

**FINANCIAL SERVICES COMMISSION
ACT, 1989****Repealed by Act 2007-03 as from 24.5.2007****Principal Act**

Act. No. 1989-46	<i>Commencement</i>	10.1.1991
	<i>Assent</i>	28.12.1989

Amending enactments	Relevant current provisions	
Acts. 1991-06	ss.3(1)(b), 6(1), 10(1), 15(3) and 18	4.4.1991
1994-03	ss. 3(2) and (3)(e) and (f), 8(1) to (4)	25.7.1994
	ss. 2, 3(1)(b), 5, 6(1), (2)(a) to (e), 12(1)(a), (b) and (c), 12A, 19(1) and 22	30.5.1995
LN. 1994/055	<i>Corrigendum</i>	30.5.1995
Act. 1998-39	s. 15(3)	1.1.2000

English sources:

None

1989-46
Repealed

Financial Services Commission

ARRANGEMENT OF SECTIONS.

Section

1. Title and commencement.
2. Interpretation.
3. Establishment of the Financial Services Commission.
4. The Commission to be a body corporate.
5. Meetings and proceedings.
6. Duties of the Commission.
7. Powers of the Commission.
8. Appointment of Commissioner.
9. Discharge of functions by the Commissioner and the Commission.
10. Disclosure of interest.
11. Commission may establish committees.
12. Delegation of functions.
- 12A. Reviews of supervisory activities of the Commission and Commissioner.
13. The Revenues of the Commission.
14. Establishment and operation of general fund.
15. Accounts and auditing.
16. Preparation of estimates.
17. Financial year.
18. Immunity.
19. Proceedings on failure of Commission to perform its duties.
20. Restriction on execution.
21. Exemption from taxes, etc.
22. Confidentiality.

1989-46
Repealed

Financial Services Commission

AN ACT TO ESTABLISH THE FINANCIAL SERVICES COMMISSION.

Title and commencement.

1.(1) This Act may be cited as the Financial Services Commission Act, 1989.

(2) The provisions of this Act shall come into operation on such day as the Governor may by notice published in the Gazette appoint, and different days may be so appointed for different purposes.

Interpretation.

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

“Commissioner” means the person appointed under section 8 or any person appointed in accordance with the provisions of section 49(2) of the Interpretation and General Clauses Act;

“finance business” means any business related to finance and investment and includes the business of banking, insurance, investment and asset management and administration or the provision of the services in relation to any of the aforesaid;

“financial services” means any services provided in connection with any finance business, and “financial services legislation” shall be construed accordingly;

“institution” means any person, company or partnership.

Establishment of the Financial Services Commission.

3.(1) There is hereby established the Financial Services Commission which shall consist of—

- (a) the Commissioner, as chairman;
- (b) seven other persons appointed by the Governor, acting with the approval of the Foreign and Commonwealth Secretary after consultation with the Commissioner, of whom—
 - (i) four shall have experience of regulation and supervision of finance business or shall practise as a solicitor, barrister, auditor or actuary in the United Kingdom; and

- (ii) three shall be a solicitor, barrister, auditor or actuary and practise as such in Gibraltar or have experience in the practice of finance business in Gibraltar.

(2) Every member of the Commission shall hold office for such period and upon such terms as may be specified in the instrument appointing him.

(3) If the Governor acting with the approval of the Foreign and Commonwealth Secretary is satisfied that any member of the Commission—

- (a) has been absent from three consecutive meetings of the Commission without the permission of the Commission;
- (b) has become bankrupt or made any arrangement with his creditors;
- (c) has been convicted of a criminal offence punishable by a term of imprisonment of 3 months or more;
- (d) is incapacitated by physical or mental illness; or
- (e) is in material breach of the terms under which he was appointed; or
- (f) is otherwise unable or unfit to discharge the functions of a member.

the Governor acting with the approval of the Foreign and Commonwealth Secretary may by notice in the Gazette declare his office as a member of the Commission to be vacant and thereupon his office shall become vacant.

(4) Notwithstanding the foregoing provisions of this section any member may resign his office by giving written notice to the Commission.

(5) Any member of the Commission who ceases to be a member shall be eligible for re-appointment except where he ceases to be a member by virtue of subsection (3) of this section or where he would have ceased to be a member in that manner but for his voluntary resignation.

(6) The Commission shall appoint a person who is an employee of the Commission to be the Secretary to the Commission.

The Commission to be a body corporate.

4.(1) The Commission shall be a body corporate with perpetual succession under the name of the Financial Services Commission and shall have a common seal which shall be officially and judicially noted.

(2) The common seal of the Commission may only be affixed to an instrument in the presence of the Commissioner and one other member of the Commission.

(3) Such instruments as are referred to in subsection (2) of this section shall be signed by the persons so present as witnesses to the sealing and the acts of sealing and witnessing shall be recorded in a register to be kept for the purpose.

(4) The Commission may sue and subject to section 18 hereof be sued in its corporate name. Service of any process or notice on the Commission may be effected by leaving it at, or sending it by registered post to, the principal office of the Commission.

Meetings and proceedings.

5.(1) The quorum at all meetings of the Commission shall be four members who shall include the Commissioner as Chairman and two of the four members referred to in section 3(1)(b)(i).

(2) All meetings of the Commission shall be called by the Secretary to the Commission and shall take place in Gibraltar.

(3) Any matters arising at a meeting of the Commission shall be decided by a majority of the members present and voting thereon at the meeting and in the case of an equality of votes, the Chairman shall have a second or casting vote.

(4) All orders and directions of the Commission shall be given under the hand of the Commissioner.

(5) The Commission shall keep proper minutes of its proceedings.

Duties of the Commission.

6.(1) Subject to the provisions of section 9, it shall be the principal duty of the Commission to carry out and discharge the functions pursuant to this or any other relevant Act or regulation so far as is practicable and for this purpose shall appoint fit and proper persons having the skills and experience necessary to enable the Commission to do so.

(2) Without prejudice to the generality of the provisions of subsection (1) the Commission is charged with the following duties:

- (a) to keep under review both the operation of Gibraltar legislation relating to financial services and the effectiveness of the

supervision of institutions licensed to provide any financial services.

- (b) in respect of financial services in those areas where Community law applies, to monitor the extent to which Gibraltar legislation and supervision of licensed institutions—
 - (i) comply with Community obligations; and
 - (ii) establish and implement standards which match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom.
- (c) to seek through the provision of effective services for the supervision of finance business to protect the public against financial loss arising out of dishonesty, incompetence or malpractice on the part of persons engaged in finance business in Gibraltar:
- (d) to advise the Government of Gibraltar and the Government of the United Kingdom on matters concerning financial services, having regard, in particular, to any matter arising in the course of the discharge by the Commission of its duties under paragraph (b) above, and to the need for timely and effective implementation in Gibraltar law of Community obligations.
- (e) to draw up codes for regulating the terms of service, discipline and training of all persons employed by the Commission.

Powers of the Commission.

7.(1) Subject to the provisions of this or any other Act the Commission shall have power to do all things necessary for and ancillary and reasonably incidental to the carrying out of its duties under this or any other Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the Commission may—

- (a) purchase, lease or otherwise acquire and hold any property (real or personal) required for the purposes of the Commission and dispose of any such property no longer required for such purposes;
- (b) contract with any person for the supply to, or by, the Commission of any goods, services or personnel;
- (c) pay expenses properly incurred by the Commission;

- (d) employ such persons (including advisors and consultants) as the Commission thinks fit for the proper discharge by the Commission of its functions;
- (e) establish and maintain schemes or make such other arrangements as it thinks fit for the payment of pensions or other benefits to its employees;
- (f) compile, prepare, print, publish, issue, circulate and distribute, whether for payment or otherwise, such papers, leaflets, magazines, periodicals, books and other literary matter as may be conducive to the attainment of the objects of the Commission or the advancement of its functions.

Appointment of Commissioner.

8.(1) The Governor acting with the approval of the Foreign and Commonwealth Secretary shall appoint a person to be Commissioner.

(2) The Commissioner shall be the executive officer of the Commission and shall in addition perform such other functions, and exercise such other powers, as are from time to time conferred upon him by this or any other Act or regulation or are delegated to him by the Commission. In particular he shall supervise institutions licensed to provide any financial services with a view to ensuring that such supervision complies with any applicable Community obligations and, where these obligations apply, establish and implement standards which match those required by legislation and supervisory practice governing the provision of financial services within the United Kingdom.

(3) In the event of the illness, death, retirement, suspension or removal from office or absence from Gibraltar of the Commissioner, the Governor acting with the approval of the Foreign and Commonwealth Secretary shall appoint a person to act as Commissioner.

Discharge of functions by the Commissioner and the Commission.

9.(1) The Commissioner shall refer to the Commission:—

- (a) all matters coming to his notice or attention which fall to be dealt with by the Commission pursuant to this or any other Act or regulation;
- (b) any matters of policy or principle arising in the course of the exercise by him of any function vested in him alone.

(2) The Commission may regulate its procedure in such manner as it thinks fit consistent with the provisions of this Act or any regulation made hereunder.

Disclosure of interest.

10. (1) A member of the Commission who has any direct or indirect personal, professional, business or pecuniary interest in any matter coming before the Commission shall on each and every occasion on which the matter comes before the commission declare his interest and thereafter unless otherwise directed by the Commissioner shall withdraw from the meeting, take no further part in the proceedings of the Commission in relation to such matter nor vote on such matter.

(2) A declaration, withdrawal or direction referred to in subsection (1) of this section shall be recorded.

(3) Unless the Commissioner shall otherwise direct, any decision reached by the Commission on a matter in which a member has declared an interest in accordance with subsection (1) of this section shall be recorded in the normal way save that proceedings of the Commission on such a matter prior to the making of a decision shall be recorded separately and that record shall be provided only to those members of the Commission who were present at those proceedings.

Commission may establish committees.

11. (1) The Commission may establish standing or special committees, which expression shall include sub-committees and may refer to any such committee any matters for consideration, enquiry or management.

(2) The Commission shall establish rules of procedure for such committees.

(3) The Commission may appoint as a member of any Committee established under subsection (1) any person who, in its opinion appears to be qualified to be a member of the Committee, whether that person is a member of the Commission or not.

(4) Every appointment under subsection (3) may be revoked by the Commission at any time.

(5) A Committee established under subsection (1) may elect any of its members to be the Chairman and shall conduct its business in accordance with the rules of procedure referred to in subsection (2) of this section.

Delegation of functions.

12. (1) Subject to the provisions of section 8 and to any express provision contained in this or any other Act the Commission or the Commissioner may delegate the discharge of any of its or his functions—

- (a) to any suitably qualified or competent individual; or
- (b) to a committee of the Commission.
- (c) *Omitted*

(2) The delegation by the Commission or the Commissioner of any of their functions shall not affect the exercise by the Commission or by the Commissioner of such functions.

Reviews of supervisory activities of the Commission and Commissioner.

12A. The Governor acting with the approval of the Foreign and Commonwealth Secretary shall appoint persons to review the supervisory activities under this or any other Act of the Financial Services Commission and the Financial Services Commissioner in relation to any financial services to which Community law applies and to report and as appropriate make recommendations to the Foreign and Commonwealth Secretary. Such reviews will take place annually or at the instigation of the Governor acting with the approval of the Foreign and Commonwealth Secretary. The cost of such reviews shall be charged to the Commission.

The Revenues of the Commission.

13. (1) The revenues of the Commission shall be:

- (a) such fees and charges payable under any Act as may be assigned to it by Act for the performance and discharge of the functions of the Commission in connection with the administration of that Act or otherwise;
- (b) such funds as may from time to time be voted by the Gibraltar Parliament;
- (c) Funds properly accruing to the Commission from any other source.

(2) The Commission may invest any of its funds not required for immediate use in any manner for the time being authorised for the investment of Trust Funds.

Establishment and operation of general fund.

14. (1) The Commission shall establish a general fund into which all monies received by the Commission shall be paid; and out of which all payments made by the Commission shall be made.

(2) The Commission shall be responsible for the management of the general fund.

(3) The Commission may borrow from the government of Gibraltar such sums as it may require for meeting its obligations and discharging its functions and for the purposes of meeting expenditure of a capital nature.

Accounts and auditing.

15. (1) The Commission shall keep proper books of account of its income and other receipts and expenditures during each financial year, and shall also cause a statement of its accounts for each financial year to be prepared within three months after the end of that year.

(2) The accounts of the Commission for each financial year shall be audited and certified by an auditor to be appointed annually by the Commission.

(3) The auditor of the Commission shall be a person or firm who is registered in Part I or II of the Register maintained under the provisions of the Auditors Approval and Registration Act, 1998¹.

(4) The auditor shall, with reference to the accounts of the Commission, report—

- (a) whether he has obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purposes of the audit; and
- (b) whether, in his opinion, proper books of account have been kept by the Commission;
- (c) whether the Commission's balance sheet and accounts dealt with by the report are in agreement with the books of account;
- (d) whether in his opinion and to the best of his information and according to the explanations given to him, the said accounts give a true and fair view, in the case of the balance sheet of the Commission's finances as at the end of the financial year and in the case of the income and expenditure account, of the surplus or deficit for that financial year; and

¹ 1992-04

- (e) whether in his opinion the Commission has discharged with diligence its obligations in relation to the collection of its revenues.

(5) Within three months after the end of the audit of its accounts for any financial year, the Commission shall prepare and submit to the Minister for Trade and Industry a written report of its operations for that year together with a copy of the audited accounts for that year and the Minister for Trade and Industry shall lay a copy of such report and of the audited accounts on the table of the Gibraltar Parliament at the earliest possible opportunity.

Preparation of estimates.

16. The Commission shall prepare and furnish to the Financial and Development Secretary annual estimates of income and expenditure, including capital expenditure, not later than 3 months prior to the commencement of each financial year and such additional information and explanations as he may require thereon.

Financial year.

17. The financial year of the Commission shall be such period as may from time to time be prescribed by section 2 of the Financial Year Act:

1970-26

Provided that the first financial year of the Commission shall commence on the date of establishment of the Commission and ending on the 31st day of March next following that date.

Immunity.

18. Neither the Commission nor any of its members, officers or servants shall be liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the Commission by this or any other Act or regulation unless the act or omission is shown to have been in bad faith:

Provided that the section shall not apply to the discharge or purported discharge by the Commission of the powers and functions conferred on the Commission by paragraphs (a) to (e) of section 7(2) of this Act.

Proceedings on failure of Commission to perform its duties.

19. (1) If at any time it appears to the Governor that the Commission has failed to comply with any of the provisions of this or any other Act, the Governor acting with the approval of the Foreign and Commonwealth Secretary may by notice in writing require the Commission to make good the default within such time as may be specified in the notice.

(2) If the Commission fails to comply with the requirements of a notice issued under the provisions of subsection (1), the Attorney-General may apply to the Supreme Court for an order requiring the Commission to remedy the default specified and the Supreme Court may make such order on the application as it thinks fit. Every member of the Commission shall be personally liable for compliance with any such order to the best of his ability.

Restriction on execution.

20. No execution by attachment of property or process in the nature thereof shall be issued against the Commission.

Exemption from taxes, etc.

21. The income of the Commission shall be exempt from income tax and all taxes and the property of the Commission shall be exempt from all duties and rates levied by the Government of Gibraltar.

Confidentiality.

22. (1) Save as may be provided for by any other Act, any information from which an individual or body can be identified and which is acquired by the Commission in the course of carrying out its functions shall be regarded as confidential by the Commission and by its members, officers and servants.

(2) Save as may be provided for by any other Act, no such information as is referred to in subsection (1) shall be disclosed without the consent of every individual who, and every body which, can be identified from that information, except to the extent that its disclosure appears to the Commission to be necessary—

- (a) to enable the Commission to carry out any of its statutory functions; or
- (b) in the interests of the prevention or detection of crime; or
- (c) in connection with the discharge of any international obligation to which Gibraltar is subject; or
- (d) to assist, in the interests of the public, any authority which appears to the Commission to exercise in a place outside Gibraltar functions corresponding to those of the Commission; or
- (e) to comply with the directions of the Supreme Court;

- (f) for the purpose of assisting or enabling any person appointed to carry out a review in accordance with section 12A to discharge his functions;

provided always any such disclosure is consistent with any applicable Community obligation.

(3) Without prejudice to subsections (1) and (2), any information communicated to the Commission by any Department of the Government of Gibraltar shall, if that Department so requests be regarded as confidential, by the Commission and by its members, officers and servants; and no such information shall be disclosed except in compliance with the directions of the Supreme Court.

(4) A person who discloses information, or who causes or permits the disclosure of information, in contravention of this section, is guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both;
- (b) on summary conviction, to a fine not exceeding £500.