

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5177 GIBRALTAR Thursday 3rd October 2024

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B. 24/24

## BILL

FOR

AN ACT to amend the Housing Act 2007 and for connected purposes.

ENACTED by the Legislature of Gibraltar.

### Short Title.

1. This Act may be cited as the Housing (Amendment) Act 2024.

### Commencement.

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

(2) Sections 40 and 113(3) of the Housing Act 2007 shall, for the purposes of dwelling houses erected after the 1<sup>st</sup> day of January 1945 and on or before the 1<sup>st</sup> day of March 1959 come into operation on the commencement of this Act.

(3) Sections 10 and 11A of the Landlord and Tenant Act 1983 shall, for the purposes of dwelling houses erected after the 1<sup>st</sup> day of January 1945 and on or before the 1<sup>st</sup> day of March 1959, cease to apply on the commencement of this Act.

### Amendment to the Housing Act 2007.

3.(1) The Housing Act 2007 is amended in accordance with this section.

(2) In section 2–

(a) in the definition of “agreement”, for “Principal Housing Officer” substitute “Housing Authority”;

(b) after the definition of “agreement” insert–

“ “authorised occupier” means a person who is authorised in writing by the Principal Housing Officer to occupy public housing;”;

(c) after the definition of “block of flats” insert–

“ “child in common” means a child for whom both parties share parental responsibility;

“civil partner” has the same meaning as in section 4 of the Civil Partnership Act 2014;”;

(d) after the definition of “Minister” insert–

“ “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property;”;

(e) in the definition of “Principal Housing Officer”, after “authorised” insert “in writing”.

(3) In section 6–

(a) in subsection (5) for “a person approved in writing by the Principal Housing Officer” substitute “an authorised occupier”;

(b) after subsection (5) insert–

“(6) Every authorised occupier who has attained the age of 18 and intends on remaining in occupation of public housing must, by 1st January each year, confirm to the Principal Housing Officer in writing his intention to remain an authorised occupier of the public housing, but this requirement shall not apply to a person who is undergoing full time education.”.

(4) In section 7–

(a) in the heading after “ownership” insert “or rental”;

(b) after subsection (1) insert–

“(2) In the case of public housing allocated on or after the date prescribed by the Minister–

(a) the conditions in subsection (1)(a), (b) and (c) shall also apply to a partner with whom the tenant has a child in common, if residing with him;

(b) it shall also be a condition of possession of any public housing allocated to the tenant that the tenant shall be entitled to continue in possession so long as he or his spouse, civil partner or partner with whom he has a child in common, if residing with him, does not have any other rental tenancy or licence to occupy relating to residential

property in Gibraltar which can be made available for occupation by him.”.

(5) In section 8–

- (a) in subsection (2)(c) for “;” substitute “.”;
- (b) in subsection (3) for “a year commencing more than 12 months before the date of the notice” substitute “any calendar year more than one year previous to the calendar year in which the notice was served”;
- (c) in subsection (4) for “the condition” substitute “a condition”;
- (d) after subsection (7) insert–

“(8) If the Principal Housing Officer has reason to believe that a tenant has failed to comply with a restoration order made under section 19 and no appeal is brought against such an order under section 28, he may serve notice of termination of tenancy, in such form as may be prescribed, requiring possession of the public housing to be given up within 30 days of the date of service of the notice and there shall be no right of appeal against a notice of termination issued under this subsection.

(9) If the Principal Housing Officer has reason to believe that a tenant has broken or not performed an obligation of the tenancy agreement, he may with the approval of the Committee and of the Minister, serve a notice of termination of tenancy on the tenant, in such form as may be prescribed, requiring possession of the public housing to be given up within 30 days of the date of service of the notice.

(10) A notice under subsection (9) shall–

- (a) state the grounds on which the notice is being served including such information, as the Principal Housing Officer considers necessary, establishing those grounds;
- (b) give notice that all moveable property remaining in the public housing 21 days after the termination of tenancy shall be removed and taken into custody by the Government and all perishable goods remaining therein shall be immediately disposed of; and
- (c) inform the tenant of his right of appeal under section 26.

(11) Subject to section 12, a tenancy for public housing shall terminate automatically on the death of the tenant and the Housing Authority or any person authorised by it shall have the right to enter and take possession of the property.”.

(6) In section 10 for “3 months” substitute “1 month”.

(7) In section 12(2)–

(a) in paragraph (a) after “civil partner,” insert “or partner with whom the tenant has a child in common,”;

(b) in paragraph (b)–

(i) after “widower or” insert “surviving civil partner or partner with whom the tenant has a child in common, or”;

(ii) for “widower was” substitute “widower or surviving civil partner or partner with whom the tenant has a child in common was”;

(iii) for “12” substitute “36”;

(iv) for “with the written consent of the Principal Housing Officer” substitute “as an authorised occupier”.

(8) After section 12 insert–

**“Nomination of preferred successor.**

12A.(1) Notwithstanding section 12(2), the order set out therein shall not apply in the event a tenant nominates a preferred successor in accordance with the provisions of this section.

(2) A tenant may nominate an entitled person aged 18 years or older to be the preferred successor of the tenancy by submitting a written nomination to the Principal Housing Officer which shall include–

(a) the full name of the entitled person;

(b) a declaration by the tenant specifying their intent to nominate the entitled person as the preferred successor;

(c) the tenant’s signature and date of submission; and

(d) any additional information or documentation as required by the Principal Housing Officer.

(3) Upon receipt of a written nomination in accordance with subsection (2) the Principal Housing Officer shall acknowledge receipt of the nomination in writing and notify the nominated person of the nomination in writing.

- (4) In the event of the tenant's death, the nominated preferred successor shall have priority in succeeding the tenancy over all other entitled persons, subject to the person meeting the current criteria for the allocation of public housing.”.

(9) In section 14–

- (a) in subsection (3) after “Principal Housing Officer” insert “, or a person authorised by him,”;
- (b) in subsection (4) for “level 3” substitute “level 4”.

(10) In section 15–

- (a) in subsection (1)–
- (i) for “Minister may, in his” substitute “Housing Authority may, in its”;
- (ii) in paragraph (a) for “his” substitute “it”;
- (iii) in paragraph (b)–
- (aa) after “reasons” insert “(including dealing with occurrences of anti-social behaviour)”;
- (bb) for “.” substitute “; or”;
- (iv) after paragraph (b) insert–
- “(c) he has broken or not performed an obligation of the tenancy agreement.”;
- (b) after subsection (4) insert–
- “(4A) For the purposes of this section, alternative public housing is suitable if that housing is of an appropriate size in relation to the number of authorised occupiers living with the tenant.”;
- (c) in subsection (10) for “2” substitute “4”;
- (d) after subsection (10) insert–
- “(11) In this section “anti-social behaviour” has the same meaning as in section 78.”.

(11) After section 15 insert—

*“Administrative Penalties*

**Administrative penalties.**

15A.(1) The Principal Housing Officer may impose an administrative penalty on a tenant or former tenant, as the case may be, on any of the grounds set out in subsection (2).

(2) The grounds are as follows—

- (a) where, after inspection of the public housing on termination or surrender of the tenancy, the Principal Housing Officer or persons authorised by him are of the view that the property is not in a reasonably clean state due to the neglect of the outgoing tenant;
  - (b) where a tenant is granted a licence to occupy a second property for the purposes of repairing or decorating it and refuses to vacate his first property before the expiry of the licence.
- (3) An administrative penalty is to be determined by the Principal Housing Officer in accordance with guidance issued by him but shall not exceed £1000.
- (4) The penalty must be paid within 28 days of the date on which the notice imposing it takes effect, unless an extension is granted by the Principal Housing Officer.
- (5) A penalty imposed under this section may be enforced in the same manner as if it were a civil debt owed to Government.
- (6) The Principal Housing Officer shall give notice of an administrative penalty in accordance with section 15B.

**Notice of penalty.**

15B.(1) Where the Principal Housing Officer has imposed an administrative penalty, a written notice shall be issued in accordance with this section.

(2) The notice shall—

- (a) notify the person directly affected by the penalty;
- (b) inform the person of the grounds for the penalty;
- (c) specify the date on which the penalty will take effect;

(d) notify the person of the person's right to appeal the decision in accordance with section 26A.

(3) A notice may be served by –

- (a) handing it to the person;
- (b) addressing it to the person and leaving it at their last known address; or
- (c) sending it by registered post to the person at their last known address.”.

(12) After section 17 insert–

**“Tenant’s liability to repairs.**

17A.(1) A tenant shall be liable to maintain all electrical installations and interior fixtures and fittings in good repair, in accordance with the provisions of Schedule 7.

(2) The requirements of subsection (1) shall not apply to–

- (a) tenants of pensionable age;
- (b) tenants who are the subject of occupational therapy assessment.

(3) A tenant shall not be liable for the maintenance of items listed in Schedule 7 which have been damaged due to expected wear and tear.

(4) In this section, “expected wear and tear” means the expected life span of any fixture, fitting or appliance as determined by the Head of Agency for the Housing Works Agency.”.

(13) In section 18(2) for “2” substitute “4”.

(14) In section 19–

- (a) in subsection (6) for “3” substitute “4”;
- (b) after subsection (6) insert–

“(7) If a tenant is guilty of an offence under subsection (6) the court, if it thinks fit, may order the tenant to pay for the costs of any remedial action taken by the Housing Authority relating to the unauthorised developments.”.

(15) In section 24 for “3” substitute “4”.

(16) In section 25–

(a) in subsection (1) for “a fine not exceeding level 3 on the standard scale” substitute “imprisonment for 3 months or to a fine not exceeding level 4 on the standard scale, or both”;

(b) after subsection (1) insert–

“(2) The Housing Authority may disqualify any person found guilty of an offence under this section from any future application for public housing.”.

(17) In section 26–

(a) in subsection (4) for “ownership of residential property under any of the paragraphs (a) to (c) of subsection 7(1)” substitute “ownership or rental of residential property under any of the conditions set out in section 7”;

(b) in subsection (5)–

(i) after “appeal” insert “,”;

(ii) for “the condition” substitute “a condition”;

(ii) for “, shall ” insert “, it shall”.

(c) after subsection (5) insert–

“(5A) Any tenant who is aggrieved by a notice of termination of tenancy under section 8(9) may within 21 days beginning with the date of service of the notice appeal to the Housing Tribunal against the termination of the tenancy.

(5B) On hearing the appeal, where the Tribunal is satisfied that the tenant has broken or not performed an obligation of the tenancy agreement, it shall confirm the notice.”;

(d) after subsection (7) insert–

“(7A) Notwithstanding section 8(9), where an appeal has been lodged under subsection (5A), the date of termination shall be–

(a) where the appeal is withdrawn by the tenant, at the end of 14 days from the date of withdrawal;

(b) where the notice is confirmed by the Tribunal, at the end of 14 days from the date of determination of the appeal.”.



(18) After section 26 insert–

**“Appeal against notice under section 15B.**

26A.(1) A person aggrieved by a notice issued under section 15B may, within a period of 21 days beginning with the date of service of the notice, appeal to the Housing Tribunal.

(2) On an appeal the Tribunal may confirm, quash or vary the notice and the Principal Housing Officer or a tenant or former tenant aggrieved by the decision of the Tribunal may appeal to the Magistrates’ Court against the decision on a point of law.

(3) If an appeal is brought, a notice does not become operative until–

- (a) a decision on the appeal confirming the notice is given and the period of 30 days within which an appeal to the Magistrates’ Court can be brought expires without any such appeal having been brought; or
- (b) if a further appeal to the Magistrates’ Court is brought, a final decision is given confirming the notice.

(4) For the purposes of subsection (3), the withdrawal of an appeal shall have the same effect as a decision confirming the notice appealed against.”.

(19) In section 29–

(a) in subsection (1)–

(i) in the first sentence, for “notice or direction” substitute “notice, order, demand or direction”;

(ii) after paragraph (b) insert–

“(ba) by electronic communication; or”;

(iii) in paragraph (c)–

(aa) for “both” substitute “any”;

(bb) for “order or demand” substitute “order, demand or direction”;

(b) in subsection (2) for “notice, order or demand issue” substitute “notice, order, demand or direction issued”;

(c) after subsection (2) insert–

“(3) In the case of a notice, order, demand or direction served by electronic communication, the notice, order, demand or direction shall be deemed to be served on the second day after the day on which it is transmitted.

(4) This section shall not apply to a notice issued under section 15B.”.

(20) After section 32 insert–

**“Disclosure of information.**

32A.(1) The Principal Housing Officer may, in the circumstances set out in subsection (2), disclose to a landlord whether or not a person has been allocated public housing.

(2) The circumstances are that–

- (a) the person is a tenant of the landlord;
- (b) Part II of this Act applies to that tenancy; and
- (c) the landlord believes the person has been allocated public housing which could be deemed suitable alternative accommodation under section 45.

(3) In this section “landlord” and “tenant” have the same meaning as in Part II.”.

(21) In section 33–

(a) before the definition for “communal services tenement” insert–

“ “child in common” means a child for whom both parties share parental responsibility;

“civil partner” has the same meaning as in section 4 of the Civil Partnership Act 2014;”.

(b) after the definition for “notice to quit” insert–

“ “parental responsibility” means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property;”.

(22) In section 34–

(a) in subsection (1)(b)(ii), after “partner,” insert “or the widow, widower or surviving civil partner was not living with the tenant at the date of the tenant’s death,”;

(b) in subsection (2)–

- (i) for “12” substitute “36”;
  - (ii) for “any other member of the family” substitute “a father, mother or grandchild of the tenant”;
  - (c) after subsection (3) insert—
    - “(3A) In any proceedings involving the entitlement of a member of the family under this section, the onus shall be on the member of the family to prove that he had been living with the tenant for the 36 months immediately before the tenant’s death or departure from the dwelling for a prescribed reason and was at the time of the tenant’s death or departure financially dependent on him.”.
- (23) In section 35—
- (a) for subsection (2) substitute—
    - “(2) This section shall not apply to public housing.
    - (3) In this section “public housing” has the same meaning as in Part 1.”.
- (24) For section 37(2) substitute—
- “(2) The Minister may, by way of regulations—
    - (a) prescribe fees to be charged, by whom such fees shall be payable, and to whom they shall be paid in respect of any of the several matters, which by virtue of the provisions of this Part, may be referred to the Rent Assessor; and
    - (b) for such period as he may specify appoint, in addition to the Rent Assessor provided for in this section, one or more other fit and proper persons to be Rent Assessors; and every additional Rent Assessor so appointed shall, during the term of his appointment and thereafter until he has disposed of all matters referred to him during that term, have all the functions, powers and duties of the Rent Assessor appointed under this section.”.
- (25) In section 40—
- (a) for subsection (1)(a) substitute—
    - “(a) it shall apply to every dwelling in a building that has been erected on or before the 1<sup>st</sup> March 1959;”;
  - (b) for subsection (8) substitute—

“(8) This Part shall not apply to any dwelling house that has been erected after the 1st March 1959, or to any tenancy to which the former Act did not apply.”.

(26) In section 41–

(a) after subsection (3) insert–

“(3A) The Rent Assessor may, in his absolute discretion and on the application of a tenant in the prescribed form, provide for the assessed rent to be phased in over a period not exceeding five years if the assessed rent, in the opinion of the Rent Assessor, results in an excessively burdensome increase to the tenant.”;

(b) in subsection (4) after “subsection (3)” insert “, or in the case of a successful application under subsection (3A), such period not exceeding five years as determined by the Rent Assessor”;

(c) for subsection (6) substitute–

“(6) There shall be a Register of Assessed Rent from which the Rent Assessor shall, on payment of the prescribed fee, provide applicants with extracts from the register containing relevant particulars of rents assessed under this section.”;

(d) in subsection (7) for “(10) and (11)” substitute “(10), (11) and (11A)”;

(e) after subsection (11) insert–

“(11A) Notwithstanding subsection (7), the statutory rent in respect of a dwelling in a building erected after the 1st January 1945 and before the 1st March 1959 shall be the rent appropriate to that dwelling as assessed by the Rent Assessor in accordance with the provisions of subsection (1), including where the tenancy was in existence immediately before the commencement of this Act.”.

(d) in subsection (12)–

(i) after “twelve months or” insert “may be increased at any time”;

(ii) for “Gazette–” substitute “Gazette.”;

(iii) delete from “provided” to the end of the subsection.

(27) In section 43–

(a) in subsection (1) after “the dwelling” insert “or common areas”;

(b) after subsection (1) insert–

“(1A) If an application is made in accordance with subsection (1), the landlord shall ensure that any tenant living in the dwelling is given notice of the application.”.

(28) In section 45–

(a) after subsection (2) insert–

“(2A) The criteria which the Rent Assessor shall apply to certify that accommodation is suitable alternative accommodation under subsection (2) shall be the same criteria applied by the court under subsection (3).”;

(b) in subsection (3)(a)–

(i) in paragraph (ii) for “and” substitute “or”;

(ii) after paragraph (ii) insert–

“(iii) of a dwelling as described in section 55(4)(e); and”.

(29) In section 49–

(a) in subsection (1) after “application” insert “in such form as may be prescribed”;

(b) in subsection (2)–

(i) after “apply” insert “in the prescribed form”;

(ii) for “subsection (1) and the landlord shall be bound by any such certificate” substitute “this section”;

(c) for subsection (5) substitute–

“(5) A certificate issued pursuant to an application made under subsection (1) shall take effect from the date, as determined by the Rent Assessor, on which the works or structural alterations were completed and the dwelling shall remain vacant until that date.”;

(d) for subsection (6) substitute–

“(6) A certificate issued pursuant to an application made under subsection (2) in respect of any works or structural alterations that are to be carried out, shall take effect from the date on which the works or structural alterations are completed, as certified by the Building Control Officer and the dwelling shall remain vacant until that date.”;

(e) for subsection (10) substitute—

“(10) The Rent Assessor shall, on application by an affected tenant, give to the tenant copies of any relevant applications for decontrol, applications for confirmation under subsection (2) and decisions made by him.”;

(30) In section 52(2) for “2” substitute “4”.

(31) In section 55—

(a) for subsection (4)(d) substitute—

“(d) the tenant shall allow the landlord access to the dwelling and all reasonable facilities—

- (i) at least once a year in order to inspect the condition of the dwelling;  
and
- (ii) as and when required in order to carry out any repairs that the landlord is entitled or obliged to carry out;”.

(b) after subsection (4)(d) insert—

“(e) the tenant shall be entitled to continue in possession of a dwelling to which this Part applies as long as he or his spouse, or civil partner, or partner with whom he has a child in common, if residing with him—

- (i) is not or does not become, either directly or indirectly, a majority share owner of residential property in Gibraltar which is or can by his decision or that of his spouse, civil partner or partner with whom he has a child in common, be made available for occupation by him;
- (ii) does not, either directly or indirectly, have nor acquire a beneficial interest in a shareholding of a company or other legal entity wherever incorporated or established which owns a property such as is described in paragraph (i) above;
- (iii) does not, either directly or indirectly, have nor acquire a vested interest in a trust (wherever established) which owns a property such as is described in paragraph (i) above;
- (iv) does not have any other rental tenancy or licence to occupy relating to residential property in Gibraltar which is or can by his decision or that of his spouse, civil partner or partner with whom he has a child in common, be made available for occupation by him,

but no order or judgment for the recovery of possession of any dwelling to which this Part applies or for the ejectment of a tenant therefrom shall be made or given unless the court is satisfied that the property is deemed suitable alternative accommodation in accordance with section 45.”.

(32) In section 69 for “periodical tenancy” substitute “tenancy to which this Part applies”.

(33) In section 75–

(a) in subsection (1) for “make and maintain reasonable financial provision for repair and maintenance of the property or such proportion thereof as is equivalent to the proportion of the dwelling that it owns” substitute “allocate not less than 15% of said rental income for repair and maintenance of the property”;

(b) after subsection (2) insert–

“(3) The Minister may by Notice in the Gazette amend the percentage set out in subsection (1).”.

(34) After section 82(3) insert–

“(4) The Tribunal may consider any application or appeal under this Act which is made out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.”.

(35) In section 110–

(a) in the heading delete “of Principal Housing Officer”.

(b) in subsection (1)–

(i) for “Principal Housing Officer” substitute “Minister”;

(ii) for “he may require any person” substitute “the Minister may appoint an officer who may require any person”;

(c) in subsection (2) for “Principal Housing Officer” substitute “officer”.

(36) In Schedule 1–

(a) in paragraph 1(1) for “Chief Executive Officer (Building and Works)” substitute “Head of Agency for the Housing Works Agency”;

(b) in paragraph 3 for “an officer of the Ministry of Housing” substitute “a person”.

(37) In Schedule 2–

(a) for paragraph 1(1) substitute—

“1(1) The Committee shall consist of seven members appointed by the Minister as follows –

- (a) a registered medical practitioner;
- (b) an occupational therapist or a person possessing similar qualifications;
- (c) a social worker or a person possessing similar qualifications;
- (d) a mental health officer;
- (e) a child protection officer;
- (f) two other persons, one of whom shall be the chairman and the other the deputy chairman.”.

(b) in paragraph 1(6) for “three” substitute “four”.

(38) In Schedule 3, in paragraph (d) for “such as traffic and parking problems within” substitute “for the betterment of”.

(39) In Schedule 6, delete paragraph 7.

(40) In Schedule 7—

- (a) for “Section 55(4)” substitute “Sections 17A and 55(4)”;
- (b) in the entry for “WC fittings” for “pan” substitute “seat”;
- (c) in the entry for “Taps generally other than stop cock” after “washers” insert “and/or kitchen and/or bathroom mixers”;
- (d) in the entry for “Electrical fittings” after “fuses” insert “to the relevant standards and certification as periodically published by the Gibraltar Electricity Authority”;
- (e) in the entry for “Awnings” for “Repair to fittings” substitute “Repair to any damage, replacement or fittings”;
- (f) in the entry for “Glass” after “windows” insert “to its original fitted standard”;
- (g) in the entry for “Gullies” –
  - (i) after “Gullies” insert “and/or Gutters”;
  - (ii) after “gratings” insert “if these are under the control of the tenant”.



(h) after the entry for “Gullies and/or Gutters” insert the following new entry –

Water leaks	Repairs to fixtures and/or fittings which result in water leaks to flushing cisterns, W.C. fittings, wash hand basins, kitchen sinks, baths and/or showers.
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**Validation of certificates.**

4. All certificates for decontrol issued by the Rent Assessor under section 49 of the Housing Act 2007 prior to the commencement of this Act in respect of dwellings in buildings erected after 1st January 1945 and before 1st March 1959 are hereby ratified, validated and declared to be lawfully issued by him.

**Amendment to the Crimes Act 2011.**

5.(1) The Crimes Act 2011 is amended in accordance with this section.

(2) In section 534, in both the heading and subsection (1)(a), for “Government” substitute “public”.

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**EXPLANATORY MEMORANDUM**

This Bill amends the Housing Act 2007, with particular focus on improving the framework of both the public housing regime under Part 1 of the Act and the private rent control regime under Part 2.

The Bill also ensures that all dwellings subject to rent control in Gibraltar are within scope of the Housing Act 2007 and those dwellings previously within scope of the Landlord and Tenant Act 1983 are subject to the Rent Assessor’s regime under Part 1 of Schedule 4 to the Act.

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