

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,596 of 3rd May, 2007

B. 34/07

PUBLIC APPOINTMENTS ACT 2007

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**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,596 of 3rd May, 2007

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BILL

FOR

AN ACT to make provision for the procedures to be followed by certain Commissions created under the Constitution and matters incidental thereto.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Public Appointments Act 2007 and comes into operation on the day of publication.

**Part I
Specified Appointments Commission**

Interpretation of Part I.

2. In this Part, unless the context otherwise requires—

“chairman” means the chairman of the Commission appointed under section 56(1)(b) of the Constitution;

“Commission” means the Specified Appointments Commission established under section 56 of the Constitution;

“Constitution” means the Constitution of Gibraltar set out in Annex 1 to the Gibraltar Constitution Order 2006;

“member” means a member of the Commission appointed under section 56(1) of the Constitution and includes the chairman and any additional member appointed under that section;

“public office” means any civil office of emolument under the Crown in Gibraltar;

“secretary” means the secretary to the Commission.

Period of Appointment.

3. Each member shall be appointed for a period of three years, and may be reappointed.

Defects in appointments not to invalidate proceedings.

4. The validity of the proceedings of the Commission shall not be affected by any defect in the appointment of a member thereof.

Powers of the Commission to conduct examinations.

5. The Commission may conduct such examinations, interviews and investigations, as it may consider necessary for the proper discharge of its functions.

Secretary to the Commission and other support.

6.(1) The Chief Secretary may designate any public officer or other person to be the secretary to the Commission.

(2) No person appointed under subsection (1) shall—

- (a) be a member of the Commission; or
- (b) participate in the proceedings of the Commission or vote on any question that is the subject matter of its deliberations.

(3) The Chief Secretary shall provide to the Commission such other logistical and administrative support as it may require to discharge its functions.

(4) In relation to the administration of its functions relating to recruitment the Commission shall act through the Government’s Human Resources Manager.

Remuneration and expenses.

7.(1) The remuneration and expenses payable to a member shall be a charge on the Consolidated Fund, and the remuneration payable to a member shall not without his consent be altered to his disadvantage after his appointment.

(2) Expenses incurred by the Commission in the discharge of its functions shall be payable out of the Consolidated Fund.

Part II
Public Service Commission

Interpretation of Part II.

8. In this Part, unless the context otherwise requires,—

“board” means a board appointed by the Commission under section 11;

“chairman” means the chairman of the Commission appointed under section 55(1) of the Constitution;

“Commission” means the Public Service Commission established under section 55 of the Constitution;

“Constitution” means the Constitution of Gibraltar set out in Annex 1 to the Gibraltar Constitution Order 2006;

“member” means a member of the Commission appointed under section 55(1) of the Constitution and includes the chairman and any additional member appointed under that section;

“public office” means any civil office of emolument under the Crown in Gibraltar and “public officer” shall be construed accordingly.

Defects in appointments not to invalidate proceedings.

9. The validity of the proceedings of the Commission shall not be affected by any defect in the appointment of a member thereof.

Secretary to the Commission and other support.

10.(1) The Chief Secretary may designate any public officer or other person to be the secretary to the Commission.

(2) No person appointed under subsection (1) shall—

- (a) be a member of the Commission; or
- (b) participate in the proceedings of the Commission or vote on any question that is the subject matter of its deliberations.

(3) The Chief Secretary shall provide to the Commission such other logistical and administrative support as it may require to discharge its functions.

(4) In relation to the administration of its functions relating to recruitment the Commission shall act through the Government's Human Resources Manager.

Powers of Commission to conduct examinations and appoint boards.

11.(1) The Commission may conduct such examinations, interviews and investigations, and appoint such selection, promotion or other boards as it may consider necessary for the proper discharge of its functions.

(2) A board appointed under subsection (1) may consist wholly or partly of persons who are not members of the Commission.

(3) The Commission may delegate to a board appointed under subsection (1) any of the functions of the Commission relating to the examination or interview of or investigation of any circumstances affecting candidates for appointment, promotion or transfer to any public office, or the termination of any appointment to any public office, or the dismissal or disciplinary control of any public officer.

Remuneration and expenses.

12.(1) The remuneration and expenses payable to a member shall be a charge on the Consolidated Fund.

(2) Expenses incurred by the Commission in the discharge of its functions shall be payable out of the Consolidated Fund.

**Part III
General**

Interpretation of Part III.

13. In this Part—

“board” means a board appointed by the Commission under section 11;

“Chairman” means the Chairman of a Commission established under either section 55 or 56 of the Constitution;

“Commission” means a Commission established under either section 55 or 56 of the Constitution;

“Constitution” means the Constitution of Gibraltar set out at Annex 1 to the Gibraltar Constitution Order 2006;

“officer” means any person appointed to be an officer of a Commission under section 10(2);

“member” means the member of a Commission established under either section 55 or 56 of the Constitution;

“public office” means any civil office of emolument under the Crown in Gibraltar and “public officer” shall be construed accordingly;

“secretary” means the secretary of a Commission established under either section 55 or 56 of the Constitution.

Communications to be privileged.

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

- (a) between the Commission, or any member, or of any board, or any officer of the Commission, or the secretary, and the Government, the Governor, a Secretary of State, or a public officer; or
- (b) between any persons who are members of the Commission or of any board, or officers of the Commission, or the secretary, in exercise of or in connection with the exercise of their functions,

unless the Governor, acting after consultation with the Chairman, consents in writing to such production or disclosure.

Protection of members.

15. Every member shall have such and the like protection and privileges, in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duties under the Constitution or this Act or any regulations made thereunder, as is by law given to any magistrate acting in the exercise of his office.

False information.

16. A person who, in connection with an application by himself or any other person for appointment to a public office or in connection with any other matter upon which it is the duty of the Commission to advise the Governor, wilfully gives to the Commission or to any member any information which is false or misleading in any material particular is guilty of an offence and is liable on conviction on indictment to imprisonment for up to two years and to a fine not exceeding level 5 on the standard scale or to both.

Publication and disclosure of information.

17.(1) No member nor any other person shall without the consent in writing of the Governor, acting after consultation with the Chairman, publish or

disclose to any unauthorised person or otherwise than in the course of duty 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 the Constitution or this Act, and a person who knowingly acts in contravention of this subsection 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 subsection (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.

Attempts to influence Commission.

18.(1) A person who, otherwise than in the course of his duty, directly or indirectly by himself or by any other person in any manner whatsoever influences or attempts to influence any decision of the Commission or of any member is guilty of an offence and is liable on conviction on indictment to imprisonment for up to two years and to a fine not exceeding level 5 on the standard scale or to both.

(2) Nothing in subsection (1) shall prohibit any person from giving a certificate or testimonial to any applicant or candidate for any public office or from supplying any information or assistance upon formal request by the Commission.

Attorney-General's fiat.

19. A prosecution in respect of an offence against this Act shall not be instituted except by, or with, the consent of the Attorney-General.

Oaths or affirmations.

20.(1) Every member shall, on first appointment, take before the Governor an oath or affirmation in the form set out in Schedule 1.

(2) The secretary and every person (not being a member of the Commission) who is an officer, or is a member of a board appointed under

section 11 , shall on first appointment take before the chairman an oath or affirmation in the form set out in Schedule 2.

Regulations.

21. The Government may by regulations provide for any matter that is necessary or incidental to the administration of the provisions of this Act.

Repeal.

22. Subject to section 23, the Public Service Commission Act and the Public Service Commission Regulations are repealed.

Transitional provisions.

23. Where prior to the commencement of this Act the Commission or a board has any matter pending before it, the Commission or the board, as the case may be, shall dispose of that matter as though this Act had not come into operation.

Saving.

24. Nothing in this Act shall derogate from any provision of the Gibraltar Constitution Order 2006.

SCHEDULE 1

Section 20(1)

OATH OR AFFIRMATION OF MEMBER

I,, having been appointed as chairman/member* of the Specified Appointments Commission/Public Service Commission*, do swear [*or solemnly affirm*] that I will freely and without fear or favour, affection or ill-will give my counsel and advice to the Governor of Gibraltar in connection with all such questions or matters as are or may be referred to the Specified Appointments Commission/Public Service Commission* by or under the Constitution, and that I will not, directly or indirectly, reveal any such matters to any unauthorised person or otherwise than in the course of duty. [So help me God.]

Sworn [*or Made*] before me this day of 20 .

Governor

* Delete as appropriate

SCHEDULE 2

Section 20(2)

OATH OR AFFIRMATION OF SECRETARY/OFFICER/MEMBER OF A BOARD*

I,....., having been called upon to exercise the functions of secretary to/an officer of/ a member of a board of* the Specified Appointments Commission/Public Service Commission*, do swear [*or solemnly affirm*] that I will not, directly or indirectly, reveal to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any documents, communications or information whatsoever which may come to my knowledge in the course of my duties as such secretary/officer/member*. [So help me God.]

Sworn [*or Made*] before me this day of 20 .

Chairman of the
Specified Appointments Commission/
Public Service Commission*

* Delete as appropriate

EXPLANATORY MEMORANDUM

This Act makes provision for the regulation of the Specified Appointments Commission and the Public Service Commission.

These Commissions are established under sections 55 and 56 of the Constitution of Gibraltar.

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