

Diplomatic Privileges Act

Principal Act

Act. No. 1965-18

Commencement

16.7.1965

Assent

15.7.1965

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Diplomatic Privileges Act 1964 (1964 c.81)

ARRANGEMENT OF SECTIONS

Section

- 1 Short title.
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SCHEDULE

Articles of Vienna Convention having the force of law in Gibraltar.

AN ACT TO GIVE EFFECT TO THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS AND FOR PURPOSES CONNECTED THEREWITH.

Short title.

1. This Act may be cited as the Diplomatic Privileges Act.

Application of Vienna Convention.

2. (1) Subject to section 3, the Articles set out in the Schedule, being Articles of the Vienna Convention on Diplomatic Relations signed in 1961, shall have the force of law in Gibraltar, and shall for that purpose be construed in accordance with the following provisions of this section.

(2) In those Articles—

“national of the receiving State” shall be construed as meaning British citizen, British Dependent Territories citizen or British Overseas citizen.

“Ministry for Foreign Affairs or such other ministry as may be agreed” shall be construed as meaning the department of the Secretary of State concerned.

(3) For the purposes of Article 32, a waiver by the head of the mission of any State or any person for the time being performing his functions shall be deemed to be a waiver by that State.

(4) The exemption granted by Article 33 with respect to any services, shall be deemed to except those services from any class of employment which is insurable employment, or in respect of which contributions are required to be paid under the Social Security (Employment Injuries Insurance) Act, and the Social Security (Insurance) Act, and any enactment for the time being in force amending either of those enactments, but not so as to render any person liable to any contribution which he would not be required to pay if those services were not excepted.

(5) Articles 35, 36 and 40 shall be construed as granting any privilege or immunity, which they require to be granted.

(6) The references in Articles 37 and 38 to the extent to which any privileges and immunities are admitted by the receiving State, and to additional privileges and immunities that may be granted by the receiving State, shall be construed as referring respectively to the extent to which any privileges and immunities may be specified by Her Majesty, by Order in Council, by virtue of section 2 of the Diplomatic Privileges Act, 1964, and to any additional privileges and immunities that may be so specified, and in respect of which the Governor, by order published in the Gazette, may make a similar order.

Restriction of privileges and immunities.

3. Where Her Majesty has, by Order in Council, under section 3 of the Diplomatic Privileges Act, 1964, withdrawn any privileges or immunities granted under such Act, the Governor may, by order published in the Gazette, do likewise in relation to Gibraltar in respect of such of those privileges or immunities as may be applicable to Gibraltar by virtue of this Act.

Evidence.

4. If in any proceedings any question arises whether or not any person is entitled to any privilege or immunity under this Act, a certificate issued by or under the authority of the Secretary of State stating any fact relating to that question shall be conclusive evidence of that fact.

Interpretation and saving.

5. *Omitted.*

SCHEDULE**ARTICLES OF VIENNA CONVENTION HAVING THE FORCE OF LAW IN GIBRALTAR.****ARTICLE 1.**

For the purpose of the present Convention, the following expressions shall have the meanings hereunder assigned to them:

- (a) the “head of the mission” is the person charged by the sending State with the duty of acting in that capacity;
- (b) the “members of the mission” are the head of the mission and the members of the staff of the mission;
- (c) the “members of the staff of the mission” are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;
- (d) the “members of the diplomatic staff” are the members of the staff of the mission having diplomatic rank;
- (e) a “diplomatic agent” is the head of the mission or a member of the diplomatic staff of the mission;
- (f) the “members of the administrative and technical staff” are the members of the staff of the mission employed in the administrative and technical service of the mission;
- (g) the “members of the service staff are the members of the staff of the mission in the domestic service of the mission;
- (h) a “private servant” is a person who is in the domestic service of a member of the mission and who is not an employee of the sending State;
- (i) the “premises of the mission” are the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.

ARTICLE 24.

The archives and documents of the mission shall be inviolable at any time and wherever they may be.

ARTICLE 27.

1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and other missions and consulates of the sending State, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.
2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions.
3. The diplomatic bag shall not be opened or detained.
4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.
5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention.
6. The sending State or the mission may designate diplomatic couriers ad hoc. In such cases the provisions of paragraph 5 of this Article shall also apply, except that the immunities therein mentioned shall cease to apply when such a courier has delivered to the consignee the diplomatic bag in his charge.
7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorised port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft.

ARTICLE 29.

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

ARTICLE 30.

1. The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.
2. His papers, correspondence and, except as provided in paragraph 3 of Article 31, his property, shall likewise enjoy inviolability.

ARTICLE 31.

1. A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction, except of the case of:

- (a) a real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) an action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

2. A diplomatic agent is not obliged to give evidence as a witness.

3. No measures of execution may be taken in respect of a diplomatic agent except in the cases coming under sub-paragraphs (a), (b) and (c) of paragraph 1 of this Article, and provided that the measures concerned can be taken without infringing the inviolability of his person or of his residence.

4. The immunity of a diplomatic agent from the jurisdiction of the receiving State does not exempt him from the jurisdiction of the sending State.

ARTICLE 32.

1. The immunity from jurisdiction of diplomatic agents and of persons enjoying immunity under Article 37 may be waived by the sending State.

2. The waiver must always be express.

3. The initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under Article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counter-claim directly connected with the principal claim.

4. Waiver of immunity from jurisdiction in respect of civil or administrative proceedings shall not be held to imply waiver of immunity in respect of the execution of the judgment, for which a separate waiver shall be necessary.

ARTICLE 33.

1. Subject to the provisions of paragraph 3 of this Article a diplomatic agent shall with respect to services rendered for the sending State be exempt from social security provisions, which may be in force in the receiving State.
2. The exemption provided for in paragraph 1 of this Article shall also apply to private servants who are in the sole employ of a diplomatic agent, on condition:
 - (a) that they are not nationals of or permanently resident in the receiving State; and
 - (b) that they are covered by the social security provisions which may be in force in the sending State or a third State.
3. A diplomatic agent who employs persons to whom the exemption provided for in paragraph 2 of this Article does not apply shall observe the obligations, which the social security provisions of the receiving State impose upon employers.
4. The exemption provided for in paragraphs 1 and 2 of this Article shall not preclude voluntary participation in the social security system of the receiving State provided that such participation is permitted by that State.
5. The provisions of this Article shall not affect bilateral or multilateral agreements concerning social security concluded previously and shall not prevent the conclusion of such agreements in the future.

ARTICLE 34.

A diplomatic agent shall be exempt from all dues and taxes, personal or real, national, regional or municipal except:

- (a) indirect taxes of a kind, which are normally incorporated in the price of goods or services;
- (b) dues and taxes on private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (c) estate, succession or inheritance duties levied by the receiving State, subject to the provisions of paragraph 4 of Article 39;
- (d) dues and taxes on private income having its source in the receiving State and capital taxes on investments made in commercial undertakings in the receiving State;
- (e) charges levied for specific services rendered;

- (f) registration, court or record fees, mortgage dues and stamp duty, with respect to immovable property, subject to the provisions of Article 23.

ARTICLE 35.

The receiving State shall exempt diplomatic agents from all personal services, from all public service of any kind whatsoever, and from military obligations such as those connected with requisitioning, military contributions and billeting.

ARTICLE 36.

1. The receiving State shall, in accordance with such laws and regulations as it may adopt, permit entry of and grant exemptions from all customs, duties, taxes, and related charges other than charges for storage, carriage and similar services, on:

- (a) articles for the official use of the mission;
- (b) articles for the personal use of a diplomatic agent or members of his family forming part of his household, including articles intended for his establishment.

2. The personal baggage of a diplomatic agent shall be exempt from inspection, unless there are serious grounds for presuming that it contains articles not covered by the exemptions mentioned in paragraph 1 of this Article, or articles the import or export of which is prohibited by the law or controlled by the quarantine regulations of the receiving State. Such inspection shall be conducted only in the presence of the diplomatic agent or of his authorised representative.

ARTICLE 37.

1. The members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified in Articles 29 to 36.

2. Members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, shall, if they are not nationals of or permanently resident in the receiving State, enjoy the privileges and immunities specified in Articles 29 to 35, except that the immunity from civil and administrative jurisdiction of the receiving State specified in paragraph 1 of Article 31 shall not extend to acts performed outside the course of their duties. They shall also enjoy the privileges specified in Article 36, paragraph 1, in respect of articles imported at the time of first installation.

3. Members of the service staff of the mission who are not nationals of or permanently resident in the receiving State shall enjoy immunity in respect of acts performed in the course of their duties, exemption from dues and taxes on the emoluments they receive by reason of their employment and the exemption contained in Article 33.

4. Private servants of members of the mission shall, if they are not nationals of or permanently resident in the receiving State, be exempt from dues and taxes on the emoluments they receive by reason of their employment. In other respects, they may enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 38.

1. Except in so far as additional privileges and immunities may be granted by the receiving state, a diplomatic agent who is a national of or permanently resident in that State shall enjoy only immunity from jurisdiction, and inviolability, in respect of official acts performed in the exercise of his functions.

2. Other members of the staff of the mission and private servants who are nationals of or permanently resident in the receiving State shall enjoy privileges and immunities only to the extent admitted by the receiving State. However, the receiving State must exercise its jurisdiction over those persons in such a manner as not to interfere unduly with the performance of the functions of the mission.

ARTICLE 39.

1. Every person entitled to privileges and immunities shall enjoy them from the moment he enters the territory of the receiving State on proceeding to take up his post or, if already in its territory, from the moment when his appointment is notified to the Ministry for Foreign Affairs or such other ministry as may be agreed.

2. When the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities shall normally cease at the moment when he leaves the country, or on expiry of a reasonable period in which to do so, but shall subsist until that time, even in case of armed conflict. However, with respect to acts performed by such a person in the exercise of his functions as a member of the mission, immunity shall continue to subsist.

3. In case of the death of a member of the mission, the members of his family shall continue to enjoy the privileges and immunities to which they are entitled until the expiry of a reasonable period in which to leave the country.

4. In the event of the death of a member of the mission not a national of or permanently resident in the receiving State or a member of his family forming part of his household, the receiving State shall permit the withdrawal of the movable property of the deceased, with the exception of any property acquired in that country the export of which was prohibited at the time of his death. Estate, succession and inheritance duties shall not be levied on movable property the presence of which in the receiving State was due solely to the presence there of

the deceased as a member of the mission or as a member of the family of a member of the mission.

ARTICLE 40.

1. If a diplomatic agent passes through or is in the territory of a third State, which has granted him a passport visa if such visa was necessary, while proceeding to take up or to return to his post, or when returning to his own country, the third State shall accord him inviolability and such other immunities as may be required to ensure his transit or return. The same shall apply in the case of any members of his family enjoying privileges or immunities who are accompanying the diplomatic agent, or traveling separately to join him or to return to their country.

2. In circumstances similar to those specified in paragraph 1 of this Article, third States shall not hinder the passage of members of the administrative and technical or service staff of a mission, and of members of their families, through their territories.

3. Third States shall accord to official correspondence and other official communications in transit, including messages in code or cipher, the same freedom and protection as is accorded by the receiving State. They shall accord to diplomatic couriers, who have been granted a passport visa if such visa was necessary, and diplomatic bags in transit the same inviolability and protection as the receiving State is bound to accord.

4. The obligations of third States under paragraphs 1, 2 and 3 of this Article shall also apply to the persons mentioned respectively in those paragraphs, and to official communications and diplomatic bags, whose presence in the territory of the third State is due to force majeure.