

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,136 of 22nd December, 2014

B. 36/14

BILL

FOR

AN ACT to amend the Gibraltar Regiment Act 1998.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1.(1) This Act may be cited as the Royal Gibraltar Regiment (Amendment) Act 2014.

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

Amendment to the titles.

2.(1) In the Long Title to the Gibraltar Regiment Act 1998 (hereinafter referred to as “the principal Act”) for “Gibraltar Regiment” substitute “Royal Gibraltar Regiment”.

(2) In section (1) of the principal Act for “Gibraltar Regiment” substitute “Royal Gibraltar Regiment”.

Amendments to section 2.

3. In section 2 of the principal Act—

- (a) delete the definition “Army Act”;
- (b) for the words “civil court” substitute “civil criminal court”;

- (c) in the definition of “officer” for “in Her Majesty’s Armed Forces” substitute “the regular army”;
- (d) in the definition of “Regiment” after “The” insert “Royal”;
- (e) delete the definition “Reserve Forces Act”;
- (f) immediately prior to the definition “soldier” insert the following definitions—
 - ““the regular army” means any of Her Majesty’s military forces other than—
 - (a) the Army Reserve;
 - (b) the Territorial Army;
 - (c) the Royal Gibraltar Regiment; and
 - (d) a force raised under the law of a British overseas territory;
 - “the regular forces” means the Royal Navy, the Royal Marines, the regular army or the Royal Air Force, and references to “a regular force” are to be read accordingly;
 - “the reserve forces” means the Royal Fleet Reserve, the Royal Naval Reserve, the Royal Marines Reserve, the Army Reserve, the Territorial Army, the Royal Air Force Reserve or the Royal Auxiliary Air Force, and references to “a reserve force” are to be read accordingly;”;
- (g) in the definition “Volunteer Reserve” delete the words “and to whom the regulations terms and conditions set out in Schedule 1 to this Act apply”; and
- (h) in subsection (2) after “Commander” insert “ and the Commanding Officer”.

Section 3.

4. For section 3 of the principal Act substitute—

“Establishment, maintenance and disbandment.

- 3.(1) There shall continue to be maintained in Gibraltar one of Her Majesty’s military forces called the Royal Gibraltar Regiment and consisting of the Regular Element and the Volunteer Reserve.
- (2) The Regiment shall consist of such number of officers and soldiers of the Regular Element and of the Volunteer Reserve Element as may from time to time be determined by the Governor, in consultation with the Secretary of State, to be necessary for the Regiment to efficiently and effectively perform its duties and operational role.
- (3) The Governor may, in consultation with the Secretary of State, increase or decrease the number of officers or soldiers of the Regular Element and of the Volunteer Reserve Element as determined under subsection (2) as he may deem necessary, to meet changing circumstances.
- (4) The Governor may, acting on the order of Her Majesty, by Proclamation published in the Gazette, disband the Regiment or any part of the Regiment whenever it appears expedient to do so and may give such instructions as may be necessary to carry the Proclamation into effect.”.

Section 4.

5. Section 4 of the principal Act is repealed.

Part II.

6. For the heading “**PART II**” substitute—

**“PART II
DISCIPLINE”.**

Section 5 to 5H and Part heading.

7. For section 5 of the principal Act substitute—

“Purpose of Part.

5. This Part provides for members of the Regiment to be subject to the framework for disciplinary matters, including the trial and appellate provisions on the same terms as members of the regular forces in the United Kingdom.

Scope of Part.

5A.(1) This Part applies to—

- (a) members of the Regiment; and
- (b) a person was formerly a member of the Regiment.

for the purposes of applying service law to such persons.

- (2) Nothing in this Part shall permit the application of this Act or any enactment in Schedule 2 to a person who does not fall within subsection (1).
- (3) The application of this Part to a person falling within subsection (1)(b) shall be limited to the periods and conditions set out in the enactments in Schedule 2.
- (4) In this Part—

“service law” means any enactment whether of the Gibraltar Parliament or of the United Kingdom Parliament which is set out in Schedule 2, as the same may be amended from time to time; and

“provision of service law” means a provision contained in an enactment which falls within the definition of service law.

Application of service law.

- 5B.(1) Service law shall apply to a member of the Regiment subject to the provisions of this Part.
- (2) The application of a provision of service law shall not be incompatible with the Gibraltar Constitution Order 2006, but where a provision of service law is incompatible, then either-
- (a) the interpretation or application of the provision of service law shall be modified so that it is compatible; or
 - (b) where it is not possible to modify or interpret the provision, that provision of service law may not be applied or relied upon.
- (3) Where a substantive or procedural aspect of service law provides for matters to be dealt by a court, body or person established in the United Kingdom, such as the attendance before a court, body or person, service of documents or time limits, this Act shall be construed as enabling those provisions of service law to be applied in Gibraltar by any respective equivalent court, body or person established in Gibraltar to the extent provided for in this Part.
- (4) For the purposes of subsection (3) service law shall be interpreted with such modifications as to names, ranks or otherwise, as may be required to give effect to service law.
- (5) Nothing in this Part shall be construed as requiring any court, body or person to sit in or otherwise establish itself in Gibraltar.
- (6) A provision of service law shall apply subject to any limitation or restriction which is set out in Schedule 2A.

Modification of service law.

- 5C.(1) A reference in service law to—

- (a) a provision of the Police and Criminal Evidence Act 1984 shall, if there is a corresponding provision in the Criminal Procedure and Evidence Act 2011, be deemed to be a reference to that provision;
 - (b) the civilian police shall be a reference to a force established under the Police Act 2006;
 - (c) any application for a warrant shall be made to a justice in Gibraltar;
- (2) Subject to subsection (3), a reference in service law to any officer or rank shall mean a reference to an officer or rank in the Regiment save that where an officer of such a rank is not provided for in the Regiment then such a reference shall be deemed to be a reference to the nearest equivalent rank.
- (3) A reference in service law to a rank above that of the Commanding Officer of the Regiment shall mean a reference to the Commander, unless it would be inappropriate to do so.
- (4) Where any provision of service law conflicts with any provision of this Act or any subsidiary legislation made hereunder, the provisions contained herein or made hereunder shall prevail.

Judgments and orders.

- 5D.(1) Subject to section 5A(2) and 5B(2) any judgment or order passed or made by a court, body or person outside of Gibraltar pursuant to service law shall be enforceable in Gibraltar on the same terms as if that court, body or person had been duly constituted under the laws of Gibraltar, subject to subsection (2).
- (2) A judgment or order to which subsection (1) applies may, for the purposes of enforcement, be modified as the circumstances in Gibraltar require and as the Commander and the Commanding Officer may in writing agree (which agreement shall be disclosed to the person against whom any judgment or order is being enforced) but only if such modifications do not alter the effect of the judgment or order on the person to whom it is addressed.

Regulations: sentenced persons.

5E. Regulations made under section 23 may provide for the treatment of persons who are sentenced to a period of detention by a court, body or person applying service law, including the procedures for the transfer of such persons to Gibraltar and other arrangements connected thereto.

Amendment of Schedules 2 and 2A.

5F.(1) The Governor may by Order in the Gazette and after consultation with the Commander and the Commanding Officer amend Schedules 2 and 2A.

(2) An Order made under subsection (1) shall be laid before the Parliament at the next meeting after its publication in the Gazette.

Warrant for arrest: desertion or AWOL.

5G.(1) A justice may, upon an application on behalf of the Commanding Officer, direct that a police officer arrest a member of the regiment whom the justice has reasonable grounds for believing has deserted or is otherwise absent without leave.

(2) A person detained pursuant to a warrant shall, as soon as is reasonably practicable, be conveyed into the custody of the Commanding Officer.

(3) A reference in subsection (1) to a police officer means a police officer under the Police Act 2006.

Civil criminal court to have jurisdiction.

5H. Subject to the rules on double jeopardy, nothing in this Part shall limit the jurisdiction of a civil criminal court sitting in Gibraltar to try and deal with an offence.

PART IIA
APPLICATION OF ADMINISTRATIVE PROVISIONS”.

Section 6.

8.(1) In the section heading to section 6 of the principal Act after “Application” insert “by Order”.

(2) For section 6 of the principal Act substitute–

“6.(1) The Governor may, by Order in the Gazette, apply to the Regiment such of the Armed Forces regulations, manuals, warrants and instructions which are applicable to regular forces in the United Kingdom.

(2) An Order made under subsection (1) may provide for any such addition or modification as may be appropriate provided that such amendments do not render such regulations, manuals, warrants or instructions inconsistent with the provisions of this Act.

(3) An Order under subsection (1) may–

(a) provide for the retrospective application of the regulation, manual, warrant or instruction provided that no person shall be liable for anything done prior to the publication of the Order;

(b) amend or revoke a previous Order.

(4) For the avoidance of doubt, the application of regulations, manuals, warrants or instructions which are the subject of an Order under subsection (1) are not to be construed as falling within the definition of “service law” in section 5A.”.

Section 7.

9. Section 7 of the principal Act is repealed.

Section 8.

10.(1) For section 8 of the principal Act substitute–

- “8.(1) Subject to section 9, the Regiment shall be under the full command of the Governor.
- (2) The Governor shall appoint a Commander of the Regiment who shall be of sufficient seniority and, subject to section 9, shall have command of the Regiment and shall be responsible to the Governor for the duties, organisation, training, discipline and efficiency of the Regiment.
- (3) The Governor in exercise of his powers under subsection (2), shall appoint as Commander of the Regiment an officer who holds a commission in the regular forces.
- (4) The Governor shall appoint an additional officer to be the Commanding Officer of the Regiment who shall be responsible to the Commander for the duties, organisation, training, discipline and efficiency of the Regiment.
- (5) The Governor in exercise of his powers under subsection (4) shall appoint as Commanding Officer of the Regiment any officer holding a Governor’s commission but where it is necessary or expedient to do so, he may appoint any officer holding a land forces commission in the regular forces.”.

Section 12.

11. For section 12 of the principal Act substitute–

“Nationality Requirements.

12. No person shall be commissioned as an officer of or enlisted as a soldier in the Regiment unless he is a British citizen, a British Overseas Territories citizen, a British Overseas citizen, British National Overseas, British protected member or a British subject under the British Nationality Act 1981.”.

Sections 15A to 17.

12. For sections 16 and 17 substitute–

“Deployment and training.

- 15A.(1) The Governor may, for such purposes as the Secretary of State may direct, order that the whole or any part of the Regular Element and the Volunteer Reserve be deployed on operations outside Gibraltar.
- (2) The Commanding Officer may order any member of the Regular Element to proceed to any place outside Gibraltar for the purpose of carrying out operations, assignments, instruction or training.

Liability for service.

- 16.(1) Every member is at all times liable—
- (a) for service in the performance of the duties of the Regiment as directed by the Commanding Officer in accordance with the provisions of this Act;
 - (b) to undertake such operations, assignments, attachments, instruction or training as may be directed by the Commanding Officer; and
 - (c) to serve anywhere in the world as directed under subsections (1)(a) and (b).
- (2) Subsection (1) only applies to a member of the Volunteer Reserve when that member is on duty.
- (3) No Regular member is entitled to be released or discharged from the Regiment whilst a call out order issued under section 18 remains in effect.

Extension of powers of command dependent on rank.

17. An officer, warrant officer or non-commissioned officer of the Regular Element or the Volunteer Reserve Element has, over members of the regular forces and the reserve forces, such powers as are dependent on rank.”.

Section 18.

13. Section 18(6) of the principal Act is repealed.

Section 19.

14. Section 19 is repealed.

Section 20.

15. Section 20 is amended as follows—

- (a) in the section heading for “penalise” substitute “disadvantage”;
- (b) in subsection (1)—
 - (i) for “member of the Volunteer Reserve” substitute “member or potential member of the Volunteer Reserve”;
 - (ii) in paragraph (a) for “penalise” substitute “disadvantage”;
 - (iii) in paragraph (b) for “that member” substitute “that person”;
- (c) in subsection (2)—
 - (i) for “penalise” substitute “disadvantage”,
 - (ii) for “penalises” substitute “disadvantages”
- (d) in subsection (3) for “penalise” substitute “disadvantage”;
- (e) in subsection (4) for “six” substitute “12”.
- (f) in subsection (5) for “six” substitute “12” on both occasions it appears.

Section 22.

16. Section 22 is amended as follows—

- (a) in paragraph (f) for “relinquishes” substitute “retires, resigns or relinquishes”;

- (b) paragraphs (g) and (h) are deleted;
- (c) after paragraph (i) insert–
 - “(j) an officer is converted from one commission type to another;
 - (k) an officer is extended on an Royal Gibraltar Regiment Short Service Commission;
 - (l) an officer’s Commission is extended for “Intelligent Manning” purposes.
 - (m) an officer’s Commission is extended on a Royal Gibraltar Regiment Regular Commission beyond 20 years;
 - (n) a Regimental Sergeant Major is appointed;
 - (o) a Warrant Officer is appointed on promotion.”.

Section 23.

17. After section 23 of the principal Act insert–

“Further administrative provisions.

23A.(1) The Governor may issue such administrative regulations, manuals, warrants and instructions as may be required for the efficient operation of the Regiment.

- (2) The matters set out in subsection (1) may include–
 - (a) providing for the Terms of Service for members of the Regiment; and
 - (b) providing for the Terms of Enlistment for members of the Regiment.”.

Schedule 1.

18. Schedule 1 is repealed.

Schedules 2 and 2A.

19. For Schedule 2 substitute—

“

**SCHEDULE 2
SERVICE LAW**

ENACTMENT
Part 1 Primary Legislation
Armed Forces Act 2006
Courts Martial (Appeals) Act 1951
Court Martial Appeals Act 1968
Reserve Forces Act 1996 (Offence creating provisions only-sections 95-109)
Part 2 Statutory Instruments and Defence Council Regulations
Armed Forces (Court Martial) Rules [S.I. 2009/2041]
Armed Forces (Custody Proceedings) Rules [S.I. 2009/1098]
Armed Forces (Custody without Charge) Regulations [S.I. 2009/1097]
Armed Forces (Discharge and Transfer to the Reserve Forces) (No 2) Regulations [S.I. 2009/1091]
Armed Forces (Disposal of Property) Regulations [S.I. 2009/1923]
Armed Forces (Drug Testing) Regulations 2009
Armed Forces (Evidence of Illegal Absence and Transfer to Service Custody) Regulations [S.I. 2009/1108]
Armed Forces (Financial Penalty Enforcement Orders) Regulations [S.I.

2009/1212]
Armed Forces (Forfeiture of Service)(No 2) Regulations [S.I. 2009/1090]
Armed Forces (Forfeitures and Deductions) (Minimum Rate of Pay) Regulations 2009
Armed Forces (Forfeitures and Deductions) Regulations [S.I. 2009/1109]
Armed Forces (Meaning of “Commanding Officer”) Regulations 2009
Armed Forces (Minor Punishments and Limitation on Power to Reduce in Rank) Regulations [S.I. 2009/1215]
Armed Forces (Part 5 of the Armed Forces Act 2006) Regulations [S.I. 2009/2055]
Armed Forces (Post Incident Alcohol and Drug Testing) Regulations 2009
Armed Forces (Powers of Stop and Search, Search, Seizure and Retention) Order [S.I. 2009/2056]
Armed Forces (Redress of Individual Grievances) Regulations 2007/3353
Armed Forces (Review of Court Martial Sentence) Order [S.I. 2009/1168]
Armed Forces (Review of Court Martial Sentence) (Supplementary Provisions) Regulations [S.I. 2009/1169]
Armed Forces (Service Complaints Commissioner) Regulations 2007/3352
Armed Forces (Service Complaints) (Consequential Amendments) Order 2008/1696
Armed Forces (Service Inquiries) Regulations 2008/1651
Armed Forces (Service Supervision and Punishment Orders) Regulations [S.I. 2009/1214]
Armed Forces (Summary Appeal Court) Rules [S.I. 2009/1211]
Armed Forces (Summary Hearing and Activation of Suspended Sentences of Service Detention) Rules [S.I. 2009/1216]

Armed Forces Act 2006 (Transitional Provisions etc) Order [S.I. 2009/1059]
Armed Forces (Unfitness to Stand Trial and Insanity) Regulations [S.I. 2009/1213]
Armed Forces (Warrants of Arrest for Service Offences) Rules [S.I. 2009/1110]
Court Martial Appeal Court Rules [S.I. 2009/2569]
Court Martial (Prosecution Appeals) Order [S.I. 2009/2044]
Service Custody and Service of Relevant Sentences Rules [S.I. 2009/1096]
Armed Forces (Conditional Release from Custody) Order 2009 [S.I. 2009/991]
The Court Martial Appeal Court (Evidence) Order [S.I. 2009/2569]
Armed Forces (Proceedings) (Costs) Regulations [S.I. 2009/993]
Court Martial and Service Civilian Court (Youth Justice and Criminal Evidence Act 1999) Rules 2009 [S.I. 2009/2100]
Court Martial Appeal Court (Bail) Order 2009 [S.I. 2009/992]
Police and Criminal Evidence Act 1984 (Armed Forces) Order 2009/1922

SCHEDULE 2A

Restrictions and limitations on the application of service law

1. ARMED FORCES ACT 2006.

PART 3

CHAPTER 2: POWERS OF STOP AND SEARCH.

Sections 75 to 81

The powers referred to in sections 75 to 81 may only be exercised within land owned or occupied by the Ministry of Defence and-

- (a) references to places where public have rights of access, whether by right or otherwise, and whether such access is subject to conditions or not, and any premises, building or other relevant structure shall be construed as being within or on land owned or occupied by the Ministry of Defence; and
- (b) powers in relation to vehicles may only be exercised when the vehicle in question is within land owned or occupied by the Ministry of Defence.

Section 82: Application of chapter to ships and aircraft.

Section 82 shall only apply to ships that are owned or operated by the Ministry of Defence within Admiralty Waters and aircraft of the regular forces.

CHAPTER 3: POWERS OF ENTRY, SEARCH AND SEIZURE.

The powers in sections 83 to 93 may only be exercised in or over land owned or occupied by the Ministry of Defence and references to residential premises shall be a reference to residential premises on such land.

CHAPTER 4: SUPPLEMENTARY.

Sections 94 and 95 shall be construed as applying when the premises, service living accommodation, building or locker is

situated in or on land owned or occupied by the Ministry of Defence.

**PART 14
ENLISTMENT, TERMS OF SERVICE ETC.**

Section 340 shall not apply.

**2. ARMED FORCES (POWERS OF STOP AND SEARCH,
SEARCH, SEIZURE AND RETENTION) ORDER [S.I.
2009/2056]**

The geographical limitations referred to in paragraph 1 in relation to the provisions of the Army Act 2006 apply in relation to the exercise of powers under this Order.”.

Amendments to Schedule 3.

20.(1) Schedule 3 to the principal Act is amended in accordance with this section.

(2) For paragraph 1 substitute–

“1. Subject to the provisions of section 12 and paragraph 6, the Governor may, from time to time–

- (a) commission any person; or
- (b) appoint any officer holding a Land Forces Commission in the regular forces;

as an officer in the Regiment.”.

(3) For paragraph (4) substitute–

“4. A commission granted by the Governor shall be in accordance with regulations issued by the Governor under section 23.”.

(4) For paragraph (5) substitute–

“**Arms Selection Board.**

5. The Governor shall appoint a Royal Gibraltar Regiment Arms Selection Board, the membership of which shall be–

- (a) the Commander of the Regiment, or his representative;
- (b) the Commanding Officer (as an Observer); and
- (c) such other person or persons as the Governor may, in his discretion, determine.

The Chairman of the Board shall be the Commander, unless the Governor shall, exceptionally, have appointed some other person to be the Chairman of the Board.”.

(5) Paragraph 6 is deleted.

(6) In paragraph 7 for the words “The appointment” substitute “The initial appointment”.

(7) At the end of paragraph 9 insert “in accordance with regulations issued by the Governor under section 23”.

(8) At the end of paragraph 10 insert the words “in consultation with the Secretary of State”.

(9) For paragraph 11 substitute–

“11.(1) The Governor may, on the recommendation of the Commander, permit an officer to extend his service beyond that allowed for in paragraph (1) in accordance with regulations issued by the Governor under section 23.

(2) Where an officer wishes to retire, resign or relinquish his commission he shall give such notice as may be prescribed in regulations issued by the Governor under section 23.”.

(10) For paragraph 12 substitute–

“12.(1) Subject to section 18(4) and paragraph (2) below, an officer or soldier in the Volunteer Reserve may serve to a maximum age of 60 subject to career progression as laid down

in the regulations for the Voluntary Reserve issued by the Governor under section 23.

- (2) The Governor may extend for periods of 12 years at a time, or to age 60, subject to selection on the Royal Gibraltar Regiment Arms Selection Board.”.

(11) In the Appendix to Schedule 3 for the words “Gibraltar Regiment” substitute “Royal Gibraltar Regiment”.

Amendments to Schedule 4.

21. For Schedule 4 to the principal Act substitute—

“SCHEDULE 4

Section 14

**TERMS OF ENLISTMENT
FOR SOLDIERS IN THE REGIMENT**

Authority for enlistment.

1. Subject to section 12, the Governor may authorise the enlistment of any person as a soldier in the Regiment in the Regular Element or the Volunteer Reserve in such manner and subject to such conditions as may be prescribed in regulations issued by the Governor under section 23.

Re-engagement.

2. The Commanding Officer may recommend the re-engagement of soldiers in such manner and subject to such conditions as may be prescribed in regulations issued by the Governor under section 23.

Transfer of soldiers.

3. A soldier may be transferred—
- (a) from the Regular Element to the Volunteer Reserve;
 - (b) from the Volunteer Reserve to the Regular Element,

in such manner as may be prescribed by the Governor in consultation with the Secretary of State.

Form of Governor's Warrant.

4. A member appointed as a Warrant Officer shall receive a Governor's Warrant in the form set out in the Appendix to this Schedule.

Discharge.

5. The Governor may discharge a soldier at any time in accordance with regulations issued by the Governor under section 23.

Appendix

Paragraph 4

THE GOVERNOR'S WARRANT

By virtue of the Authority granted to me, by the Queen Her Most Excellent Majesty in this behalf given, I do hereby Constitute and Appoint you to be Warrant Officer, in The Royal Gibraltar Regiment from the day of 20 and to continue in the said office during my pleasure. You are therefore carefully and diligently to discharge your Duty as such by doing and performing all manner of things thereunto belonging as required by the Established Regulations of the Regiment, and you are to observe and follow such Orders and Directions as you shall receive from your Commanding Officer or any other superior officer, according to the Rules and Discipline of War.

Given at the Convent, Gibraltar the day of 20

Governor and Commander in Chief'.

UK Army Pensions Warrant 2010 to apply as modified.

22.(1) The United Kingdom's Army Pensions (Armed Forces Pension Scheme 1975 and Attributable Benefits Scheme) (Amendment) Warrant

2010 shall be deemed to apply to the Regiment as from 30 September 2013, subject to subsections (2) and (3).

(2) The application of the Warrant referred to in subsection (1) shall be modified so that for the purposes of the Royal Gibraltar Regiment Pension Scheme, if on the cessation of a member's service that member does not have at least seven years' qualifying service the member ceases to be entitled to count any period of reckonable service.

(3) For the purposes of the Royal Gibraltar Regiment Pension Scheme, inflation adjustments will be made using the General Index of Retail Prices.

EXPLANATORY MEMORANDUM

This Bill amends the Gibraltar Regiment Act 1998 to update its provisions generally and specifically to allow for the application of the disciplinary measures which are available in the United Kingdom to members of the Regiment.

The Bill also makes provision for the retrospective application of changes to the pensions of members.

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