

## SUPREME COURT ACT

## Principal Act

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

|       | Amending<br>enactment | Relevant current provisions                      | Commence-<br>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<br>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)<br>and Sch | 16.10.1997             |

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

**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.*

| <b>Previous number</b> | <b>New number</b>   | <b>Previous number</b> | <b>New number</b>   |
|------------------------|---------------------|------------------------|---------------------|
| 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                  |
| 30                     | 19                  | 56                     | 18                  |
| 31                     | 20                  | 57                     | 8                   |

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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.**

**Officers of the court.**

3.(1) There shall be attached and belong to the court a Registrar, a Deputy Registrar and so many officers as to the Chief Justice shall, from time to time, appear to be necessary for the administration of justice, and the due execution of the powers and authorities which are granted and committed to the court under and by virtue of this Act.

Provided nevertheless that no new office shall be created in the court unless the Governor shall first signify his approbation thereof to the Chief Justice in writing.

(2) Every officer referred to in subsection (1) shall be appointed by the Governor.

**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.

### **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;

This version is out of date

- (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 Chief Justice may, with the approval of the Governor, 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—

- (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, Law Draftsman, 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 signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“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 Chief Justice may, with the approval of the Governor by order direct and such interest may be levied under a writ of execution on the judgment.

### **Fees to be taken 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.

### **Rules regulating funds in Court.**

37. It shall be lawful for the Chief Justice, with the concurrence of the Financial and Development Secretary, 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);

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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.*

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This version is out of date

- (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.

(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.

## SCHEDULE

## PART I

## EEA Lawyer

| EEA State     | Description of EEA lawyer   |
|---------------|-----------------------------|
| Austria       | Rechtsanwalt                |
| Belgium       | avocat/advocaat             |
| Denmark       | advokat                     |
| Finland       | asianajaja/Advokat          |
| France        | avocat                      |
| Germany       | Rechtsanwalt                |
| Greece        | δ Ἐχρηγορος                 |
| Iceland       | Iögmadur                    |
| Ireland       | barrister or solicitor      |
| Italy         | avvocato/procuratore legale |
| Liechtenstein | Rechtsanwalt                |
| Luxembourg    | avocat-avoué                |
| Netherlands   | advocaat                    |
| Norway        | advocat                     |
| Portugal      | advogado                    |
| Spain         | abogado                     |
| Sweden        | advokat                     |

## 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,

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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.