

## SUPREME COURT ACT

## Principal Act

<b>Act. No. 1960-02</b>	<i>Commencement</i>	1.9.1960
	<i>Assent</i>	17.3.1960

Amending enactment	Relevant current provisions	Commence- ment date
Acts. 1960-11	ss.8, 14, 17 and 38(1)	
1961-19	s.6	
1965-24	ss.28 and 35	
1966-29	ss.20 and 35	
1967-01	–	
1968-24	s.16	
1969-30	ss.2, 11, 28(1), 29	
1970-03	s.28(1)	
Regs. of 28.5.1970	s.20	
Acts. 1971-14	s.28(2)	
1972-06	s.19	
1974-24	ss.20 and 21	
1975-24	ss.27 and 36	
1977-01	s.13	
1977-02	–	
1977-35	ss.2, 4(2), 6(1), 18(2), and (3) and 26	
1978-06	s.23	
1978-29	s.37	
1980-04	ss.3(2), 34 and 38(1)	
1983-44	–	
1983-48	s.36	
1986-24	ss. 28, 29, 32 and 38 (cc).	1.1.1987
1987-34	s. 20(q)	27.12.1987
1988-35	ss. 17, 17A, 17B, 20, 21, and 36A.	15.12.1988
1997-25	s. 20(q)	21.8.1997
1997-32	ss. 35A to 35H, 28(1) & (c), 29(1)(a) and Sch	16.10.1997
2002-12	ss. 39 to 72	19.12.2002
2004-23	s. 35A(1) and Sch Part I.	1.5.2004
2004-11	ss. 38A and 38B	1.9.2004
2008-05	ss. 41(1), (2) & (3), 73 & Sch.	1.1.2007
2007-17	s. 37	14.6.2007
2007-24	ss. 3, 27(1), 28(3), 36, 38B(4)	28.6.2007

2010-10	s.12A	6.5.2010
2010-16	s. 36B	8.7.2010

The Supreme Court (Admiralty Practice) Rules and the Supreme Court (Prize Court Fees) Rules 1940 are printed under the title Colonial Courts of Admiralty Act 1890.

The Supreme Court Fund Regulations are printed under the title Public Finance (Control and Audit).

**Transposing:**

Directive 77/249/EEC

Directive 98/5/EC

Directive 2006/100/EC

**English sources:**

Juries Act 1825 (6 Geo.4 c.50)

County Courts Act 1934 (24 & 25 Geo.5 c.53)

## REARRANGEMENT AND RENUMBERING OF SECTIONS

*Provisions relating to criminal procedure have been transferred to the Criminal Procedure Act.*

Previous number	New number	Previous number	New number
1	1	32	21
2	2	32A	Act. 1961-24, s.158
3	<i>Repealed</i>	33	<i>Repealed</i>
4	“	34	22
5	“	35	23
6	“	36	Act. 1961-24, s.139
7	“	37	Act. 1961-24, s.141
8	9	38	Act. 1961-24, s.142
9	3	39	Act. 1961-24, s.143
10	4	39A	Act. 1961-24, s.144
11	5	40	Act. 1961-24, s.138
12	7	41	<i>Repealed</i>
13	6	42	Act. 1961-24, s.140
14	28	43	Act. 1961-24, s.145
15	32	44	Act. 1961-24, s.146
16	29	45	Act. 1961-24, s.149
17	30	46	26
18	31	47	Act. 1961-24, s.150
19	33	47A	Act. 1961-24, s.151
20	34	47B	Act. 1961-24, s.153
21	35	47C	Act. 1961-24, s.147
22	12	48	Act. 1961-24, s.154
22A	13	49	Act. 1961-24, s.155
23	16	50	Act. 1961-24, s.156
24	15	51	27
25	17	51A	36
26	14	52	37
27	Act. 1961-24, s.128	53	38
28	Act. 1961-24, s.148	54	Act. 1961-24, s.157
29	Act. 1961-24, s.158	55	10
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This version is out of date

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**SCHEDULE**

AN ACT TO AMEND THE LAW RELATING TO THE SUPREME COURT OF JUDICATURE IN GIBRALTAR.

**Short title.**

1. This Act may be cited as the Supreme Court Act.

**Interpretation.**

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

“Constitution” means the Constitution of Gibraltar as set out in Annex 1 to the Gibraltar Constitution Order 1969;

“court” means the Supreme Court of Gibraltar and includes the Chief Justice, and any additional judge thereof, whether sitting in court or in chambers or elsewhere;

“prescribed” means prescribed by rules of court;

“Registrar” means the Registrar of the Supreme Court appointed under the provisions of section 3.

**PART I.**  
**ADMINISTRATION.**

**Appointment of Registrar.**

3. There shall be attached and belong to the Court a Registrar appointed by the Governor acting on the advice of the Judicial Services Commission.

**Duties of Registrar.**

- 4.(1) The Registrar shall perform all such duties as are respectively performed by the Master, Registrar, Taxing Master or Keeper of the Records of Her Majesty's High Court of Justice in England and shall be Registrar of the Supreme Court in its Admiralty jurisdiction and he and the other officers of the court shall be subject to such orders as they may from time to time receive from the Chief Justice. The Registrar shall be a Commissioner of the said court to administer oaths and take solemn declarations or affirmations in lieu of oaths and also to take examinations of witnesses de bene esse.



(2) Any ruling or other decision of any kind whatsoever in any civil criminal proceedings by the Registrar in exercise of the duties imposed upon him by subsection (1) shall be subject to appeal to the court.

### **Jurisdiction of Registrar in absence of judge.**

5.(1) If at any time neither the Chief Justice nor an additional judge is present in Gibraltar or readily available to hear and determine any matter of an urgent nature it shall be lawful for the Registrar to hear and determine any matter which might lawfully be determined by the Chief Justice or additional judge sitting in chambers and any order, direction or warrant made, given or issued by the Registrar under the provisions of this section shall for all purposes and at all times be of the same force and effect as though such order, direction or warrant has been made, given or issued by the Chief Justice, or an additional judge.

(2) In any matter, not to be dealt with in chambers, if by reason of the death or unavoidable absence of the Chief Justice or an additional judge, a court cannot be held under this Act on any day on which it has been appointed to be held, the Registrar shall adjourn the court to such day as he may deem convenient, and enter in the minute book the cause of such adjournment.

### **Appointment and duties of Sheriff and Marshal.**

6.(1) The Registrar shall be the Sheriff of Gibraltar and shall, by himself or by his sufficient deputies to be by him appointed and authorized under his hand and for whom he shall be responsible, and execute all such writs, warrants, orders, commands and process of the court as he shall be required by the court to execute, and make return of the same together with the manner of the execution thereof to the court, and receive and detain in prison all such persons as shall be committed to the custody of the Sheriff by the court, and shall be Marshal of the Supreme Court in its Admiralty jurisdiction:

Provided that, whenever the court directs or awards any process against the Sheriff or awards any process in any cause, matter or thing wherein the Sheriff by reason of any good cause of challenge which would be allowed against any sheriff in England cannot by law execute the same, in every such case the court shall appoint some other fit person to execute and return the same and the said process shall be directed to the person so to be named for that purpose and the cause of such proceeding shall be entered on the record of the court.

(2) In the exercise of his powers and duties as Sheriff of Gibraltar, the Registrar may exercise such powers and shall perform such duties as are

from time to time exercised or performed by a sheriff in England in accordance with the law from time to time in force in England with respect thereto.

**Powers of Deputy Registrar.**

7. It shall be competent for the person holding the appointment of Deputy Registrar of the Court subject to such directions as the Chief Justice may from time to time deem expedient to give to perform any act or discharge any duty which the Registrar may lawfully do or is required by law to do and for such purposes the person holding such appointment as aforesaid shall have all powers, privileges and authority of the Registrar:

Provided however, that the Deputy Registrar shall not exercise any of the powers conferred upon the Registrar by section 5(1).

**Duty of police officers.**

8. It shall be the duty of every police officer to assist in effecting any execution, attachment or committal ordered by court or carried out under rules of court.

**Seal of court.**

9.(1) The Supreme Court shall continue to use the same seal or a similar seal as hitherto and such seal shall be kept in the custody of the Registrar.

(2) All process issuing out of the court which by any rules of court or otherwise requires to be sealed shall be impressed with the seal of the court.

(3) All process purporting to be sealed as aforesaid, and all copies, certificates and other documents purporting to be sealed as aforesaid or to be stamped with the official stamp of the court shall be received in evidence without further proof thereof.

**Sittings of court.**

10.(1) The court shall sit for the trial of criminal and civil causes and for the disposal of other legal business pending at such times as the Chief Justice may direct.

(2) The Registrar shall ordinarily give notice beforehand of all such sittings.

**PART II.**

## JURISDICTION AND POWERS.

### **Supreme court a court of record.**

11. The Supreme Court for Gibraltar established by section 56 of the Constitution shall be a superior court of record and, subject to the provisions of the Constitution; shall be constituted and have the jurisdiction and powers hereinafter specified.

### **Court to have jurisdiction of High Court in England.**

12. The court shall in addition to any other jurisdiction conferred by this or any other Act, within Gibraltar and subject as in this Act mentioned, possess and exercise all the jurisdiction, powers and authorities which are from time vested in and capable of being exercised by Her Majesty's High Court of Justice in England.

### **Jurisdiction of Family Judge.**

12A.(1) There shall be a puisne judge in the Supreme Court to whom shall be designated all family proceedings.

(2) The judge referred to in subsection (1) shall be known as the Family Judge and shall deal with family proceedings.

(3) Notwithstanding the other provisions of this section, the Family Judge may be allocated any matter, other than family proceedings, by the Chief Justice in the following cases—

- (a) where he has a spare capacity; or
- (b) during the vacation, illness or absence of another judge of the Supreme Court.

(4) The Family Judge shall have a duty to prioritise the work of family proceedings.

(5) For the purpose of this section, “family proceedings” shall have the meaning assigned to it by section 25 of the Children Act 2009.

(6) Nothing in this section shall—

- (a) limit or otherwise affect the competence and jurisdiction of all judges of the Supreme Court to deal with family proceedings; and

- (b) limit or otherwise affect the competence and jurisdiction of the Family Judge to deal with matters other than family proceedings.

(7) Where a judge other than the Family Judge deals with a family proceedings reference in any other legislation to the Family Judge shall be a reference to the judge that has dealt with those proceedings.

**International conventions affecting jurisdiction.**

13.(1) The provisions of this section shall apply for the purpose of giving effect as respects Gibraltar to any convention for the time being in force, by virtue of which the High Contracting Parties to the Convention, or their property are rendered liable to legal proceedings in the courts of the other High Contracting Parties and in the courts of any territory for whose external relations a High Contracting Party is responsible and which has been included in the ratification of such High Contracting Party.

(2) As from such day as the Governor may, by notice in the Gazette, state as being the day on which any such convention has come into force as respects Gibraltar, every High Contracting Party to the convention shall, for the purposes of any proceedings brought in the Supreme Court against that party or in respect of property of that party in accordance with the provisions of the convention, be deemed to have submitted to the jurisdiction of the court; and the court shall, in determining whether or to what extent any such proceedings are within its jurisdiction, give effect to any provision of the convention (including any protocol thereto) prescribing the mode of proof of any material circumstance.

(3) The Governor may by notice in the Gazette name those countries which Her Majesty by Order in Council has certified as being the High Contracting Parties to any such convention, in respect of what territories they are respectively parties, and to what extent they have availed themselves of any provision of the convention for suspending or modifying the operation of the convention, and any such notice shall, except in so far as it has been superseded by a subsequent notice, be conclusive evidence of the matters so certified.

**Avoidance of multiplicity of proceedings.**

14. In the exercise of the jurisdiction granted by this Act the court shall have power to grant and shall grant either absolutely or on such terms as shall seem just, all such remedies or relief whatsoever interlocutory or final as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim or defence properly put forward by them respectively or which shall appear in such cause or matter; so that as far as

possible all matters in controversy between the parties respectively may be completely and finally determined and all multiplicity of legal proceedings concerning any of such matters avoided.

**Practice and procedure.**

15. The jurisdiction vested in the court shall be exercised (as far as regards practice and procedure) in the manner provided by this or any other Act or by such rules as may be made pursuant to this Act or any other Act and in default thereof, in substantial conformity with the law and practice for the time being observed in England in the High Court of Justice.

**Power to appoint receivers for persons under disability.**

16. The court shall have power to appoint guardians and committees of the persons and estates of minors and persons suffering from mental disorder within the meaning of the Mental Health Act and unable to govern themselves or their estates, and for that purpose to enquire into, hear and determine, by inspection of the person the subject of such inquiry, or by examination on oath or otherwise of the party in whose custody or charge such person maybe, or of any other person or persons, or by such other ways and means by which the truth may be best discovered, and to act in all cases whatsoever as fully and amply to all intents and purposes as the Lord High Chancellor or the grantee from the Crown of the persons and estates of minors and persons suffering from mental disorder may” lawfully do in England.

**Power of review.**

17.(1) The court shall have full power, jurisdiction and authority to review the proceedings of all inferior courts of justice in Gibraltar, and if necessary to set aside or correct the same.

(2) Without prejudice to the generality of subsection (1), the court may upon application by or on behalf of the Attorney-General, order any inferior court to send to the Registrar the record of proceedings in any criminal case or matter, and may also require in addition to such record a statement showing in detail the proceedings taken with reference to the whole case or any particular matter, and if it appears to the court that there has been any material error in the proceedings of the inferior court, it may, after hearing the defendant or counsel on his behalf, set aside or vary any judgment or order of the inferior court and pass such judgment or make such order, or remit the case or matter to the inferior court with such directions, if any, as justice may require:

Provided that no application under this subsection may be made with regard to a sentence passed on conviction by an inferior court.

(3) The application by or on behalf of the Attorney-General referred to in subsection (2) may be made only within a period of thirty days of the date of the judgment or order of the inferior court to which it relates.

#### **Orders of mandamus, prohibition and certiorari.**

17A. The court shall have jurisdiction to make orders of mandamus, prohibition and certiorari in those classes of cases in which it had power to do so immediately before the commencement of this section.

#### **Application for judicial review.**

17B.(1) An application to the court for one or more of the following forms of relief, namely—

- (a) an order of mandamus, prohibition or certiorari; or
- (b) a declaration or injunction under subsection (2),

shall be made in accordance with rules of court by a procedure to be known as an application for judicial review.

(2) A declaration may be made or, subject to the provisions of the Crown Proceedings Act, an injunction granted under this subsection in any case where an application for judicial review, seeking that relief, has been made and the court considers that, having regard to—

- (a) the nature of the matters in respect of which relief may be granted by orders of mandamus, prohibition or certiorari;
- (b) the nature of the persons and bodies against whom relief may be granted by such orders; and
- (c) all the circumstances of the case,

it would be just and convenient for the declaration to be made or of the injunction to be granted, as the case may be.

(3) No application for judicial review shall be made unless the leave of the court has been obtained in accordance with rules of court; and the court shall not grant leave to make such an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates.

(4) On an application for judicial review the court may award damages to the applicant if—

- (a) he has joined with his application a claim for damages arising from any matter to which the application relates; and
- (b) the court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he would have been awarded damages.

(5) If, on an application for judicial review seeking an order of certiorari, the court quashes the decision to which the application relates, the court may remit the matter to the court, tribunal or authority concerned, with a direction to reconsider it and reach a decision in accordance with the findings of the court.

(6) Where the court considers that there has been undue delay in making an application for judicial review, the court may refuse to grant—

- (a) leave for the making of the application; and
- (b) any relief sought on the application,

if it considers that the granting of the relief sought would be likely to cause substantial hardship to, or substantially prejudice the rights of, any person or would be detrimental to good administration.

(7) Subsection (6) is without prejudice to any enactment or rule of court which has the effect of limiting the time within which an application for judicial review may be made.

### **Summary power to punish contempt.**

18.(1) If any Person—

- (a) being served with a subpoena to attend the court as a witness in accordance with rules of court refuses or neglects to attend the court pursuant to such subpoena; or
- (b) being present in court and required to give evidence refuses to be sworn or to give evidence; or
- (c) assaults or obstructs an officer of the court while in the execution of his duty; or

- (d) commits any contempt before the court,

it shall be lawful for the court to punish such person in a summary way by a fine of £50, or by commitment to prison for two months, if the court shall think that the contempt is one which may be disposed of without having recourse to its more formal and extensive jurisdiction:

Provided that nothing herein contained shall affect or abridge the right of any plaintiff or defendant to proceed against any party for not appearing pursuant to his subpoena for the recovery of any special damage such plaintiff or defendant may have sustained by reason of the disobedience of any such party:

Provided also that no person having been served with a subpoena shall be so punished for refusing or neglecting to attend the court unless there has been paid or tendered to him at the time of the service of the subpoena such sum in respect of his expenses (including in such cases as may be prescribed compensation for loss of time) as may be prescribed by rules of court.

(2) Payment of any fine imposed by the court under this section may be enforced upon the order of the court-

- (a) in like manner as payment of any debt adjudged by the court to be paid may be enforced under this Act; or
- (b) in like manner as payment of a sum adjudged to be paid on summary conviction may be enforced under the Criminal Procedure Act.

(3) The court may in its discretion direct that the whole or any part of any such fine, after deducting the costs, shall be applicable towards indemnifying the party injured by the refusal or neglect.

### **PART III**

#### **TRIAL BY JURY**

#### **Liability to jury Service.**

19.(1) Subject to the exemptions and disqualifications hereinafter contained every male person between the ages of eighteen and sixty-five years resident in Gibraltar having a competent knowledge of the English language shall be liable to serve as a juror at any trial held by the Supreme Court in Gibraltar.

(2) Any woman between the ages of eighteen and sixty-five may volunteer for service as a juror, and may apply to the Registrar to be included among



persons liable for jury service, and the Registrar if satisfied that she has the necessary qualifications for a juror, shall include her name in his jury lists accordingly.

**Eligibility for jury service.**

20. The following persons shall be ineligible to serve as jurors;

- (a) the Speaker and members of the House of Assembly;
- (b) members of Her Majesty's Naval, Military or Air Forces while on full pay;
- (c) justices of the peace;
- (d) ministers of religion;
- (e) persons holding office in the courts of law, barristers and solicitors in actual practice and their clerks, and notaries public in actual practice and police officers, prison officers, and any other persons engaged in the administration of justice;
- (f) registered medical and dental practitioners;
- (g) heads of Government departments and heads of departments in the Army, Navy and Air Force;
- (h) school teachers and members of the nursing service in actual employment;
- (i) members of the City Fire Brigade;
- (j) officers of the Revenue Department;
- (k) persons who immediately before the 1st day of September 1960 were included in the list of grand jurors;
- (l) editors of newspapers;
- (m) persons actually employed in the light or pilotage services;
- (n) persons duly registered under the Medical and Health Act and carrying on the business of retailing, dispensing or compounding medicines or drugs;

- (o) the chairman of the Gibraltar Broadcasting Corporation, the general manager of the Managing Agents of that Corporation and the manager of Radio Gibraltar;
- (p) members of the Public Service Commission;
- (q) the Chief Executive of the Gibraltar Health Authority.

**Disqualifications.**

21. Each of the following persons shall be disqualified for serving as juror-

- (a) aliens who have been resident in Gibraltar for less than ten years;
- (b) persons disabled by mental or bodily infirmity;
- (c) any person who has at any time in the last ten years been convicted by a court of law in any country of a criminal offence punishable by a term of imprisonment of three months or more;
- (d) any person who has at any time been convicted by a court of law in any country of a criminal offence and
  - (i) sentenced to a term of imprisonment of five years or more;
  - (ii) had passed on him an order of detention during Her Majesty's pleasure or an order corresponding thereto under the law of any other country;

**Jury list.**

22.(1) The Registrar shall before the first Sunday in September in each alternate year make a list in the prescribed form of all persons qualified and liable to serve as jurors under the provisions of this Act and shall cause a copy of the list to be published at such time and at such places as the Chief Justice may direct, and shall attach to each such copy a notice stating that all objections to the list will be heard by the justices at a time and place mentioned therein being not less than fifteen nor more than twenty-one days from the date of publication of the notice.

(2) At the time and place so mentioned, the justices shall hold a petty session for the revision of the list and shall upon any evidence adduced before them or of their own knowledge, information and belief strike out from the list the name of any person therein included who is not qualified or

liable to serve or add to the list the name of any person who is qualified and claims the right to serve as a juror.

(3) Any person may appear before the justices at the revision of the list either personally or by his advocate and claim that he is or is not liable to serve as a juror.

(4) The list when revised shall be signed by the justices and delivered by them to the Registrar, and shall be in force from the 1st day of October next after it is allowed for the two years next following.

(5) Every person whose name is included in the jury list as revised by the justices shall be liable to serve as a juror notwithstanding that he may have been entitled by reason of some disqualification or exemption to claim that he ought not to be in the jury list.

### **Service of summons.**

23.(1) A summons to serve as a juror shall be in the prescribed form and shall be served by the Marshal at least six clear days before the day appointed for the sitting of the court –

- (a) by delivering it to the person to be summoned or, in case he shall be absent, by leaving it at his usual place of abode or place of business; or
- (b) by sending him by registered post addressed to him at his usual place of abode or place of business.

(2) No person shall be summoned to serve on any jury or inquest more than once in any one year, unless all the jurors upon the list have been already summoned to serve during the year.

### **Application of Part VII of the Criminal Procedure Act to civil actions.**

24. Subject to sections 25 and 26, the provisions of Part VII of the Criminal Procedure Act that relate to juries shall apply so far as they are appropriate, mutatis mutandis, to juries summoned for the trial of any civil action.

### **Jurors may be required to stand by.**

25. In any civil action, it shall be lawful for the court, if it shall think fit so to do, at the request of either party, to order any juror to stand by:

Provided that when the panel is exhausted the names of all those who have been ordered to stand by shall be called over again and shall not be objected to by either party except for cause.

**Verdicts in civil cases actions.**

26. In any civil action tried by the court with a jury, the verdict of the jury need not be unanimous and the court may-

- (a) accept a verdict upon which at least seven jurors are agreed, if the jury are unable to reach an unanimous verdict after deliberation for such time as the court may consider reasonable, not being less than two hours from the conclusion of the summing-up;
- (b) with the consent of all parties to the case, and after the jury have deliberated for such time as the court may consider reasonable not being less than three hours, accept the verdict of a simple majority of the jurors.

**Remuneration of jurors.**

27.(1) The Minister with responsibility for justice may, make rules prescribing compensation for loss of earnings which jurors in the Supreme Court would have otherwise have made.

(2) A person who, in obedience to a summons to serve on a jury, attends for service as a juror shall be deemed to serve as a juror notwithstanding that he is not subsequently sworn.

(3) The amount due to a person by way of payment in respect of jury service for loss of earnings shall be determined by the Registrar.

(4) Any amount due to any person by virtue of the provisions of this section and the rules made thereunder shall be paid by the officer determining the same.

**PART IV.**  
**BARRISTERS AND SOLICITORS.**

**Admission of barristers.**

28.(1) The Chief Justice may approve, admit and enroll as barristers of the Supreme Court any person who satisfies the following requirements, that is to say-

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- (a) he has been called to the Bar in England or Northern Ireland, or has been admitted as an advocate in the Court of Session in Scotland;
- (b) he is not at the time of his application for admission disbarred, or removed from the roll of advocates in Scotland, or suspended from practice as such barrister or advocate;
- (c) since his admission in the United Kingdom he has completed a period of at least six months' pupillage with a practising barrister of at least five years professional standing in England, Northern Ireland, or Gibraltar, or a practising advocate of at least five years professional standing in Scotland, or has completed a practical training course approved by the Council of Legal Education in England or by an equivalent body in Northern Ireland, or Scotland; and
- (d) he intends on admission to practise in Gibraltar either alone or in partnership with another barrister or solicitor.

(2) The Chief Justice may admit a person as a barrister under this section for the purpose of any particular case or cases, notwithstanding that such person does not satisfy the requirements of paragraphs (c) and (d) of sub-section (1), and may impose on a person so admitted such restrictions and conditions as he may think fit.

(3) Every person holding the office of Attorney General, Senior Crown counsel or Crown Counsel shall, so long as he continues to hold such office, have and enjoy all the rights and privileges of a barrister entitled to practice in Gibraltar.

#### **Admission of solicitors.**

29.(1) The Chief Justice may approve admit and enroll as solicitors of the Supreme Court of Gibraltar any person who satisfies the following requirements, that is to say—

- (a) he has been admitted as a solicitor of the Supreme Court of Judicature in England, or in any court of record in Northern Ireland, or as a solicitor admitted to practice in Scotland;
- (b) he is not at the time of his application for admission struck off the rolls or suspended from practice as a solicitor; and
- (c) he intends on admission to practise in Gibraltar either alone or in partnership with another barrister or solicitor.

(2) Every person duly approved, admitted and enrolled as a solicitor of the Supreme Court of Gibraltar shall be at liberty to act also as a barrister.

**Enrolment of solicitors.**

30.(1) Every person admitted or entitled to practice as a solicitor of the court as aforesaid, shall cause his name to be enrolled in a book to be kept for the purpose in the office of the Registrar, and to be called the Roll of the Court, and he shall be entitled to a certificate of enrolment under the seal of the court. No person whose name shall not be enrolled as aforesaid shall be entitled to practise in any of the courts of Gibraltar, and no solicitor shall actually practise without first taking out a certificate.

(2) No solicitor not duly certificated shall be entitled to sue for, or recover, any fee, reward or disbursement on account of, or in relation to any act or proceeding done, or taken by him in his professional capacity.

**Barristers and solicitors may practice in all courts.**

31. It shall be lawful for persons enrolled as barristers or solicitors to practise as such in all the courts in Gibraltar.

**Barristers may act as solicitors.**

32. All barristers shall be at liberty to act also as solicitors and shall be entitled to sue for and recover, any fee, reward or disbursement on account of, in relation to any act or proceeding done, or taken by them in their professional capacity as such solicitors:

Provided that a Barrister who attains the rank of Queen's Counsel shall not undertake or perform any professional function unless instructed by a solicitor or another barrister not having the rank of Queen's Counsel. Nothing herein contained will preclude the barrister having the rank of Queen's Counsel from continuing or engaging in partnership with another barrister or solicitor.

**Law relating to barristers and solicitors.**

33.(1) Subject to the provisions of this Act and of any rules of court for the time being in force the law in England for the time being in force relating to barristers and solicitors shall extend to Gibraltar, and shall apply to all persons practicing as barristers or solicitors in Gibraltar.

(2) The rules prescribed from time to time by the Bar Council and the Law Society in England in regard to the professional conduct of barristers

and solicitors shall with such modifications as the Chief Justice may deem fit to allow be respectively observed by barristers and solicitors in Gibraltar.

## **Disciplinary powers of Chief Justice.**

34.(1) The Chief Justice may, for reasonable cause—

- (a) order the name of any barrister or solicitor to be struck off the Roll of the Court;
- (b) suspend any barrister or solicitor from practising within Gibraltar during any period specified by the Chief Justice;
- (c) administer any reprimand to any barrister or solicitor;
- (d) order any barrister or solicitor to repay or forego any fee; or
- (e) on the investigation of any complaint relating to the professional conduct of a barrister or solicitor, or on the determination of any proceedings relating to the professional conduct of a barrister or solicitor, make such order as he thinks fit as the payment by the barrister or solicitor or the complainant or any other party of the costs of the investigation or proceedings.

(2) The Chief Justice may at any time, for good cause, set aside or annul any order made under subsection (1).

(3) Where the Chief Justice—

- (a) makes or refuses to make an order under subsection (1); or
- (b) on application refuses to set aside or annul under subsection (2) any such order,

in respect of any barrister or solicitor, that barrister or solicitor may appeal against the decision to the Court of Appeal, but in every other case the decision of the Chief Justice in any proceedings referred to in subsection (1) or subsection (2) shall be final.

## **Unqualified person practising.**

35.(1) A person not enrolled as a barrister or solicitor in Gibraltar, and not being a notary public, who, unless he proves that the act was not done for, or in expectation of, any fee, gain or reward, either directly or indirectly draws or prepares any instrument –

- (a) relating to movable or immovable property or any legal proceeding;
- (b) for or in relation to the formation of any limited liability company whether private or public;
- (c) for or in relation to the making of a deed of partnership or the dissolution of a partnership;

is guilty of an offence and is liable on summary conviction to a fine of £50.

(2) Notwithstanding anything in any other law or Act contained, proceedings in respect of any offence under this section may be brought at any time within two years next after the commission of the offence or within six months next after the first discovery thereof by the prosecutor whichever period is the shorter.

(3) This section shall not extend to-

- (a) any public officer drawing or preparing instruments in the course of his duty; or
- (b) any person employed merely to engross any instrument.

(4) For the purpose of this section the expression “instrument” does not include-

- (a) a will or other testamentary instrument; or
- (b) a letter or power of attorney; or
- (c) a transfer of stock or shares containing no trust or limitation thereof.

#### PART IV A EEA LAWYERS

#### **Interpretation of Part IVA.**

35A.(1) In this Part unless the context otherwise requires –

“barrister” and “solicitor” mean a person admitted or entitled to practise under sections 28 or 29 as a barrister or solicitor, as the case may be;



“the Directive” means the European Communities Council Directive 77/249/EEC to facilitate the effective exercise by lawyers of freedom to provide services;

“EEA State” means a state which is a contracting party to the Agreement on the European Economic Area;

“EEA lawyer” means a national of an EEA State mentioned in column 1 of Part I of the Schedule who is entitled to pursue his professional activities under the designation mentioned in column 2 of that Part of the Schedule in respect of that EEA State;

“EEA State of origin” in relation to an EEA lawyer, means the EEA State (other than the United Kingdom) or States in which he is established; and

“own professional authority”, in relation to an EEA lawyer, means an authority entitled to exercise disciplinary authority over him in his EEA State of origin.

- (2) A person who –
- (a) is not a national of an EEA State; but
  - (b) is by virtue of a right conferred by Article 11 of Council Regulation (EEC) 1612/68 or any other enforceable Community right entitled to be treated for the purpose of access to the profession of lawyer,

shall be treated for the purpose of this Act as if he were such a national.

### **Purpose of Part.**

35B. The provisions of this Part shall have effect for the purpose of enabling an EEA lawyer to pursue his professional activities in Gibraltar by providing, under the conditions specified in or permitted by the Directive, services otherwise reserved to barristers or solicitors; and services which may be so provided are hereafter in this Part referred to as “services”.

### **Representation in legal proceedings.**

35C.(1) No enactment or rule of law or practice shall prevent an EEA lawyer from providing any service in relation to any proceedings, whether civil or criminal, before any court, tribunal or public authority (including appearing before and addressing the court, tribunal or public authority) by reason only that he is not a barrister or solicitor; provided that throughout he

is instructed with, and acts in conjunction with, a barrister or solicitor who is entitled to practise before the court, tribunal or public authority concerned and who could properly provide the service in question.

(2) An EEA lawyer in salaried employment who is instructed with and acts in conjunction with a barrister in any proceedings may provide a service on behalf of his employer in those proceedings only in so far as a barrister in such employment could properly do so.

**Drawing of documents, etc, not related to legal proceedings.**

35D.(1) No enactment or rule of law or practice shall prevent an EEA lawyer from drawing or preparing for payment an instrument relating to personal estate by reason only that he is not a barrister or solicitor.

(2) Nothing in this Part shall entitle an EEA lawyer to draw or prepare for payment an instrument—

- (a) creating or transferring an interest in land; or
- (b) for obtaining title to administer the estate of a deceased person.

**Legal aid.**

35E. Services may be provided by an EEA lawyer by way of legal advice and assistance or legal aid.

**Title and description to be used by EEA lawyers.**

35F. In providing any services, an EEA lawyer shall use the professional title and description applicable to him in his EEA State of origin, expressed in the language or one of the languages of that State, together with the name of the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that State.

**Power to require an EEA lawyer to verify his status.**

35G.(1) The Chief Justice may at any time request a person seeking to provide any services in Gibraltar to verify his status as an EEA lawyer.

(2) Where a request has been made under sub-section (1), the person to whom it is made shall not, except to the extent (if any) allowed by the Chief Justice, be entitled to provide services in Gibraltar until he has verified his status as an EEA lawyer to the satisfaction of the Chief Justice.

**Professional misconduct.**

35H.(1) A complaint may be made to the Chief Justice that an EEA lawyer providing any services has failed to observe a condition or rule of professional Conduct referred to in Part II of the Schedule and applicable to him.

(2) Where a complaint is made under sub-section (1), the Chief Justice shall consider and adjudicate upon it in accordance with the same procedure, and subject to the same rights of appeal, as apply in relation to a barrister or solicitor over whom he has jurisdiction.

(3) Where the Chief Justice finds that an EEA lawyer against whom a complaint has been made under sub-section (1) has committed a breach of a condition or a rule of professional conduct mentioned in that sub-section he—

- (a) shall report that finding to the EEA lawyer's own professional authority; and
- (b) may, if he thinks fit, direct the EEA lawyer not to provide services in Gibraltar, except to such extent and under such conditions (if any) as he may specify in the direction.

(4) The Chief Justice may at any time, if he thinks fit, vary, cancel or suspend the operation of a direction given by him under sub-section (3)(b).

(5) An EEA lawyer in respect of whom a direction is made under sub-section (3)(b) shall not be entitled to provide services in Gibraltar except as allowed by the direction.

## **PART V.**

### **MISCELLANEOUS.**

#### **Interest on judgment debts.**

36. Every judgment debt shall carry interest, from the time the judgment is entered until it is satisfied, at such rate as the Minister with responsibility for justice may by order direct and such interest may be levied under a writ of execution on the judgment.

#### **Fees to betaken in the Supreme Court.**

36A. Without prejudice to the provisions of sections 37 and 38, the Chief Justice has, and is deemed always to have had, the power by rules to prescribe, vary or abolish the fees to be taken in the Supreme Court.

**Recovery of insurance premiums by way of costs.**

36B. Where in any proceedings a costs order is made in favour of any party who has taken out an insurance policy against the risk of incurring a liability in those proceedings, the costs payable to him may, subject in the case of court proceedings to rules of court, include costs in respect of the premium of the policy.

**Rules regulating funds in Court.**

37. It shall be lawful for the Chief Justice, with the concurrence of the Minister responsible for Justice, to make rules regulating the payment of moneys into court and the lodgment of securities and effects in court, the investment of funds in court and the payment out of moneys in court, the transfer of securities and the delivery out of effects, and, without prejudice of the generality of the foregoing, such rules may—

- (a) prescribe what moneys are to be invested, and in what manner, and what moneys are to be retained un-invested;
- (b) authorize the payment of interest on moneys that are un-invested, prescribe the rate of interest from time to time payable, and specify the moneys on which interest shall accrue and the moneys on which interest shall not accrue;
- (c) subject to the provisions of the Exchange Control Act, make any necessary provision regarding moneys in foreign currencies;
- (d) authorize the employment of an agent in transacting any business relating to funds in court and the payment to him of any commission or fee subject to such rules and to any order of the court;
- (e) make provision for the transfer to the Consolidated Fund of moneys lying unclaimed, without prejudice to the right of the persons, if any, entitled thereto;
- (f) prescribe the accounts to be kept, the forms to be used and the returns to be rendered.

**Rules of court.**

♦38.(1) It shall be lawful for the Chief Justice to make rules of court for carrying this Act into effect and in particular for all or any of the following matters:-

- (a) for regulating the sittings of the Supreme Court for the dispatch of civil business therein and of a judge sitting in chambers;
- (b) for regulating the pleading, practice and procedure in the Supreme Court in civil cases and in matters which in Her Majesty's High Court of Justice in England come within the jurisdiction of the Crown side of the Queen's Bench Division thereof;
- (cc) for regulating pupillage generally, including the qualifications for admission to pupillage, the manner in which pupillage may be served, appeals in respect of pupillage, and the approval and termination of pupillage.
- (c) the summoning, impanelling and challenging of jurors and the fees to be paid in respect of trials of civil actions by jury;
- (d) for regulating the admission of barristers and solicitors to practise in the Supreme Court, their professional practice, conduct and discipline and for those purposes for delegating to any two or more persons (being barristers or solicitors) on such terms as may be specified in the rules, any of the powers conferred on him by section 34 (other than the powers of disenrolment and suspension);
- (e) for regulating the powers of commissioners for oaths, the fees and costs of barristers and solicitors and the hours of opening and closing the offices of the court;
- (f) generally for regulating any matters relating to the practice and procedure of the court or to the duties of the officers thereof or the costs of proceedings therein;
- (g) regulating access to and the use of the Law Library of the Supreme Court, prescribing fees for such access and use and the penalties to be paid for any damage to or loss of books therein and the method of recovering of such penalties.

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♦ *The powers conferred by this section were enlarged by section 5 of the Judgments (Reciprocal Enforcement) Ordinance and by section 14 of the Evidence Ordinance.*

(2) Rules made under this section may empower the making of orders at any stage of any proceedings directing that specified facts may be proved at the trial by affidavit with or without the attendance of the deponent for cross-examination, notwithstanding that a party desires his attendance for cross-examination and that he can be produced for that purpose.

(3) The power to make rules conferred by this section shall include the power to make rules with respect to all or any of the matters dealt with by the rules of the Supreme Court in England made from time to time.

(4) Where any provision in respect of the practice or procedure of any of Her Majesty's Courts the jurisdiction of which or of any courts substituted for or united and consolidated with which is vested by this Act in the Supreme Court are contained in any Act of the Parliament at Westminster rules of court may be made under this section modifying those provisions to any extent that may be deemed necessary by the Chief Justice for adapting the same to the Supreme Court.

#### **Civil Procedure Rules.**

38A.(1) Subject to this and any other Act (and without prejudice to the generality of sections 15 and 38), and to rules made under this Act specifying otherwise, the Civil Procedure Rules made (and as amended from time to time) under the Civil Procedure Act 1997 in England and Wales shall apply in Gibraltar with such modifications (for example, in nomenclature) as the circumstances in Gibraltar may require.

(2) The Chief Justice may make Rules supplementing, amending or modifying the Civil Procedure Rules as they apply to Gibraltar.

#### **Masters.**

38B.(1) The small claims jurisdiction of the court (as defined in the Civil Procedure Rules), may be exercised by a judicial officer to be known as a Master.

(2) The Chief Justice may direct such other matters as he may determine to be heard by a Master, but such matters shall be limited to those which may be heard by a Master or district judge in England and Wales.

(3) A Master shall also have jurisdiction to hear and determine any summons issued under section 5 of the Debtors Act 1869 in respect of any judgment or decree, irrespective of the amount concerned.

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(4) The Governor acting on the advice of the Judicial Service Commission may appoint any person appearing to him to have the requisite knowledge and experience to act as a Master.

(5) An appeal from a decision of a Master shall lie to the Chief Justice or an additional judge.

## **PART VI** EUROPEAN LAWYERS: INTRODUCTORY

### **Purpose of this Part and Part VII to XI.**

39.(1) The purpose of this Part and Part VII to XI is to implement the Directive in Gibraltar.

(2) The provisions of this Part and Part VII to XI shall have effect for the purposes of facilitating the practice of the profession of lawyer on a permanent basis by a European lawyer in Gibraltar.

(3) The provisions of this Part and Part VII to XI shall not affect the provision of services by lawyers within the meaning of Part IVA

### **Transitional provisions.**

40.(1) On or after the coming into force of this Part and Part VII to XI, a European lawyer –

- (a) shall not practise professional activities under his home professional title in Gibraltar on a permanent basis, or
- (b) commence such practice,

without being registered in accordance with section 52 unless he was already practising before that date and has made an application for registration under Part VIII which has not been determined.

(2) In subsection (1) and (3), an application for registration shall, as at a particular date, be taken not to have been determined if as at that date the applicant–

- (a) has not received a rejection of his application and the period for such a rejection or a deemed rejection has not yet expired; or
- (b) is appealing against a rejection of the application (including a deemed rejection) and the appeal has not been determined.

(3) Section 56(1)(b) and (57) shall not apply to a European lawyer who satisfies all the following conditions–

- (a) immediately before the entry into force of this Part and Part VII to XI he was practising on a permanent basis in Gibraltar;
- (b) before the entry into force of this Part and Part VII to XI he applied for registration to the competent authority; and
- (c) as at the date in question his application for registration had not been determined.

**Interpretation of this Part and Part VII to XI.**

41.(1) In this Part and Part VII to XI, unless the context otherwise requires–

“barrister” means a barrister of the Supreme Court of Gibraltar;

“competent authority”, in relation to Gibraltar, means the Chief Justice;

“the Directive” means the European Communities Parliament and Council Directive No. 98/5/EC to facilitate practice of the profession of lawyer on a permanent basis in certain States other than the State in which the professional qualification was obtained;

“European lawyer” has the meaning given in subsection (2);

“home State” means the State in Part III of the Schedule in which a European lawyer acquired his authorisation to pursue professional activities and, if he is authorised in more than one of those States, it shall mean any of those States;

“home professional title” means, in relation to a European lawyer, the professional title or any of the professional titles specified in relation to his home State in Part III of the Schedule under which he is authorised in his home State to pursue professional activities;

“member of the Gibraltar Bar” means a solicitor or barrister of the Supreme Court of Gibraltar;

“Qualification Act” means the Recognition of Professional Qualifications Act (Act 31 of 1997);



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“registered European lawyer” means a European lawyer who is registered with the competent authority in accordance with section 53 and whose registration has not been withdrawn or suspended;

“solicitor” means, in relation to Gibraltar, a person who is a solicitor of the Supreme Court of Gibraltar.

(2) In this Part and Part VII to XI, “European lawyer” means a person who is—

- (a) a national of the United Kingdom or of a State listed in Part III of the Schedule;
- (b) authorised in any of the States listed in Part III of the Schedule to pursue professional activities under any of the professional titles appearing in that subsection; and
- (c) subject to subsection (3), not a solicitor or barrister of the Supreme Court of Gibraltar.

(3) *Repealed.*

#### **Exchange of information.**

42.(1) In order to facilitate the application of the Directive and to prevent its provisions from being misapplied, the competent authority may supply to or receive from an authority in any of the States listed in section 41(3) which has been designated by that State under the Directive as a competent authority in that State, any information relating to a European lawyer or to any person with whom he jointly practises.

(2) Subject to subsection (1), the competent authority shall preserve the confidentiality of any information received in accordance with subsection (1) relating to a European lawyer or to any person with whom he jointly practises.

(3) The competent authority shall provide a certificate attesting to the authorisation of any member of the Bar to practise when requested to do so by that member or by a competent authority in a State listed in section 41(3).

### **PART VII**

#### **PRACTICE OF PROFESSIONAL ACTIVITIES BY A REGISTERED EUROPEAN LAWYER**

#### **Practice of professional activities.**

43.(1) Subject to the provisions of this Part and Part VII to XI, a registered European lawyer shall be entitled to carry out under his home professional title any professional activity that may lawfully be carried out by a member of the Gibraltar bar and any enactment or rule of law or practice with regard to the carrying out of professional activities by members of the Gibraltar Bar shall be interpreted and applied accordingly.

(2) A registered European lawyer who is in salaried employment may carry out professional activities under his home professional title to the same extent that an employed member of the Gibraltar bar may do so.

**Title and description to be used by a registered European lawyer.**

44.(1) Where a registered European lawyer is engaged in—

- (a) any professional activity authorised by the professional organisation in his home State which gave him the authorisation to practise; or
- (b) any professional activity that may be carried out by a member of the Gibraltar Bar,

he shall comply with the requirements set out in subsection (2).

(2) The requirements referred to in subsection (1) are that a registered European lawyer shall—

- (a) use his home professional title expressed in an official language of his home State in a manner which avoids confusion with the title of solicitor or barrister;
- (b) indicate the professional organisation by which he is authorised to practise or the court of law before which he is entitled to practise in that State; and
- (c) indicate the fact that he is a registered European Lawyer under the provisions of this Act.

**Joint practice.**

45.(1) A registered European lawyer may carry out professional activities under his home professional title as part of a joint practice—

- (a) to the same extent and in the same manner as a member of the Gibraltar Bar may do so, with—

- (i) another member of the Gibraltar Bar;
  - (ii) a person who is a registered European lawyer; or
  - (iii) any other person permitted under the provisions of this Act; or
- (b) with another European lawyer who is practising on a permanent basis under his home professional title in that registered European lawyer's home State.

**Name of joint practice.**

46.(1) Subject to subsection (2), where a registered European lawyer is a member of a joint practice in his home State, he may use the name of that practice with his home professional title when practising as a registered European lawyer.

(2) Rules made under section 38 may prohibit the use by a European lawyer of the name of a joint practice to the extent that—

- (a) that name is also used by persons who are not European lawyers or members of the Gibraltar Bar; and
- (b) those rules prohibit members of the Gibraltar Bar from using that name.

**Notification of joint practice.**

47.(1) Where a European lawyer is a member of a joint practice in his home State and intends to register under Part VIII, he shall inform the competent authority of the fact and provide it with the following information—

- (a) the name of the joint practice;
- (b) his place of business;
- (c) the name and place of business of any member of his joint practice;
- (d) any other information about the joint practice requested by the competent authority.

(2) A European lawyer to whom this section applies shall notify the competent authority of any changes in the information whether before or after registration.

#### **Representation in legal proceedings.**

48.(1) Subject to subsection (2), no enactment or rule of law or practice shall prevent a registered European lawyer from pursuing professional activities relating to the representation of a client in any proceedings before any court, tribunal or public authority (including addressing the court, tribunal or public authority) only because he is not a solicitor or barrister.

(2) In proceedings referred to in subsection (1), where the professional activities in question may (but for this Part and Part VII to XI) be lawfully provided only by a solicitor, barrister or other qualified person, a registered European lawyer shall act in conjunction with a solicitor or barrister who is entitled to practise before the court, tribunal or public authority concerned and who could lawfully provide those professional activities.

(3) The solicitor or barrister referred to in subsection (2) shall, where necessary, be answerable to the court, tribunal or public authority concerned.

#### **Property transactions and probate.**

49. A registered European lawyer is not entitled, by virtue of section 43(1)–

- (a) to prepare for remuneration any instrument creating or transferring an interest in land unless he has a home professional title obtained in Denmark, the Republic of Ireland, Finland or Sweden,
- (b) to prepare for remuneration any instrument for obtaining title to administer the estate of a deceased person unless he has a home professional title obtained in Denmark, Germany, the Republic of Ireland, Austria, Finland or Sweden.

#### **Legal aid.**

50. A registered European lawyer may provide professional activities by way of legal advice and assistance or legal aid under the Legal Aid and Assistance Act and references to a solicitor, counsel or legal representative in that or any other enactment relating to legal advice and assistance or legal aid shall be interpreted accordingly.

### **PART VIII**

## REGISTRATION OF EUROPEAN LAWYERS

**Establishment and maintenance of registers of European lawyers.**

51. The competent authority shall establish and maintain a register of registered European lawyers.

**Application to be entered on a register.**

52.(1) A European lawyer who wishes to pursue professional activities under his home professional title on a permanent basis in Gibraltar shall apply to be entered on the register maintained by the competent authority.

(2) A European lawyer who wishes to register with the competent authority in accordance with subsection (1) shall provide the competent authority with a certificate confirming his registration with the competent authority in each home State under whose home professional title he intends to practise.

(3) The competent authority may require that the certificate referred to in subsection (2) shall not have been issued more than three months before the date of the application under this section.

(4) An application for registration under this section shall comply with the provisions of this Act and be accompanied by the prescribed fee (if any).

**Registration by competent authority.**

53.(1) The competent authority shall enter on its register the name of a European lawyer who applies to it in accordance with section 52.

(2) Where the competent authority registers a European lawyer in accordance with subsection (1), it shall inform the competent authority in the home State of the registration.

**Time limit for decision and notification by competent authority.**

54.(1) The competent authority shall consider an application for registration under section 52 as soon as is reasonably practicable, and shall notify the European lawyer of its decision, and if the application is rejected or granted subject to conditions, the reasons upon which the rejection or the imposition of conditions is based, within four months of receipt of an application complying with section 52(2) and (4).

(2) Where the competent authority fails to take a decision and notify the European lawyer within four months in accordance with subsection (1), it

shall be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period.

(3) Where the competent authority withdraws or suspends a registration, it shall notify the European lawyer of its decision and of the reasons upon which the withdrawal or suspension is based.

**Appeal by European lawyer.**

55.(1) Within three months of the notification to him of the competent authority's decision, or later with the permission of the Court of Appeal, the European lawyer may appeal against the decision to the Court of Appeal.

(2) The Court of Appeal may, for the purpose of determining any appeal under this Part—

- (a) order the competent authority to register the European lawyer;
- (b) refuse the appeal; or
- (c) remit the matter to the competent authority with such directions as the court sees fit.

(3) The court shall give reasons for its decision.

**Offence of pretending to be a registered European lawyer.**

56.(1) A person who is not registered in Gibraltar as a European lawyer (including a person whose registration has been suspended) and –

- (a) wilfully pretends to be a registered European lawyer or takes or uses any name, title, designation or description implying that he is a registered European lawyer; or
- (b) subject to subsection (2), carries on professional activities under one of the professional titles listed in section 41(3) or under any name, designation or description implying that he is entitled to pursue those activities under one of those professional titles; shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Subsection (1)(b) shall not apply to a person who satisfies any of the following conditions—

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- (a) he is not a national of the United Kingdom or of any of the States listed in section 41(3);
- (b) he is a solicitor or barrister of the Supreme Court of Gibraltar;  
or
- (c) he is providing services within the meaning of Part IVA at the time his activities fall within subsection (1)(b).

### **Costs and fees of an unregistered European lawyer.**

57. Where a European lawyer is carrying on professional activities under his home professional title in Gibraltar but is not registered as a European lawyer (including a person whose registration has been suspended), any costs or fees in respect of those activities shall not be recoverable by him or any other person.

### **Evidence of registration.**

58. Any certificate purporting to be signed by the competent authority and stating that a person—

- (a) is, or is not, registered with the competent authority; or
- (b) was, or was not, registered with the competent authority during a period specified in the certificate,

shall, unless the contrary is proved, be evidence of that fact and be taken to have been so signed.

### **Publication of names of registered European lawyers.**

59.(1) Where the competent authority publishes the names of solicitors or barristers registered with it, it shall also publish the names of any European lawyers registered with it.

(2) In this section, “publishes” or “publish” includes the provision of information to a legal or other publisher.

## **PART IX REGULATION AND DISCIPLINE**

### **Rules of professional conduct applicable.**

60. Where a registered European lawyer is practising under his home professional title in Gibraltar, he shall be subject to the same rules of professional conduct as a member of the Gibraltar Bar.

**Disciplinary proceedings applicable.**

61.(1) Where a registered European lawyer fails to comply with the rules of professional conduct to which he is subject under section 60, he shall be subject to the same rules of procedure, penalties and remedies as a member of the Gibraltar Bar and shall, if appropriate, be subject to disciplinary proceedings brought by the competent authority.

(2) Any sanction against a registered European lawyer in relation to disciplinary proceedings may include withdrawal or suspension of his registration.

(3) The competent authority shall give reasons for its decision.

**Disciplinary proceedings against a registered European lawyer.**

62.(1) Where the competent authority intends to begin disciplinary proceedings against a registered European lawyer, it shall—

- (a) inform the competent authority in his home State of the intention to begin those proceedings and furnish it with all the relevant details;
- (b) co-operate with that authority throughout those proceedings; and
- (c) inform that authority of the decision reached in those proceedings, including the decision in any appeal, as soon as practicable after the decision is given.

(2) Subject to subsection(3), where the competent authority in the registered European lawyer's home State withdraws his authorisation to practise under the home professional title either temporarily or permanently, his registration with the competent authority in Gibraltar shall be automatically withdrawn to the same extent.

(3) Where a registered European lawyer is authorised to practise under a home professional title in two or more home States, his registration shall be withdrawn in accordance with subsection (2) only if his authorisation to practise under a home professional title has been withdrawn in all those home States.



(4) Where there is an appeal against a decision in disciplinary proceedings against a registered European lawyer, the court shall afford the competent authority in the registered European lawyer's home State an opportunity to make representations in relation to that appeal.

## **Disciplinary proceedings against a solicitor or barrister.**

63. Where the competent authority intends to begin disciplinary proceedings against a solicitor or barrister of the Supreme Court of Gibraltar practising in a State listed in section 41(3) it shall inform the competent authority in that State of—

- (a) the intention to begin those proceedings and furnish it with all the relevant details; and
- (b) the decision reached in those proceedings, including the decision in any appeal, as soon as practicable after the decision is given.

## **PART X**

### **ENTRY OF EUROPEAN LAWYERS INTO THE PROFESSION OF SOLICITOR OR BARRISTER**

#### **Application by registered European lawyer.**

64.(1) Where a registered European lawyer applies to the competent authority to become a solicitor or barrister as the case may be, and the competent authority requires him to pass an aptitude test under the provisions of the Qualification Act, he may apply to the competent authority for an exemption from that requirement on the grounds that he falls within subsection (2) or (3) of this section.

- (2) A person falls within this subsection if—
  - (a) he is a European lawyer and has been registered with the competent authority for at least three years; and
  - (b) he has for a period of at least three years effectively and regularly pursued in Gibraltar, professional activities under his home professional title in the law of Gibraltar.
- (3) person falls within this subsection if—
  - (a) he is a European lawyer and has been registered with the competent authority for at least three years; and

- (b) he has for a period of at least three years effectively and regularly pursued in Gibraltar professional activities under his home professional title; and
- (c) he has for a period of less than three years effectively and regularly pursued in Gibraltar, professional activities under his home professional title in the law of Gibraltar.

**Decision by the competent authority.**

65.(1) Subject to subsection (3), the competent authority shall grant an exemption applied for under section 64 if it considers that the requirements under subsection (2) or (3) of section 64 have been met.

(2) The registration of a registered European lawyer shall cease from the date he is granted entry into the profession of solicitor or barrister.

(3) The competent authority may refuse to grant an exemption if it considers that the registered European lawyer would be unfit to practise as a solicitor or barrister.

**Evidence in support of application for exemption under section 64(2).**

66.(1) Where a registered European lawyer makes an application under subsection (2) of section 64, he shall provide the competent authority with any relevant information and documents which it may reasonably require.

(2) The competent authority may verify the effective and regular nature of the professional activity pursued and may, if necessary, request the registered European lawyer to provide, orally or in writing, clarification of, or further details on, the information and documents referred to in subsection (1).

**Evidence in support of application for exemption under section 64(3).**

67.(1) Where a registered European lawyer makes an application under subsection (3) of section 64, he shall provide the competent authority with any relevant information and documents it may reasonably require.

(2) When deciding whether to grant an application under subsection (3) of section 64, the competent authority shall take into account the professional activities the registered European lawyer has pursued during the period he has been registered and any knowledge and professional experience he has gained of, and any training he has received in, the law of Gibraltar and the rules of professional conduct of the profession concerned.

(3) Subject to subsection (4), in the case of an application under subsection (3) of section 64, the competent authority shall assess and verify the registered European lawyer's effective and regular professional activity and his capacity to continue the activity he has pursued at an interview.

(4) Where the competent authority believes that an interview is unnecessary and intends to grant an application under subsection (3) of section 64, it may dispense with that requirement.

**Meaning of “effectively and regularly pursued”.**

68. For the purposes of section 64 to 67 activities shall be regarded as effectively and regularly pursued if they are actually exercised without any interruption other than those resulting from the events of everyday life.

**Time limit for decision and notification by professional body.**

69.(1) The competent authority shall consider an application under section 64 as soon as is reasonably practicable, and shall notify the applicant of its decision and, if the application is rejected, the reasons for the rejection, within four months of receipt of all the relevant documents.

(2) Where the competent authority fails to take a decision and notify the registered European lawyer within four months in accordance with subsection (1), it shall be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period.

**Appeal by registered European lawyer.**

70.(1) Within three months of the notification to him of the competent authority's decision, or later with the permission of the Court of Appeal, the European lawyer may appeal against the decision to the Court of Appeal.

(2) The court may, for the purpose of determining any appeal under this Part—

- (a) give the exemption and the authorisation to enter into the profession of solicitor or barrister, as the case may be;
- (b) refuse the appeal; or
- (c) remit the matter to the competent authority with such directions as the court sees fit.

(3) The court shall give reasons for its decision.

**Practice under the title of solicitor or barrister.**

71.(1) This section applies where a registered European lawyer (“the lawyer”) is granted entry into the profession of solicitor or barrister.

(2) Subject to subsection (3), the lawyer shall be entitled to continue to practise in Gibraltar, as the case may be, under his home professional title, and to use his home professional title, expressed in an official language of his home State, alongside the title of solicitor or barrister, provided that he continues to be authorised in his home State to pursue professional activities under that title.

(3) For the purposes of rules of professional conduct, including those relating to disciplinary and complaints procedures, the lawyer's continuing practice in Gibraltar under his home professional title shall be deemed to form part of his practice as a solicitor or barrister, and those rules shall apply to his practice under his home professional title as they do to his practice as a solicitor or barrister.

(4) Where this section applies, a lawyer's registration as a European lawyer in accordance with section 53 shall cease from the date he is entitled to use the title of solicitor or barrister, as the case may be.

**PART XI**  
EUROPEAN LAWYERS:  
SUPPLEMENTARY PROVISIONS

**Modification of enactments.**

72.(1) References in this Act to unqualified persons, however expressed shall not include a reference to registered European lawyers pursuing professional activities within the meaning of this Part and Part VII to XI.

(2) The power to make rules under section 38 shall also be exercisable in relation to registered European lawyers.

(3) Registered European lawyers shall be treated as if they were officers of the Supreme Court of Gibraltar and shall be subject to the inherent jurisdiction of that court in like manner and to the same extent as if they were barristers or solicitors.

**Part X**

**Regulations**

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This version is out of date

73. The Government may make regulations in order to amend any Schedule to this Act for the purpose of giving effect to the law of the European Communities or European Union.

## SCHEDULE

## Part I

Section 35A(1)

## EEA Lawyer

## Lawyers listed in Article 1 of Directive 77/249/EEC

EEA State	Description of EEA lawyer
Austria:	Rechtsanwalt
Belgium:	Avocat - Advocaat
Bulgaria:	Адвокат
Cyprus:	Δικηγόρος
Czech Republic:	Advokát
Denmark:	Advokat
Estonia:	Vandeadvokaat
Finland:	AsianajajaAdvokat
France:	Avocat
Germany:	Rechtsanwalt
Greece:	Δικηγόρος
Hungary:	Ügyvéd
Ireland:	Barrister /Solicitor
Italy:	Avvocato
Latvia:	Zvērināts advokāts
Lithuania:	Advokatas
Luxembourg:	Avocat-avoué
Netherlands:	Advocaat Advocate
Malta:	Avukat/Prokuratur Legali
Poland:	Adwokat/Radca prawny
Portugal:	Advogado
Romania:	Avocat
Spain:	Abogado
Slovakia:	Advokát/Komerčný právnik
Slovenia:	Odvetnik/Odvetnica
Sweden:	Advokat
United Kingdom:	Barrister/ Solicitor;

## PART II

Section 35H (1)

1. Activities relating to the representation of a client in legal proceedings or before public authorities shall be pursued in Gibraltar under the conditions laid down for lawyers established in Gibraltar, with the exception of any conditions requiring residence or registration with a professional organisation in Gibraltar.
2. A lawyer pursuing these activities shall observe the rules of professional conduct of Gibraltar, without prejudice to his obligations in the EEA State from which he comes.
3. A lawyer pursuing activities other than those referred to in paragraph 1 shall remain subject to the conditions and rules of professional conduct of the EEA State from which he comes without prejudice to respect for the rules, whatever their source, which govern the profession in Gibraltar, especially those concerning the incompatibility of the exercise of the activities of a lawyer with the exercise of other activities in Gibraltar, professional secrecy, relations with other lawyers, the prohibition on the same lawyer acting for parties with mutually conflicting interests, and publicity. The latter rules are applicable only if they are capable of being observed by a lawyer who is not established in Gibraltar and to the extent to which their observance is objectively justified to ensure, in Gibraltar, the proper exercise of a lawyer's activities, the standing of the profession and respect for the rules concerning incompatibility.

### Part III

Section 41

#### Lawyers listed in Article 1 Directive 98/5/EC

State	Professional title(s)
Austria	Rechtsanwalt
Belgium	Avocat/Advocaat/Rechtsanwalt
Bulgaria	Адвокат
Cyprus	Δικηγόρος
Czech Republic	Advokát
Denmark	Advokat
Estonia	Vandeadvokaat
Finland	Asianajaja/Advokat
France	Avocat
Germany	Rechtsanwalt
Greece	Δικηγόρος
Hungary	Ügyvéd
Ireland	Barrister/Solicitor
Italy	Avvocato
Latvia	Zvērināts advokāts

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Lithuania	Advokatas
Luxembourg	Avocat
Malta	Avukat/Prokuratur Legali
Netherlands	Advocaat
Romania	Avocat
Poland	Adwokat/ Radca prawny
Portugal	Advogado
Slovenia	Odvetnik/Odvetnica
Slovakia	Advokát/Komerčný právnik
Sweden	Advokat
Spain	Abogado/Advocat/Avogado/Abokatu
United Kingdom	Advocate/Barrister/Solicitor