

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4,347 of 6th March, 2017

B. 05/17

BILL

FOR

AN ACT to make provision for the exercise of emergency powers in accordance with section 18(2)(b) of the Constitution where a public emergency arises or is likely, and for connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Governor's Emergency Powers Act 2017.

Commencement.

2. This Act comes into operation on the day of publication.

Public emergency.

3.(1) In this Act "public emergency"-

- (a) has the meaning given in section 18(2)(a) of the Constitution (the period during which Her Majesty is at war); and
- (b) means any period declared to be a public emergency in accordance with the provisions of this Act.

(2) A proclamation, by the Governor, to the effect that there is a public emergency may be made in circumstances where-

- (a) an event or situation threatens serious damage to human welfare in Gibraltar, whether in whole or in part;

- (b) an event or situation threatens serious damage to the environment of Gibraltar, whether in whole or in part; or
- (c) an event or situation threatens serious damage to the security of Gibraltar.

(3) For the purposes of section 2(a) an event or situation threatens damage to human welfare only if it involves, causes or may cause-

- (a) loss of human life;
- (b) human illness or injury;
- (c) homelessness;
- (d) damage to property;
- (e) disruption of a supply of money, food, water, energy or fuel;
- (f) disruption of a system of communication;
- (g) disruption of facilities for transport; or
- (h) disruption of services relating to health.

(4) For the purposes of subsection (2)(b), an event or situation threatens damage to the environment only if it involves, causes or may cause-

- (a) contamination of land, water or air with biological, chemical or radio-active matter; or
- (b) disruption or destruction of plant life or animal life.

(5) The event or situation mentioned in subsection (2) may occur or be inside or outside Gibraltar.

Proclamations of Emergency.

4.(1) If the Governor is satisfied that a state of public emergency has occurred, is occurring or is about to occur, the Governor may make a Proclamation of Emergency.

(2) A Proclamation of Emergency shall cease to have effect-

- (a) after a period of 30 days, beginning with the day on which it is made; or
- (b) at such earlier time as-
 - (i) the Proclamation of Emergency is revoked by direction made by the Governor; or
 - (ii) may be specified in the Proclamation of Emergency or in regulations made under section 5(1).

(3) Subsection (2)-

- (i) does not prevent the making of a new Proclamation of Emergency; and
- (ii) does not affect things done or omitted to be done while the Proclamation of Emergency was in force.

(4) A Proclamation of Emergency may, if the Governor thinks fit, be made so as to apply to such part of Gibraltar as may be specified in that Proclamation, in which case regulations made under section 5(1) shall, except as they otherwise expressly provide, have effect only in that part.

(5) Any Proclamation of Emergency made under this section shall be published in the Gazette as soon as practicable after it is made.

Power to make regulations.

5.(1) Where the Governor has made a Proclamation of Emergency under section 4(1) and the Governor is satisfied that the conditions in section 6 are met, the Governor may make regulations for the purpose of preventing, controlling or mitigating an aspect or effect of the state of that public emergency.

(2) In particular, regulations may make any provision which the Governor is satisfied is necessary for the purpose of-

- (a) protecting human life, health or safety;
- (b) treating human illness or injury;

- (c) protecting or restoring property;
- (d) protecting or restoring a supply of money, food, water, energy or fuel;
- (e) protecting or restoring a system of communication;
- (f) protecting or restoring facilities for transport;
- (g) protecting or restoring the provision of services relating to health;
- (h) protecting or restoring the activities of banks or other financial institutions;
- (i) preventing, containing or reducing the contamination of land, water or air;
- (j) preventing, reducing or mitigating the effects of disruption or destruction of plant life or animal life;
- (k) protecting or restoring the activities of the government of Gibraltar; or
- (l) protecting or restoring the performance of public functions.

(3) Regulations made under subsection (1) may, so far as necessary for any of the purposes mentioned in subsection (2), in particular-

- (a) confer any function on the Governor or on any other specified person, including-
 - (i) a power, or duty, to exercise a discretion;
 - (ii) a power to give directions or orders, whether written or oral;
- (b) provide for or enable the detention of persons and the deportation or exclusion of persons from Gibraltar;
- (c) provide for or enable, on behalf of Her Majesty, in relation to any property and with or without compensation-

- (i) the taking of possession or control of that property; or
- (ii) the acquisition of that property;
- (d) provide for or enable the destruction of property, animal life or plant life (with or without compensation);
- (e) prohibit, or enable the prohibition of, movement to or from a specified place;
- (f) require, or enable the requirement of, movement to or from a specified place;
- (g) prohibit, or enable the prohibition of, assemblies of specified kinds, at specified places or at specified times;
- (h) prohibit, or enable the prohibition of, travel at specified times;
- (i) prohibit, or enable the prohibition of, other specified activities;
- (j) provide for any law to be amended, suspended in its operation or applied with or without modification;
- (k) make provision (which may include conferring powers in relation to property) for facilitating any deployment of the Royal Gibraltar Regiment or police services;
- (l) confer jurisdiction on a court or tribunal (which may include a tribunal established by the regulations);
- (m) make provision which has effect in relation to, or to anything done in, an area of BGTW;
- (n) provide for charging, in respect of the grant or issue of any licence, permit, certificate or other document for the purposes of the regulations, such fee as may be prescribed by or under those regulations; and
- (o) provide for the payment of compensation and remuneration to persons affected by the regulations.

(4) In subsection (3)-

“BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar ;and

“specified” means specified by, or to be specified in accordance with, the regulations.

(5) Any regulations made under subsection (1) may contain such incidental and supplementary provision as appear to the Governor to be necessary for the purposes mentioned in that paragraph.

(6) Any regulations made under paragraph (1) shall be published in the Gazette as soon as practicable after they are made.

Conditions for making regulations.

6. The conditions referred to in section 5(1) are-

- (a) that the provision is necessary for the purpose of preventing, controlling or mitigating an aspect or effect of the state of public emergency in respect of which the regulations are made;
- (b) that the effect of the provision is proportionate to that aspect or effect of the state of public emergency; and
- (c) that the need for the provision is urgent.

Limitations of Regulations.

7.(1) Regulations must specify the part of Gibraltar to which they apply.

(2) Regulations may not require a person, or enable a person to be required, to provide military service.

(3) Regulations may not amend-

- (a) this Act;
- (b) any other Order in Council that applies to Gibraltar, including the Constitution.

(4) Regulations shall cease to have effect upon the expiration of the Proclamation of Emergency in relation to which they have been made, unless the Governor otherwise directs that for a specified period the continued application of the regulations, whether in whole or in part, remains necessary for the purpose of preventing, controlling or mitigating an aspect or effect of the state of public emergency to which those regulations relate.

Offence of contravening Regulations.

- 8.(1) It shall be an offence for any person without reasonable excuse,
- (a) fail to comply with, or to contravene, any provision of any regulations made under section 5(1);
 - (b) fail to comply with a direction or order given or made under any regulations made under section 5(1);
 - (c) obstruct a person in the performance of a function under or by virtue of any regulations made under section 5(1).

(2) A person guilty of an offence under this section is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding £5,000.

Effect of regulations.

9.(1) Regulations made under section 5(1) shall have effect despite any inconsistent provision in any enactment, and any inconsistent provision shall have no effect for the period that the regulations are in force.

Exercise of powers by Governor.

10.(1) Subject to subsection (2), in the exercise of any power conferred on the Governor by this Act, the Governor shall act in his discretion.

(2) So far as it is practicable to do so, the Governor shall consult the Chief Minister.

EXPLANATORY MEMORANDUM

This Bill makes provision for the Governor to exercise certain powers where a public emergency exists. The Constitution defines a public emergency as a the period during which Her Majesty is at war, where the provisions of Part II of the Emergency Powers Order in Council 1939 are in operation in Gibraltar or any emergency has been declared under any law enacted by the Legislature to like effect.

The Emergency Powers Order in Council is in the process of being repealed and this Bill is the law which enacts the provisions "to like effect".

A period of public emergency subsists where the Governor issues a Proclamation of Public Emergency. The Bill sets out the circumstances in which such a proclamation can be made.

Unless a shorter period is stated it will cease to have effect after 30 days. A new Proclamation of Emergency may be made thereafter.

The Bill provides a regulation making power permitting the Governor to make them in order to prevent, control or mitigate an aspect or effect of the state of the public emergency. Regulations made for this purpose are subject to certain conditions being met and to limitations specified in the Bill.

In exercising powers under this Bill the Governor is required to consult the Chief Minister in so far as it is practicable to do so.