

C01/2018



**Consultation Paper on
key legislation affecting business and commerce**

**by Command of Her Majesty
22nd June 2018**

Comments on this Consultation Paper should clearly reference 'Consultation Paper on key legislation affecting business and commerce (C01/2018)' and be sent by email to: consultation.papers@gibraltar.gov.gi or delivered no later than **Friday, 17th August 2018** to:

Ministry of Commerce
Suite 771, Europort
Gibraltar GX11 1AA

Any comments received after this date are unlikely to be taken into account for the purposes of the relevant consultation.

Consultation Paper on key legislation affecting business and commerce.

Foreword

Gibraltar has prospered -- and continues to prosper -- in no small part because of the remarkable entrepreneurial flair and business acumen of its people. However, in a competitive world we must always be vigilant to ensure that business and commerce can flourish within a modern, streamlined, transparent and effective legal and policy framework that encourages enterprise, protects consumers and promotes the general welfare. Our continued success and prosperity as one of the world's smallest yet thoroughly diversified economies demands a continuous process of review and reflection.

Since 2011, it has been the policy of this Government that it is only in partnership with our entrepreneurs, our business leaders and everyone involved in driving Gibraltar plc forward, that we can hope to achieve the realisation of Gibraltar's full potential. We are all in this together.

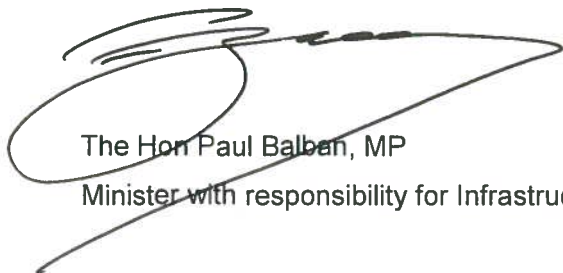
For this reason, the Government is today issuing its latest Consultation Paper, identifying as it does a number of areas of legislation affecting business and commerce in Gibraltar that we consider require reform or improvement. Where appropriate, the Consultation Paper includes our *provisional* conclusions about how to improve the existing legislative landscape -- for example by repealing outdated legislation (which could, as an additional benefit, result in the elimination of unnecessary bureaucratic processes).

Importantly, it should be noted that the list of areas of legislation highlighted in this document is not meant, nor should it be considered to be, an exhaustive one. Whilst one of the key objectives of this consultation is, of course, to elicit responses in respect of the specific matters raised below, the Government is just as interested in the 'free form' feedback from respondents in respect of, amongst other things, indications of areas of legislation not covered but which might, in the respondent's view, also require attention.

The Government looks forward, once more, to engaging with the business community as we continue our work in partnership with the private sector professionals to develop the tools the business sector needs to stay ahead in an increasingly globalised and competitive environment.



The Hon. Albert J Isola, MP
Minister with responsibility for Business and Commerce



The Hon Paul Balban, MP
Minister with responsibility for Infrastructure and Planning

Note

This Consultation Paper is divided thematically into five sections: (A) Rationalisation of legislation; (B) External areas of restaurants, cafes and food outlets; (C) Commercial rent; (D) Traffic and (E) Clubs and associations. However, several issues cut across more than one section.

It should also be noted that a parallel process on legislative reform is in place in close cooperation with the Gibraltar Federation of Small Business, the Chamber of Commerce and others as regards business licensing and related issues under the [Fair Trading Act](#). That process is nearing completion, and indeed proposed amending legislation in the form of the Fair Trading (Miscellaneous Repeals and Amendments) Bill 2017 has been published, and is available on the Laws of Gibraltar website as follows:

<http://www.gibraltarlaws.gov.gi/bills/bills2017/2017B18.pdf>

Draft subsidiary legislation to that Bill also being developed in this context.

A. Rationalisation of legislation

Background

A great many laws directly or indirectly affect the setting-up and conduct of business and commerce. However, there are several pieces of primary and subordinate legislation with an explicit administrative, regulatory or quasi-regulatory purpose. We have provisionally identified the following four enactments (and relevant subsidiary legislation) for the purposes of this section:

- (1) [Licensing and Fees Act](#) (and [Rules](#))
- (2) [Entertainments Act](#) (and [Rules](#))
- (3) [Markets and Street Pedlars Act](#) (and [Rules](#))
- (4) [Leisure Areas \(Licensing\) Act 2001](#) (and [Regulations 2001](#))

(1) Licensing and Fees Act (and Rules)

The Licensing and Fees Act's primary focus is on licensing businesses and activities linked to alcohol ('intoxicating liquor'), ranging from a manufacturer's licence to a tavern licence to an occasional licence. Licences in connection with intoxicating liquor are issued at the discretion of the Magistrates' Court. Conditions may be attached to a licence, but these are not specified in the legislation. In addition, the Licensing Rules regulate permitted hours, standards of measure and the power to exclude persons from licensed premises.

A second important focus of this legislation is in granting the Government powers to prescribe fees for a host of administrative documents, passports, certificates and a variety of other administrative services and activities and, uniquely, a fee for unit trust schemes under the Financial Services Act 1989 (now the Financial Services (Investment and Fiduciary Services) Act.

The Act also requires a licence and prescribes fees for a miscellany of additional persons and business activities. Separately, the Licensing Rules regulate the activities of porters, bakers and bakeries.

Consultation question 1

We do not consider that a separate licence from the Magistrates' Court for the manufacture, sale etc. of intoxicating liquor should be necessary; rather, these activities can be regulated expressly as a restriction on, or condition of, a business licence issued under Part 9 of the Fair Trading Act (FTA) or its successor legislation. These restrictions or conditions can include matters such as opening hours, which are currently catered for separately under the Licensing and Fees Act (and Rules).

Do consultees agree, or are they of the view that there is merit in retaining the regime whereby determinations on the issue of licenses under the Licensing and Fees Act remain a matter for the Magistrates' Court?

Consultation question 2

We consider that the sundry business activities in the Licensing and Fees legislation (auctioneers, brokers, bakers, etc.) should not require a unique licensing regime with a separate fee structure. We would therefore provisionally propose to revoke these provisions and eliminate these licenses and fees. Businesses engaged in these activities would be subject to licensing under Part 9 of the FTA or its successor legislation. However, the (limited) provisions relating to the regulation of the conduct of these business activities (e.g. inspection of bakeries) ought to be retained (for example, in the case of inspection of bakeries, by moving them within the scope of the Public Health Act).

Do consultees agree that these measures would simplify the licensing process?

Consultation question 3

The aforementioned powers to prescribe fees for a host of administrative documents, passports, certificates and a variety of other administrative services and activities ought to be retained within the Licensing and Fees Act.

Do consultees agree?

(2) Entertainments Act (and Rules)

The Entertainments Act purports to regulate public entertainment (plays, films, dancing singing, exhibitions, lectures or debates and similar). An important component of the legislation relates to cinemas and films, and in particular to the classification of films (U, PG, 12A, etc.). Under the Act, no such public entertainment can be shown for valuable consideration in unlicensed premises. There are two types of entertainment licences: Type A Entertainment Premises Licences for long-term places of entertainment; and Type B Entertainment Licences for unlicensed premises hosting one-off events. A fee is payable for either licence.

Consultation question 4

In terms of public policy objectives, we see no good reason why businesses which provide year-round public entertainment should need to obtain a licence under a bespoke regime. We would therefore provisionally propose to abolish Type A Entertainment Premises Licences, and for such businesses to be issued licences under Part 9 of the FTA or its successor legislation -- and for corresponding fees to be captured therein.

We consider that Entertainment Licences for unlicensed premises hosting one-off events should be licensed separately by the Ministry of Culture, rather than as businesses in under the business licensing regime.

Do consultees agree?

Consultation question 5

Should street performers (Type B licence) be regulated under the Entertainments Act; and, if so, should the Government designate areas where they can perform (with whatever other relevant conditions and quality control matters may apply from time to time)? (Note that street performers should not be confused with street pedlars – the former are entertainers, the latter are ambulatory vendors or hawkers of goods – see immediately below).

(3) Markets, Street Traders and Pedlars Act (and Rules)

This Act purports to provide for the control of public markets, slaughterhouses, street traders and pedlars. As regards street traders and pedlars, no-one is permitted to exercise these trades unless licensed to do so. There is further provision, in the corresponding Rules, for the classification of street-traders and pedlars. At present, licences for these individuals are issued by the Chief Environmental Health Officer. (Note that a limited reform and update of the Street Traders and Pedlars Rules so as to increase licence fees from their 1960's levels, and to increase penalties for offences, is shortly to be published).

Consultation question 6

We see no reason for a bespoke licensing regime for street-traders and pedlars, or for licenses issued under this regime, to be issued by the Chief Environmental Health Officer. These activities could be licensed through Part 9 of the FTA or its successor legislation and be subject to any relevant Town Planning or Building Control legislation. To the extent that issues of public health and the environment are concerned, the provisions dealing with these matters should be retained but moved to the Public Health Act or other appropriate legislation dealing with public health matters, as should the provisions dealing with the sanitation of markets and slaughterhouses.

Do consultees agree?

(4) The Leisure Areas (Licensing) Act 2001 (and Regulations)

The Act and its subsidiary legislation provide for the designation of special areas in which places of entertainment and business selling food or alcohol are exempted from a variety of restrictions or conditions to which they would otherwise be subject, and to which similar places and business outside these areas continue to be subject. The exemptions to restrictions and conditions relate principally to: (a) the playing of musical instruments; (b) the manufacture or sale of intoxicating liquor; (c) the need for separate licensing under the Entertainments Act (although certain provisions of that Act relating to the showing of films continue to apply); (d) the placing of tables and chairs on streets; (e) noise or vibration nuisance; (f) the operation of loudspeakers on highways, and (g) the sale of food, drinks and refreshments.

Licences issued under the Act are issued by the Licensing Authority for one year for a fee, and are renewable indefinitely on the anniversary of the licence on payment of a renewal fee.

The Licensing Authority may attach conditions to a licence and, despite the annual period of validity of a licence, it may revoke, withdraw or change the conditions at any time.

At present, there are five such designations in the geographic areas of: (i) Casemates; (ii) Ocean Village and Marina Bay; (iii) Queensway Quay; (iv) King's Bastion; and (v) Eastern Beach.

In light of the fact that the Act is nearly two decades old, we are keen to understand how consultees view the existing legislation, both in terms of its general purposes and objectives, and also in terms of its specific provisions and its operation. In sum, we are interested in knowing whether consultees support (or continue to support) the concept of 'Leisure Areas' and, if they do, whether the present legal regime achieves the right objectives.

Consultation question 7

Do you consider that Leisure Areas serve a valuable purpose (or purposes) and, if so, that the legislation currently in place that create and regulates these areas is satisfactory?

Consultation question 8

Notwithstanding any general reforms to the Leisure Areas legal regime that may arise from this consultation process, we will be reviewing the existing licensing framework for tables and chairs (both within and outside Leisure Areas) to ensure compliance with the terms of any licences that are issued, including as to the areas demarcated for use by businesses by the relevant authority, the cleaning and maintenance of these areas, and the style, colour and quality of the furnishings in these areas.

Do consultees agree that enhanced enforcement of licence conditions, including as to standards of style (e.g. colour and type of awnings) and other aesthetic considerations (and allowing for the possibility of issuing, for example, fixed penalty notices on licensees who breach the terms of their licences on these and other matters) is important?

B. External areas of restaurants, cafes and fast food outlets

Background

The availability of, and demand for, an ever-widening range of food in readily accessible and convenient locations is a reflection of change in society itself, making restaurants, cafés and fast food outlets indispensable features of modern life in Gibraltar. These businesses are closely identified with the choice, variety and attraction of Gibraltar's 'urban scene' and contribute to the economic vitality of our community. Our agreeable climate also means that many of these businesses wish to place table and chairs for their customers in the outdoor areas adjacent to them (streets, squares, other public and private areas, etc.).

This section of the Consultation Paper asks how the use of outdoor space by restaurants, cafes and fast food outlets should be regulated in the future so that the needs of businesses, their clients and the public at large are met, including access, cleanliness and maintenance. As with all parts of this Consultation Paper, consultees are also welcome to submit comments and ideas not covered by the questions or provisional conclusions.

Consultation question 9

In some jurisdictions, planning permission is required to place tables and chairs on the forecourt or any open land within the curtilage of the business. Do you think permission ought to be obtained in Gibraltar in all cases, in none, or in some?

Consultation question 10

There are two regimes for the placing of tables and chairs (currently, which one applies depends on whether you are within or outside a designated 'Leisure Area'; and if it's the latter the regime is governed by the Public Health Act). Ought there to be a single licensing regime and applicable fees for the placing of tables and chairs outside businesses, irrespective of location?

Consultation question 11

How should fees for placing tables and chairs in outside areas be computed (e.g. based on area, number of tables and chairs, etc.)?

Consultation question 12

Sometimes the adjacent outdoor area on which tables and chairs are placed are privately owned by the business in question. In such cases, should permission (a licence or other permission) be required to place tables and chairs in these areas?

Consultation question 13

Under the Public Health Act and the Leisure Areas (Licensing) Act, consideration is currently given to providing access to pedestrians and avoiding obstructions (among other factors), in deciding whether to grant, refuse or revoke licenses to place tables and chairs.

What other factors, if any, do consultees believe should be considered in granting, refusing or revoking a licence?

C. Commercial rent

Background

A proposal has been made to Government that there should be a Rent Assessor and a Rent Tribunal for commercial leases in the same way these exist for residential leases.

Consultation question 14

Should there be a Rent Assessor' and a Rent Tribunal in respect of commercial leases as there are for residential leases?

D. Traffic

Background

Businesses need to be provisioned efficiently and not hampered in receiving their goods -- without however impeding the flow of traffic unduly. A particular problem that has arisen is the abuse of loading bays by non-commercial vehicles. Under the [Traffic \(Parking and Waiting\) Regulations 2011](#), only persons loading or unloading goods may wait with or park a vehicle in certain demarcated areas; moreover, there is specific provision for loading and unloading bays to be designated and demarcated, and the use of such bays for the specific purpose of commercial loading/unloading may be restricted to approved permit holders where necessary.

Consultation question 15

Should Government further designate and regulate drop-off (loading/unloading) zones, and issue permits for use of these drop-off zones so that only designated (commercial) vehicles can use these zones for specified durations?

Consultation question 16

Should increased fines be imposed on persons using loading bays without a permit and/or using them outside of the permitted loading/unloading periods?

Consultation question 17

Should loading and unloading be restricted to certain times of the day and/or should periods not exceed a fixed amount of time?

E. Clubs and associations

Background

Clubs and associations are a valuable and well-established part of Gibraltar's social fabric. The activities of clubs are regulated by the Clubs Act, which includes provisions on penalties for supplying or keeping liquor in an unregistered club, supplying liquor in clubs for consumption off the premises, and the obligation to pay duty on returns to the Financial Secretary of purchases of intoxicating liquor to be supplied in a club. Inspections of returns by the police are permitted.

Consultation question 18

- (a) Should there be specific criteria as to what qualifies as a club (in contrast to the relatively general definition currently in the Act), and an elaboration of the rights and obligations they should have when so designated?
- (b) Should clubs and associations be permitted to cater for non-members or host events for non-members? If so, what conditions should be attached?
- (c) Should the usual import duty on intoxicating liquor be introduced for clubs, in line with business premises?

This concludes the Consultation Paper. Consultees are reminded that comments on this Consultation Paper should clearly reference 'Consultation Paper on key legislation affecting business and commerce (C01/2018)' and be sent by email to:

consultation.papers@gibraltar.gov.gi

Any comments received after the stipulated date are unlikely to be taken into account for the purposes of the relevant consultation. (Consultees also have the option of delivering comments by post or in person to the address indicated at the beginning of this Consultation Paper).