

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4546 of 21 February, 2019

B. 05/19

BILL

FOR

AN ACT to provide for the voluntary implementation of European Union laws after the Treaty on European Union, the Treaty on the Functioning of the European Union, the Treaty establishing the European Atomic Energy Community and the European Economic Area Agreement cease to apply to Gibraltar; and to provide such transitional or other provisions as are deemed necessary, and for connected purposes.

Short title.

1. This Act may be cited as the European Union Laws (Voluntary Implementation) Act 2019.

Commencement.

2. This Act comes into operation on the day specified by the Government by notice in the Gazette and different days may be appointed for different provisions and for different purposes.

Interpretation.

3. In this Act, unless the context otherwise requires-

“EU” means the European Union, being the Union established by the Treaty on European Union, and includes, if and in so far as the context permits or requires, the European Atomic Energy Community established by the Euratom Treaty;

“EU Court” means the Court of Justice of the European Union and includes, if and in so far as the context permits or requires, the EFTA Court established under the EEA Agreement;

“EU institution” means any institution of the EU;

“EU instrument” means any instrument issued by an EU institution;

“EU provision” means any provision that-

(a) is contained in or arises under any of the EU Treaties; or

- (b) comprises or is contained in an EU instrument;

“EU Treaties” means–

- (a) the Treaty on European Union;
- (b) the Treaty on the Functioning of the European Union;
- (c) the Euratom Treaty; and
- (d) the EEA Agreement;

“member”, in the expression “member State”, refers to membership of the EU;

“treaty” includes any international agreement, and any protocol or annex to a treaty or international agreement.

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

- (a) the “Treaty on European Union” is the treaty of that name signed at Maastricht on 7th February 1992, as amended from time to time by any treaty;
- (b) the “Treaty on the Functioning of the European Union” is the treaty of that name signed (as the Treaty Establishing the European Economic Community) at Rome on the 25th March 1957, as amended from time to time by any treaty;
- (c) the “Euratom Treaty” is the Treaty establishing the European Atomic Energy Community signed at Rome on 25th March 1957, as amended from time to time by any treaty; and
- (d) the “EEA Agreement” is the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as amended from time to time by any treaty.

(3) The Chief Minister may by Order amend the definition “EU Treaties” in subsection (1), and the definitions in subsection (2).

Implementation of EU provisions through Regulations, Rules or Orders.

4.(1) A Minister may make regulations, rules or orders where that Minister considers it necessary or expedient to–

- (a) give effect to an EU provision, whether in whole or in part; or
- (b) provide for or deal with any matters arising out of or related to any EU provision.

(2) Without prejudice to the generality of subsection (1), any regulations, rules or orders under this section may–

- (a) make provision by reference to or by incorporation (by reference, annexation or otherwise) of any EU provision, or of any class or description of EU provisions;
- (b) when making the provision described in paragraph (a)–
 - (i) do so to such extent and subject to such exceptions, adaptations and modifications to the EU provision as may be specified in the regulations, rules or orders,
 - (ii) make adaptations or modifications mentioned in subparagraph (i) by providing that Gibraltar is to be treated as if it is a member State, or formed part of any member State, for the purpose of the provision,
 - (iii) make adaptations or modifications mentioned in subparagraph (i) by providing that the United Kingdom is to be treated as if it were a member State, for the purpose of the provision,
 - (iv) provide that a reference to the EU provision is to be read as a reference to that EU provision as amended, substituted, extended or applied from time to time by any other EU provision, or as that provision otherwise has effect in the EU from time to time by virtue of any judgment of the EU Court;
- (c) amend any Act or any subsidiary legislation made under an Act;
- (d) provide for the creation of offences and the imposition of penalties;
- (e) contain such incidental, supplemental or transitional provisions or savings as the Minister considers expedient.

(3) The provision that may be made under this section does not include provision imposing or increasing taxation.

(4) The provision that may be made under this section is not limited only to those areas of the EU Treaties or laws made under those treaties that applied to or in Gibraltar under the terms of the Acts of Accession and the European Communities Act.

Interpretation of EU provision given effect in Gibraltar.

5.(1) For the purposes of all legal proceedings any question as to the meaning of an EU provision, implemented by regulations, rules or orders made under section 4, is to be treated as a question of law and a court or tribunal determining such a matter may have regard to, but is not bound by, any principles laid down or any decision made by an EU Court.

(2) Where any regulations, rules or orders made under section 4 include a term or expression that is defined in a provision of EU law that is being given effect by such regulations, rules or order, such term or expression has the meaning given in the provision of EU law, unless otherwise stated.

(3) In the application of this section, the interpretation of an EU provision may be adapted to the circumstances of Gibraltar.

Regulations: rules of evidence.

6. The Chief Minister may by regulations provide for judicial notice to be taken and the admission as evidence of EU Treaties and EU instruments.

EXPLANATORY MEMORANDUM

This Bill confers powers on Ministers to make subordinate legislation giving effect to European Union laws after Gibraltar has ceased to be a part of the European Union. Such powers may be exercised where the Minister considers the implementation of such European Union laws to be necessary or expedient.

EU laws may be applied fully or partially and may be adapted, as the circumstances require. Where the power is exercised, consequential amendments may be made to both primary and subordinate legislation.

In construing EU laws that have been implemented by virtue of subordinate legislation made under clause 4, a court or tribunal may have regard to, but is not bound by, decisions of EU courts.