act with respect to offences that do not fall within section 7 or 8 of this Act.

(2) The civilian authorities shall notify the service authorities of the disposition of all cases falling within subsection (1) over which they exercise jurisdiction.

Waiver of jurisdiction between civilian authorities and service authorities.

10.(1) It shall be lawful for any civilian authority or service authority who has jurisdiction (including primary jurisdiction), power or competence to waive it in favour of another authority who also has such jurisdiction, power or competence under this or any other Act.

(2) If the authority having primary jurisdiction decides not to exercise jurisdiction, it shall notify the other authority that has jurisdiction under this Act as soon as practicable.

Arrest by civilian police under warrant of judge advocate.

11.(1) In this section—

“judge advocate warrant” means a warrant issued under section 313 of the Armed Forces Act;

“wanted person” means a person subject to this Act for whose arrest a judge advocate warrant is issued.

(2) A warrant issued by a judge advocate under section 313 of the Armed Forces Act seeking the arrest of a wanted person outside Ministry of Defence Premises, shall be addressed to the Commissioner of Police.

(3) The Magistrate may, on the application of a police officer, issue a warrant for the arrest of a wanted person if —

- (a) the police officer produces or repeats the evidence given under oath or affirmation on which the judge advocate warrant was issued; and
- (b) the magistrate has reasonable grounds for believing that—
 - (i) the wanted person is in Gibraltar, and

- (ii) there are reasonable grounds for the execution of the warrant in Gibraltar.

(4) A warrant issued under this section—

- (a) must specify—
 - (i) the name of the wanted person, and
 - (ii) the offence recorded in the judge advocate warrant as the offence that the wanted person is alleged to have committed; and
- (b) may be executed by any police officer who is in possession of the warrant, or of a copy of that warrant or the judge advocate warrant.

(5) A person arrested under a warrant issued under this section—

- (a) must be shown, on being arrested, the warrant or copy mentioned in subsection (4)(b); and
- (b) must, as soon as practicable, be transferred to service custody.

(6) In exercising a power of arrest under this section, a police officer may be accompanied by one or more service policemen in accordance with such arrangements as are set out in an operational protocol entered into in accordance with section 13.

Restrictions on the exercise of service authority powers outside Ministry of Defence Premises.

12.(1) Without prejudice to section 11, no warrant issued under, or pursuant to, the Armed Forces Act shall allow a service authority to exercise any power of entry, search or seizure in relation to civilian property outside Ministry of Defence Premises in Gibraltar.

(2) For the purposes of subsection (1), the term “civilian property” shall have the same meaning as in section 4(3)(a).

Operational protocols between civilian authorities and service authorities.

13.(1) The Commander of British Forces, Gibraltar and the Commissioner of Police shall enter into operational protocols between their respective forces and or other authorities who may also have jurisdiction, power and competence as to the circumstances and manner in which such jurisdiction,

power and competence shall be exercised by one or other of them or concurrently.

(2) Without prejudice to the generality of the foregoing, such protocols shall set out-

- (a) the arrangements in accordance with which service authorities may operate and exercise jurisdiction in areas of Gibraltar outside Ministry of Defence Premises;
- (b) the procedure to be followed whenever primacy of jurisdiction is disputed.

Detention pending decision as to jurisdiction.

14.(1) In this section “relevant suspect” means a person –

- (a) who is in police detention within the meaning of section 2 of the Criminal Procedure and Evidence Act 2011;
- (b) who is suspected of a civilian offence, but who has not yet been charged with that offence; and
- (c) in respect of whom there are reasonable grounds for believing that that person may be a person subject to this Act.

(2) To the extent that grounds are required under the Criminal Procedure and Evidence Act 2011 for police detention before charge, there are to be taken to be such grounds in relation to a relevant suspect at any time when the conditions in both of subsections (4) and (5) are met.

(3) The grounds provided by subsection (2) are in addition to any other grounds for police detention that may apply in respect of a relevant suspect.

(4) The first condition is that there are reasonable grounds for believing that enquiries are being conducted diligently and expeditiously into whether–

- (a) the relevant suspect is a person subject to this Act;
- (b) if so, whether the service authorities wish to take any action over any forces offence constituted by the act on suspicion of which the relevant suspect was detained by the police;
- (c) if so, whether and for what reasons those authorities wish to request the delivery of the relevant suspect into service custody for the purpose of that investigation; and

(d) if so, whether the Attorney General wishes to accede to that request.

(5) The second condition is that there are reasonable grounds for believing that the relevant suspect's detention is necessary –

- (a) to enable those enquiries to be completed; or
- (b) to ensure that a decision can be made, and carried out, as to whether the person is delivered into service custody.

Service proceedings barring subsequent civilian proceedings.

15.(1) This section applies to a person subject to this Act who-

- (a) has been convicted or acquitted of a forces offence; or
- (b) has had such an offence taken into consideration when being sentenced under forces law.

(2) A civilian court may not try that person for any civilian offence for which, under the laws of Gibraltar, it would be debarred from trying the person if they had been convicted, or (as the case may be) acquitted, of the corresponding offence by a civilian court.

(3) For the purpose of subsection (2) the “corresponding offence” is the civilian offence, if any, that is constituted by the act, or alleged act, that constitutes the forces offence mentioned in subsection (1).

(4) In subsection (1) the references to a person being convicted, acquitted or sentenced are to be read in accordance with forces law applicable to the forces offence.

Service courts deemed properly constituted.

16.(1) If a sentence has, whether within or outside Gibraltar, been passed by a service court on a person who immediately before the passing of that sentence was subject to the jurisdiction of that court in accordance with this section, then for the purposes of any proceedings in a civilian court–

- (a) that service court is deemed to have been properly constituted;
- (b) the sentence is deemed to be within the jurisdiction of that court and in accordance with forces law; and
- (c) the sentence is deemed to have been lawfully executed if it is executed according to its tenor.

(2) For the purposes of this section “service court” includes a commanding officer dealing with a charge summarily.

Jurisdiction of Civilian Courts and Civilian Authorities.

17. Save as specifically provided in this Act, nothing in this Act or in the Armed Forces Act as applied in Gibraltar by this Act shall limit, restrict or curtail, or be interpreted as limiting, restricting or curtailing the jurisdiction, powers, functions or competences under the Constitution or any other law of Gibraltar of the civilian courts or the civilian authorities.

PART 3

**CIVILIAN OFFENCES AND POLICE POWERS RELATED TO
DESERTION AND ABSENCE WITHOUT LEAVE**

Interpretation of Part 3.

18. In this Part –

“absence without leave” and “desertion” in relation to a person have the meanings they have under the forces law applicable to that person, and it is irrelevant whether the service from which that person is absent is in Gibraltar or elsewhere;

“unlawful absentee” means a person subject to service law who –

- (a) has deserted; or
- (b) is absent without leave.

Offences and procedure related to desertion, absence without leave, malingering and persons unlawfully at large.

19.(1) In this section–

“injury” includes any disease and any impairment of a person’s physical or mental condition;

“relevant civilian” means a person who–

- (a) is not subject to service law; and
- (b) is in Gibraltar, or is elsewhere but is resident in Gibraltar.

(2) A relevant civilian commits an offence if, knowing that another person is a person subject to service law or knowing the circumstances by virtue of

which that other person is a person subject to service law, the relevant civilian—

- (a) intentionally causes the person subject to service law to be absent without leave;
- (b) aids, abets, counsels or procures the person subject to service law to commit an offence under forces law of –
 - (i) desertion, or
 - (ii) absence without leave;
- (c) knowing or believing the person subject to service law to have committed such an offence, intentionally impedes the apprehension or prosecution of the person subject to service law;
- (d) intending to cause the person subject to service law to avoid service or any particular duty or kind of duty –
 - (i) causes, aggravates or prolongs an injury to the person subject to service law, or
 - (ii) pretends to any person (including the person subject to service law) that the person subject to service law has an injury; or
- (e) knowing or believing that the person subject to service law intends to avoid service or any particular duty or kind of duty, aids, abets, counsels or procures the person subject to service law to—
 - (i) cause, aggravate or prolong an injury to the person subject to service law, or
 - (ii) pretend to any other person that the person subject to service law has an injury.

(3) A relevant civilian who commits an offence under subsection (2) is liable—

- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale or to both;
- (b) on conviction on indictment to imprisonment for a term of 2 years, to a fine or to both.

Arrest of deserters and absentees without leave.

20.(1) A police officer may arrest without warrant a person reasonably suspected of being an unlawful absentee.

(2) A justice of the peace may issue a warrant, addressed to a police officer, for the arrest of a person if satisfied by evidence given under oath or affirmation that that person is, or is reasonably suspected of being, an unlawful absentee who is present in Gibraltar.

(3) A person arrested under this section must as soon as practicable be transferred to service custody.

Deserters and absentees without leave surrendering to civilian police.

21.(1) This section applies if a person surrenders to a police officer as being an unlawful absentee.

(2) If the surrender occurs at a place which is not a police station, the police officer must take the person, or secure that the person is taken, to—

- (a) a designated police station; or
- (b) a police station other than a designated police station, if to do so would have been lawful under section 48 of the Criminal Procedure and Evidence Act 2011 if the person had been arrested by the police officer for an offence.

(3) Subsection (4) applies to the custody officer at the police station—

- (a) at which the surrender occurs; or
- (b) to which the person is brought under subsection (2).

(4) The custody officer must detain the person for as long as is necessary for the custody officer to—

- (a) consider the case and take action under subsection (5); or
- (b) arrange for the person to be brought, as soon as practicable, before the Magistrates' Court for the case to be considered and action taken under subsection (5).

(5) The custody officer or the Magistrates' Court, after considering the case under subsection (4)(a) or (b) respectively, must—

- (a) if it appears that the person is not an unlawful absentee, order that the person should no longer be detained under this section (without prejudice to whether that person is to continue to be detained on any other basis); or
- (b) if it appears that the person is an unlawful absentee—
 - (i) arrange for the person to be transferred to service custody, and, if necessary, continue the person’s detention pending that transfer;
 - (ii) if the person is also in custody for some other cause, notify the service authorities that they may make representations to the Attorney General as to whether the person should be transferred to service custody; or
 - (iii) if the person is not also in custody for some other cause, release the person subject to a condition that that person reports, at or by such time as may be specified in the condition, to such place or person as may be so specified for the purpose of enabling that person to be taken into service custody.

(6) If a person who is released under subsection (5)(b)(iii) fails to comply with the condition subject to which the person was released, the Magistrates’ Court may issue a warrant for that person’s arrest.

(7) A person arrested under a warrant issued under subsection (6) must as soon as practicable be transferred to service custody.

(8) In this section “custody officer”, “designated police station” and “police station” have the meanings that they have in section 2 of the Criminal Procedure and Evidence Act 2011.

Arrest by police of persons unlawfully at large.

22.(1) A person who has been sentenced to service detention and who is unlawfully at large –

- (a) may be arrested without a warrant by a police officer; and
- (b) may be taken to the place in which the person is required in accordance with law to be detained.

(2) For the purpose of this section a person is unlawfully at large if that person is unlawfully at large under the forces law applicable to that person.

PART 4

OTHER CIVILIAN PROVISIONS**Offences relating to false information.**

23.(1) A person, other than a person subject to service law, commits an offence if that person knowingly provides information that is false or misleading in a material particular in connection with a procedure prescribed by forces law for enlistment or attestation by that person or another person.

(2) A person guilty of an offence under this section is liable-

- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale or to both;
- (b) on conviction on indictment to imprisonment for a term of 2 years, to a fine or to both.

Detention in prison.

24. A person in service custody may be detained in a prison, within the meaning of the Prison Act 2011, if –

- (a) the service authority with custody of the person requests the use of the prison;
- (b) the governor of the prison, at the governor's discretion, consents to the request; and
- (c) the detention is pending the person's removal from Gibraltar for the purposes of the investigation of or proceedings in respect of a suspected forces offence.

PART 5**MISCELLANEOUS****Rights and obligations under the Constitution and other rights.**

25.(1) No provision in this Act may be construed as in any way affecting any right conferred upon any person by the Constitution, and any act whether undertaken pursuant to a provision within this Act or which is undertaken in Gibraltar pursuant to the Armed Forces Act, is subject to the Constitution.

(2) For the avoidance of doubt, a person may seek to enforce any right or obligation conferred by or imposed under the Constitution irrespective of anything provided for in this Act or the Armed Forces Act.

(3) No provision in this Act or in the Armed Forces Act affects the civilian court's powers to make orders with respect to any application before it concerning a matter provided for in the Constitution.

(4) For the avoidance of doubt, a person who by virtue of this Act or by virtue of the application of forces law by this Act may apply to the Supreme Court where that person believes that any right conferred by the Constitution has been violated.

(5) The Supreme Court may, on hearing an application under subsection (4), make such orders as it deems fit, including any temporary order.

(6) Nothing in this Act or in the Armed Forces Act shall affect the right of a person who is detained at a place against that person's will from applying to the Supreme Court for a writ of *habeas corpus* or other prerogative remedy.

Subsidiary legislation.

26. The Chief Minister, in agreement with the Governor, may make any regulations, rules or orders as he considers necessary or expedient for the better administration of this Act or for any matter arising from or incidental to the application of this Act.

Immunity.

27. Neither the Crown in right of Her Majesty's Government in Gibraltar nor any public officer shall be liable in damages for anything done or omitted by any service court, service authority or any other person under the Armed Forces Act.

Consequential amendments.

28. Section 594 of the Crimes Act 2011 is hereby repealed.