

NATIONS UNIES

ASSEMBLEE  
GENERALE



Distr.  
GENERALE

A/7550/Add.1

26 juin 1969

FRANCAIS

ORIGINAL : ANGLAIS-  
ESPAGNOL

Vingt-quatrième session

APPLICATION DE LA DECLARATION SUR L'OCTROI DE L'INDEPENDANCE  
AUX PAYS ET AUX PEUPLES COLONIAUX

GIBRALTAR

Rapport du Secrétaire général

Additif

Depuis qu'il a présenté, le 2 mai 1969, son rapport sur la question de Gibraltar (A/7550), conformément à la résolution 2429 (XXIII) adoptée par l'Assemblée générale le 18 décembre 1968, le Secrétaire général a reçu une nouvelle communication, datée du 16 juin 1969, qui lui a été adressée par le représentant permanent de l'Espagne auprès de l'Organisation des Nations Unies. Le texte de ladite communication figure ci-après.

"Le 30 mai 1969, le Gouvernement britannique, qui avait rompu, le 1er avril 1968, les entretiens avec l'Espagne sur Gibraltar, recommandés par les résolutions 2070 (XX), 2231 (XXI), 2353 (XXII) et 2429 (XXIII) de l'Assemblée générale, et qui se refusait à appliquer les deux dernières de ces résolutions, a promulgué une nouvelle Constitution pour Gibraltar, dont je me permets de vous communiquer le texte 1/. Je joins également un document où sont présentées les observations du Gouvernement espagnol à propos de ladite Constitution (annexe I)."

Comme vous pourrez le constater, ladite Constitution implique :

1. Non seulement un mépris des recommandations de l'Assemblée générale de l'Organisation des Nations Unies sur la façon de mettre fin à la situation coloniale qui existe à Gibraltar, mais aussi un renforcement de cette situation, par la création d'un obstacle artificiel à l'exécution desdites résolutions.

1/ Reproduit dans la langue originale, en tant qu'annexe II au présent document. La mission permanente du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord a également communiqué au Secrétariat des exemplaires de la Constitution.

2. Une violation de l'article X du Traité d'Utrecht de 1713; traité de caractère colonial et anachronique, qui fut imposé à l'Espagne, mais qui constitue encore tant qu'il n'a pas été abrogé, le seul titre juridique concernant la présence britannique sur une parcelle du sol espagnol.

3. La création d'un instrument politique artificiel, au service exclusif des intérêts particuliers du Royaume-Uni à Gibraltar.

D'une part, la Grande-Bretagne offre à ses sujets établis dans la colonie une participation au contrôle de la destinée du Territoire, ce qu'elle ne peut faire sans violer l'intégrité territoriale de l'Espagne, reconnue dans les résolutions de l'Assemblée générale et sauvegardée par le Traité d'Utrecht.

D'autre part, le Royaume-Uni ne confère pas à ses sujets établis dans la colonie et encore moins aux autres personnes qui y habitent et y travaillent ce que l'on peut et l'on doit leur reconnaître : la jouissance, sans discrimination, des droits de l'homme, des droits politiques et des droits du travail et le pouvoir de régler, sans tutelle aucune, leurs propres affaires intérieures.

Mon gouvernement désire indiquer, en outre, que dans ses propositions au Royaume-Uni de Grande-Bretagne et d'Irlande du Nord, le 13 décembre 1966 (A/C.4/SR.1671), qui ont été portées à votre connaissance, il offrait à toute la population de Gibraltar, y compris les sujets de Sa Majesté, un statut, qui, garanti par l'Espagne et la Grande-Bretagne et enregistré auprès de l'Organisation des Nations Unies, aurait, comme on le voit maintenant, protégé les intérêts particuliers des habitants de Gibraltar bien mieux que la nouvelle constitution promulguée par le Royaume-Uni. L'offre de l'Espagne qui est toujours valable et que le Royaume-Uni n'a jamais voulu négocier s'inspire de la juste décision de l'Assemblée générale recommandant à l'Espagne et à la Grande-Bretagne d'assurer conjointement la sauvegarde des intérêts des Gibraltariens. Il ne fait pas de doute que la formule recommandée par l'Organisation des Nations Unies permettrait de sauvegarder ces intérêts bien mieux que les mesures unilatérales du Royaume-Uni qui n'ont d'autre but que d'empêcher l'application des résolutions de l'Assemblée générale et de perpétuer l'atteinte à l'intégrité territoriale de l'Espagne.

Dans ces conditions, le Gouvernement espagnol exprime son inquiétude devant toute mesure qui peut contribuer à consolider et à développer cette nouvelle et très grave situation de type colonial, qui porte en elle le germe de tensions susceptibles d'avoir de très sérieuses conséquences.

Cette inquiétude dicte la conduite du Gouvernement espagnol dont l'intention est d'essayer, par des moyens pacifiques comme il l'a toujours fait, de faciliter la tâche des Nations Unies.

Mon gouvernement m'a chargé de vous tenir au courant de l'évolution de la situation à cet égard.

Je vous serais obligé de bien vouloir faire distribuer la présente note ainsi que ses annexes comme document de l'Assemblée générale."

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# ANNEXE I

## OBSERVATIONS DU GOUVERNEMENT ESPAGNOL SUR LA CONSTITUTION DE GIBRALTAR DE 1969

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## I. INTRODUCTION

1. Les présentes observations portent sur les instruments constitutionnels relatifs à Gibraltar qui ont été publiés dans la supplément de la "Gaceta de Gibraltar" du 30 mai 1969, à savoir le "Gibraltar Constitution Order 1969" (ci-après dénommé "le Décret"), les annexes audit Décret, notamment l'annexe I, intitulée "La Constitution de Gibraltar" (ci-après dénommée "la Constitution"), et la prose adressée au Gouverneur de Gibraltar par le Secrétaire d'Etat. Dans la première partie (section II), ces instruments sont examinés compte tenu des obligations internationales de la Grande-Bretagne, en ce qui concerne Gibraltar, qui découlent :

- a) Des résolutions pertinentes de l'Assemblée générale des Nations Unies,
- b) Du Traité d'Utrecht entre l'Espagne et la Grande-Bretagne, signé le 13 juillet 1713, et d'autres normes du droit international.

2. Dans la deuxième partie (section III), la Constitution est analysée du point de vue des droits qu'elle confère effectivement à la population de Gibraltar. Enfin, les conclusions sont présentées à la section IV.

II. LA NOUVELLE CONSTITUTION DE GIBRALTAR COMPTE TENU  
DES OBLIGATIONS INTERNATIONALES DE LA GRANDE-BRETAGNE

A) Demandes formulées par l'Assemblée générale des Nations Unies

3. Dans ses résolutions sur la question de Gibraltar, l'Assemblée générale des Nations Unies demande expressément à la Grande-Bretagne :

1) De mettre fin à la situation de type colonial qui existe à Gibraltar. (Résolutions 2070 (XX), 2231 (XXI), 2353 (XXII) et 2429 (XXIII). Cette dernière fixe comme date limite le 1er octobre 1969.)

2) De respecter l'unité nationale et l'intégrité territoriale de l'Espagne [Résolutions 2231 (XXI), 2353 (XXII) et 2429 (XXIII)].

3) D'engager des négociations avec l'Espagne et de consulter le Gouvernement espagnol afin de mettre un terme à la situation de type colonial qui existe à Gibraltar. (Résolutions 2070 (XX), 2231 (XXI), 2353 (XXII), adressées aux deux gouvernements, et résolution 2429 (XXIII), adressée nommément à la Grande-Bretagne.)

4) De sauvegarder les intérêts de la population de Gibraltar lorsqu'il sera mis fin à la situation coloniale, au moyen d'une formule négociée entre l'Espagne et la Grande-Bretagne [Résolutions 2431 (XXI) et 2353 (XXII)].

4. Il ressort clairement que la promulgation du Décret et de la Constitution est contraire aux résolutions de l'Assemblée générale :

1) En matière de décolonisation. La Constitution perpétue le statut colonial de Gibraltar, déclaré incompatible avec la Charte des Nations Unies dans la résolution 2429 (XXIII). Gibraltar continuera d'être, en tout sauf peut-être en nom, une colonie britannique, et, de toute évidence, restera pour l'Organisation des Nations Unies un territoire non autonome auquel doit s'appliquer la résolution 1514 (XV) et notamment son paragraphe 6.

2) Le respect de l'intégrité territoriale de l'Espagne. Le maintien de Gibraltar sous la souveraineté britannique, comme l'évolution visant à faire du territoire une entité politique distincte de l'Espagne, constituent une violation de l'intégrité territoriale de l'Espagne, principe reconnu par l'Organisation des Nations Unies comme s'appliquant à Gibraltar. Dans ce sens, la condamnation par la résolution 2353 (XXII) du référendum organisé à Gibraltar le 10 septembre 1967 s'applique également à la nouvelle Constitution, car ces deux actes sont identiques, tant pour ce qui est des objectifs auxquels ils prétendent que des circonstances qui entourent leur exécution.

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3) Les négociations avec l'Espagne. A aucun moment de l'élaboration de la Constitution, ni des entretiens engagés avec les habitants de Gibraltar à ce sujet, le Gouvernement britannique n'a consulté le Gouvernement espagnol sur l'un quelconque des aspects des instruments constitutionnels qu'il se proposait de promulguer. En fait, les négociations sur Gibraltar ont été interrompues à partir du 1er avril 1968, par décision du Gouvernement britannique qui a ainsi fait fi de l'invitation à négocier avec l'Espagne contenue dans quatre résolutions de l'Assemblée générale.

4) Les intérêts de la population. L'Assemblée générale des Nations Unies a recommandé que les intérêts de la population soient sauvegardés, non par le biais d'une action unilatérale de la Puissance administrante, mais grâce à la collaboration de l'Espagne et de la Grande-Bretagne par voie de négociations, menées conformément au principe juridique de la bonne foi. Il est en outre manifeste, comme on le montrera aux paragraphes 23 à 29 ci-dessous, que les droits énoncés dans la Constitution ne sont conférés qu'à une partie des habitants du territoire, à savoir ceux qui "appartiennent à Gibraltar". Le statut de gibraltarien étant accordé de façon très stricte par la Puissance administrante, la pleine protection constitutionnelle et la jouissance de droits politiques d'ailleurs limités ne profitent donc pas à un grand nombre de personnes qui, lors de la publication des instruments constitutionnels, résident ou travaillent habituellement à Gibraltar.

B) Obligations découlant du Traité d'Utrecht

5. L'unique titre juridique que reconnaisse l'Espagne pour ce qui est de la présence de la Grande-Bretagne à Gibraltar est le Traité d'Utrecht, du 13 juillet 1713, en vertu duquel le Roi d'Espagne cédait à la Grande-Bretagne "la pleine et entière propriété de la ville et du château de Gibraltar", sous réserve d'une série de limitations importantes et précises qui déterminent, depuis lors, le statut juridique international de Gibraltar. Ni le Décret ni la constitution ne mentionnent ce traité, le premier déclarant simplement en introduction que "Gibraltar fait partie des possessions de Sa Majesté". Ce mépris du Traité d'Utrecht dans les instruments constitutionnels de 1969 ne peut en aucun cas dégager la Grande-Bretagne des obligations qui découlent dudit traité.

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6. La clause finale, toujours pleinement en vigueur, de l'article X du Traité d'Utrecht, est ainsi libellée : "Au cas que la Couronne de la Grande-Bretagne jugeât à propos de donner, de vendre ou d'aliéner en aucune manière, la propriété de ladite ville de Gibraltar, on a de plus arrêté et conclu que la préférence en serait donnée à la Couronne d'Espagne, exclusivement à qui que ce puisse être". Cette disposition donne donc à l'Espagne un droit de regard, qui limite le droit de la Grande-Bretagne de disposer librement du territoire, droit normalement inhérent à la souveraineté de l'Etat. L'intention des parties est claire : aucune souveraineté, autre que la souveraineté espagnole, ne pourrait en aucun cas s'exercer sur Gibraltar, qui jusqu'à la date du Traité d'Utrecht faisait partie du territoire espagnol, si pour une raison quelconque la souveraineté britannique sous laquelle est placé le territoire venait à disparaître.

7. Il convient de noter, tout d'abord, que l'intention des parties, et, partant, le but du Traité, sont parfaitement compatibles avec les résolutions de l'Assemblée générale des Nations Unies. On peut même dire que ces résolutions viennent, en quelque sorte, compléter le Traité d'Utrecht. En effet, la clause de retour à l'Espagne soit s'appliquer, avec tous ses effets juridiques, au moment où la Grande-Bretagne renonce au droit de propriété sur la ville et la forteresse qui lui a permis d'instaurer une situation coloniale à Gibraltar. Dans ses résolutions, l'Assemblée générale demande à la Grande-Bretagne de renoncer à ce droit dans le cadre du processus de décolonisation des Nations Unies, pour assurer l'intégrité du territoire espagnol.

8. Il serait contraire au Traité d'Utrecht non seulement de céder Gibraltar à un Etat existant (ce qui n'est pas concevable aujourd'hui) mais aussi de créer à Gibraltar une entité territoriale quelle qu'elle soit jouissant d'une autonomie propre, même si elle doit conserver des liens spéciaux avec la Grande-Bretagne. En effet, au cas où certaines questions seraient placées hors de la compétence souveraine de la Grande-Bretagne, ou feraient l'objet d'un partage de compétence entre la Grande-Bretagne et l'entité de Gibraltar, on introduirait illégitimement, ne fût-ce que de façon partielle, un tiers étranger à la relation juridique entre l'Espagne et la Grande-Bretagne. Et au cas où l'indépendance de Gibraltar serait totale, ce qui n'est pas viable en pratique, la clause finale de l'article X du Traité d'Utrecht serait violée dans toutes ses dispositions puisqu'elle ne permet



l'établissement à Gibraltar d'une souveraineté autre que celle de l'Espagne ou de la Grande-Bretagne, que si l'Espagne a pu préalablement exercer son droit de rétablir sa pleine souveraineté sur le territoire.

9. Tout en maintenant la stricte autorité de la Grande-Bretagne sur Gibraltar, non seulement pour ce qui est de la forme mais quant au fond, la Constitution crée des institutions où il n'est pas difficile de découvrir les germes d'une situation analogue à celle décrite au paragraphe précédent et qui constitue une violation du Traité d'Utrecht. Un examen général de la Constitution révèle une intention de concilier deux éléments à première vue contradictoires.

a) La volonté du Royaume-Uni de maintenir sa souveraineté sur Gibraltar;

b) La mise en place progressive d'une entité dotée apparemment d'une personnalité propre, tant physique que politique. Cette entité est appelée, dans le préambule du Décret, le "peuple de Gibraltar", et dans la Constitution (une expression moins élégante du point de vue juridique mais qui ne laisse pas d'être très significative) les "personnes qui appartiennent à Gibraltar".

10. Il convient de rappeler, quoi que ce fait soit bien connu, le caractère de la population actuelle de Gibraltar : n'ayant pas à l'origine de liens avec le territoire, puisque la population autochtone espagnole fut expulsée immédiatement après la cession, cette population s'est établie à Gibraltar à des époques diverses et relativement récentes, au fur et à mesure des besoins et des vicissitudes de la base britannique. Le trait fondamental de ce "peuple" est de n'avoir aucune réalité ethnique ni sociologique puisqu'il a été constitué de toutes pièces en vertu du pouvoir discrétionnaire du Gouverneur britannique, sur la base d'un noyau initial de personnes nées à Gibraltar avant qu'une collectivité indienne ne soit autorisée à s'y établir de façon permanente. Ces caractéristiques apparaissent dans la Gibraltarien Status Ordinance de 1962, relative au statut de gibraltarien, qui a remplacé des dispositions antérieures tout aussi restrictives et à laquelle se réfère la Constitution pour déterminer les personnes "qui appartiennent à Gibraltar" [art. 17 3)].

11. En fait, pour jouir du statut de gibraltarien et pour bénéficier pleinement des dispositions de la Constitution relatives aux droits de l'homme et aux libertés fondamentales ainsi que des droits politiques qu'elle confère, il faut,

à moins d'être sujet britannique, être inscrit sur le registre prévu à cet effet. Les conditions à remplir pour être inscrit sur ce registre sont très complexes; en bref, est Gibraltarien toute personne qui appartient à l'une des catégories suivantes :

- a) Les personnes nées à Gibraltar avant le 30 juin 1925 inclus, et les descendants mâles légitimes des hommes de cette catégorie;
- b) Certains descendants légitimes des précédents, à condition, cependant, que leur père ou leur grand-père soit né à Gibraltar;
- c) Par décret du Gouverneur, les fils illégitimes des femmes de Gibraltar, les fils adoptifs des Gibraltariens et les fils légitimes des femmes de Gibraltar, s'ils satisfont à certaines conditions très strictes concernant la naissance à Gibraltar, l'âge, la moralité, le domicile permanent à Gibraltar, la connaissance de l'anglais, etc.;
- d) Par décret du Gouverneur, les personnes originaires de Grande-Bretagne, domiciliées à Gibraltar, si elles y ont résidé pendant au moins vingt-cinq ans et de façon continue pendant les dix années précédant la demande d'inscription;
- e) Les fils légitimes des hommes inscrits par décret du Gouverneur;
- f) Les épouses et veuves des hommes appartenant aux catégories précédentes.

Les personnes appartenant aux catégories c) et d) peuvent être déchues de la qualité de Gibraltarien, à la discrétion absolue du Gouverneur, pour avoir eu une conduite ou tenu des propos jugés déloyaux vis-à-vis du Souverain britannique.

12. Aux termes de la Constitution, seules les personnes appartenant à ces catégories très restreintes, à l'exclusion des autres résidents et de la population espagnole qui chaque jour quitte le territoire espagnol pour aller travailler à Gibraltar, doivent être consultées sur le destin de la ville, peuvent participer à l'élection de représentants aux institutions de Gibraltar et sont protégées contre la discrimination en matière de droits de l'homme et de libertés fondamentales. Ce serait là, semble-t-il, la seule base populaire de la nouvelle entité territoriale de Gibraltar qui se dessine dans les dispositions de la Constitution.

### III. ANALYSE DES DROITS CONFÉRÉS PAR LA CONSTITUTION

#### A) Subordination au système juridique du Royaume-Uni

13. L'ensemble du système juridique en vigueur à Gibraltar reste subordonné au système juridique constitutionnel britannique, de façon typiquement coloniale.

C'est ainsi que :

1) Le Parlement britannique sera habilité à décider de l'avenir de Gibraltar en tant que territoire britannique (Préambule du Décret). Cette disposition n'était pas nécessaire du point de vue juridique; elle n'a été incluse qu'à des fins purement politiques, étant donné qu'aux termes d'une convention constitutionnelle, d'après les avis les plus autorisés, la cession de territoires ne peut pas être considérée comme faisant partie de la prérogative royale et reste subordonnée à une décision du Parlement formulée sous forme de loi (voir Mc. Nair, "The Law of Treaties", 1961, p. 94 et suivantes).

2) Les lois du Parlement britannique et les décrets promulgués en exécution desdites lois ne sont pas modifiés par la Constitution et ne doivent pas être interprétés conformément à ladite Constitution (art. 1 et 2 1) de l'annexe 2 au Décret, "Dispositions transitoires").

3) Le Souverain britannique se réserve le pouvoir, en tant que de besoin, de promulguer des lois applicables à Gibraltar, y compris le pouvoir de modifier ou d'abroger la Constitution (art. 86).

4) Le Gouvernement britannique peut annuler toute loi qui a été approuvée par le Gouverneur de Gibraltar (art. 37).

14. Gibraltar est considéré expressément comme territoire britannique ("partie des possessions de Sa Majesté", ainsi qu'il est dit dans le préambule du Décret) situé en dehors du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord. Ses habitants continuent à être considérés comme "sujets britanniques, citoyens du Royaume-Uni et de ses Colonies". Seule la dénomination "Colonie de la Couronne", qui n'est pas utilisée depuis un certain temps, sera remplacée par celle de "Ville de Gibraltar".

B) Pouvoirs des autorités britanniques

15. Le critère fondamental de la nouvelle Constitution est le maintien, au sens le plus strict que ce terme peut avoir du point de vue juridique, de la souveraineté britannique sur Gibraltar et de la suprématie des autorités britanniques du Royaume-Uni sur toutes ses institutions. Si l'on ajoute à cela le fait que l'expression "possessions de Sa Majesté" indique que le territoire est soumis à la volonté du Parlement du Royaume-Uni, qu'il n'y a, dans ce Parlement, aucun représentant des habitants de Gibraltar, et que les aspects fondamentaux de la vie à Gibraltar, à savoir ceux qui sont liés à son caractère de base navale et à ses installations militaires, continuent à être en dehors du cadre de la Constitution et de la législation qui en assure l'application, il apparaît avec suffisamment de clarté que, à toutes fins légales et pratiques, Gibraltar reste une colonie britannique. C'est sans doute à cela que fait allusion la note du Secrétaire d'Etat qui est jointe en annexe à la Constitution et qui affirme laconiquement que "les instruments constitutionnels n'altèrent en rien le statut international de Gibraltar".

16. Un examen des chapitres II à VIII de la Constitution révèle que tous les pouvoirs sont détenus par les autorités britanniques, que ce soit par les organes gouvernementaux centraux du Royaume-Uni (Souverain, Parlement ou Secrétaire d'Etat), ou par le Gouverneur.

17. Le Gouverneur sera "Gouverneur et Commandant en chef de Gibraltar; il sera nommé par Sa Majesté, restera en fonctions aussi longtemps qu'il plaira à Sa Majesté et sera le représentant de Sa Majesté à Gibraltar" (art. 12). Son autorité à Gibraltar, qui est, comme on le verra, quasi absolue, est toujours subordonnée aux instructions qu'il reçoit du Gouverneur britannique (art. 19). Avec cette réserve, il apparaît que l'intention des auteurs de la Constitution est d'assimiler la fonction du Gouverneur et Commandant en chef à celle d'un chef d'Etat qui, dans ce cas, détiendrait des pouvoirs absolus.

18. Le Gouverneur adjoint est également nommé par le Gouvernement britannique (art. 21), de même que les juges principaux de Gibraltar (art. 58)

19. Les institutions créées par la Constitution, nominalement appelées à exercer les pouvoirs d'une entité politique distincte (législative, exécutive et judiciaire), sont soumises à un contrôle très strict de la part du Gouverneur.

Les principaux pouvoirs détenus par le Gouverneur sont les suivants :

1) En ce qui concerne le pouvoir législatif,

a) Il appartient au Gouverneur de sanctionner toutes les lois élaborées par l'Assemblée. Le Gouverneur peut les approuver ou les rejeter à sa discrétion, et il peut les soumettre au Gouverneur britannique (art. 33) pour que ce dernier prenne une décision définitive à leur sujet.

b) Il détient des pouvoirs spéciaux qui lui permettent de légiférer par lui-même, avec l'autorisation du Gouvernement britannique, dans tous les cas où l'Assemblée se refuse à le faire (art. 34). Ces pouvoirs s'étendent aux questions définies comme faisant partie des affaires intérieures.

c) Il peut, par une recommandation formulée à cet effet, obliger l'Assemblée à examiner des questions fiscales et financières [art. 35 1)].

d) L'Assemblée doit obtenir au préalable son autorisation pour examiner toute question qui n'est pas définie comme faisant partie des affaires intérieures [art. 35 2)].

e) Le Gouverneur convoque et dissout l'Assemblée (art. 38 et 39).

2) En ce qui concerne le pouvoir exécutif :

a) Le Gouverneur et Commandant en chef détient le pouvoir exécutif (art. 45).

b) Il nomme le Premier Ministre et les autres ministres, et désigne les ministres qui font partie du Conseil de Gibraltar (art. 46 à 48).

c) Il doit consulter le Conseil de Gibraltar au sujet des questions de politique générale; cette règle comporte cependant plusieurs exceptions importantes et il peut toujours aller à l'encontre de l'avis exprimé par le Conseil (art. 49 et 50). Il est intéressant de noter la composition de cet organe où siègent le Gouverneur adjoint, le Chef adjoint de la forteresse, le Procureur général et le Secrétaire des finances et du développement (tous fonctionnaires britanniques), ainsi que le Premier Ministre et quatre autres ministres (tous choisis parmi les représentants élus par la population, mais désignés par le Gouverneur).

d) Il doit consulter le Conseil des ministres et tenir compte de ses avis en ce qui concerne les questions faisant partie des affaires intérieures (art. 50). Cette disposition constitue la seule restriction légale aux pouvoirs absolus conférés au Gouverneur par la Constitution, mais son sens réel perd de son importance si l'on considère 1) que la définition des questions intérieures dépend du Gouvernement britannique, et qu'en cas de doute, la décision relève de la compétence discrétionnaire du Gouverneur et ne peut pas être contestée devant un tribunal quelconque (art. 55); 2) que le Gouverneur détient des pouvoirs spéciaux qui lui permettent de légiférer en ce qui concerne les questions intérieures [art. 34 2)]]; 3) que lorsqu'il existe un lien entre une question intérieure et une question extérieure, le Gouverneur-Commandant en chef fait usage de son pouvoir discrétionnaire [art. 50 3) et 4)]]; 4) que le Gouverneur contrôle les finances publiques et l'économie de Gibraltar, qu'il exerce ce contrôle directement ou par l'intermédiaire du Secrétaire des finances et du Développement, fonctionnaire faisant partie de la hiérarchie coloniale britannique; 5) que tous les aspects internationaux des questions intérieures sont, par définition, des questions non intérieures parce qu'ils relèvent de la compétence du Gouverneur (voir note du Secrétaire d'Etat au Gouverneur), et 6) que le Conseil des ministres doit lui soumettre copie de tous les documents qu'il est chargé d'examiner, ainsi que des comptes rendus de ses délibérations (art. 53), ce qui permet au Gouverneur d'exercer un contrôle politique efficace sur cet organe.

3) Pouvoirs de nomination. Le Gouverneur et Commandant en chef nomme :

a) Le Président (Speaker) de l'Assemblée (art. 26).

b) Le Premier Ministre et les autres ministres [art. 47 2) et 3)]], qui sont placés à la tête des différents ministères chargés des affaires intérieures (art. 48).

c) Les juges supplémentaires dont la nomination lui semble opportune (art. 59). Le Gouverneur est également habilité à entreprendre la procédure de destitution des juges (art. 60).

d) Tous les fonctionnaires publics, sur lesquels il exerce le pouvoir disciplinaire (art. 71).

/...

4) Autres pouvoirs :

a) Pouvoir de disposer de biens immeubles au nom du Souverain (art. 75),  
prérogative particulièrement importante si l'on tient compte de la configuration  
physique spéciale de Gibraltar et de son régime de propriété foncière, étant donné  
que plus des deux tiers du territoire appartiennent à la Couronne.

b) Exercice du droit de grâce (art. 76).

C) Les droits et libertés fondamentales de l'individu

20. Le chapitre premier de la Constitution qui traite des droits et libertés  
fondamentales de l'individu ne figurait pas dans les instruments constitutionnels  
relatifs à Gibraltar établis antérieurement. Il s'inspire du Titre I de la  
Convention européenne des droits de l'homme du 4 novembre 1950, ratifiée par le  
Royaume-Uni le 8 mars 1951 et applicable à Gibraltar. Tous les droits reconnus  
par la Convention sont repris dans la Constitution, à l'exception du droit de se  
marier et de fonder une famille, énoncé à l'article 12 de la Convention. Certains  
de ces droits ont été modifiés, et il convient de souligner deux différences  
importantes.

21. L'article 2 de la Convention européenne des droits de l'homme reconnaît le  
droit de toute personne à la vie, lequel droit est repris par la Constitution dans  
son article 2. Parmi les exceptions au caractère absolu de ce droit, la  
Convention dispose que la mort peut être infligée dans les cas où elle résulte  
"d'un recours à la force rendu absolument nécessaire pour assurer la défense de  
toute personne contre la violence illégale". La Constitution, moins stricte,  
stipule que la mort peut être infligée dans les cas où elle résulte "d'un recours  
à la force raisonnablement justifié pour assurer la défense de toute personne contre  
la violence ou pour assurer la défense de la propriété". (Les différences  
principales sont soulignées.)

22. A l'article 5 de la Constitution, on a repris le principe de l'article 3 de  
la Convention européenne des droits de l'homme, selon lequel "nul ne peut être  
soumis à la torture ni à des peines ou traitements inhumains ou dégradants". Ce  
principe, absolu dans la Convention, fait l'objet d'une restriction importante dans

la Constitution, qui dispose qu'il est possible de ne pas considérer comme torture ou comme traitement inhumain ou dégradant un "châtiment, de quelque nature que ce soit, infligé en application de la loi à Gibraltar immédiatement avant l'entrée en vigueur du présent article" de la Constitution [art. 5 2)7].

23. La caractéristique la plus marquante et la plus contestable de cette "Déclaration des droits et libertés fondamentales de l'individu" consiste dans le fait qu'elle offre de nombreuses possibilités légales de discrimination, bien qu'elle proclame formellement le contraire. La Convention européenne des droits de l'homme, dans son article 14, consacre en termes absolus et sans réserve aucune le principe de la non-discrimination "fondée notamment sur le sexe, la race, la couleur, la langue, la religion, les opinions politiques ou toutes autres opinions, l'origine nationale ou sociale, l'appartenance à une minorité nationale, la fortune, la naissance ou toute autre situation".

24. Il convient de noter, tout d'abord, que l'énoncé des motifs de discrimination qu'il est interdit d'invoquer en vertu de la Constitution diffère de l'énumération figurant dans la Convention européenne. En effet, dans la Constitution, il n'est fait nulle part mention de la langue, de l'appartenance à une minorité nationale, de la fortune et de la naissance, ni du concept global de "toute autre situation". Il est évident que la langue comme l'appartenance à une minorité nationale peuvent revêtir une importance particulière à Gibraltar en tant que motifs de discrimination, et il eût été plus logique de les faire figurer parmi les motifs interdits.

25. Diverses dispositions du chapitre premier offrent la possibilité d'appliquer légalement de véritables mesures de discrimination. Les plus importantes d'entre elles sont mentionnées ci-après.

26. En premier lieu, on peut imposer des dispositions légales discriminatoires, par leur nature même ou par leurs effets, et on peut agir de manière discriminatoire dans l'exercice d'une fonction ou d'un pouvoir public contre toutes les personnes qui ne jouissent pas du statut privilégié "de personne appartenant à Gibraltar" (décrit aux par. 10 et 11 du présent document). On peut arriver à ce résultat en invoquant les dispositions des alinéas 4) et 6), en liaison avec les alinéas 1) et 2) de l'article 14 de la Constitution.

/...



27. En second lieu, il est possible de discriminer, lors de l'élaboration des lois ou au moment de leur application, en mettant en pratique les dérogations, permises par la Constitution elle-même, aux droits à la protection du domicile et d'autres biens, à la liberté de conscience, à la liberté d'expression, à la liberté de réunion et d'association, à la liberté d'ouvrir des écoles et à la liberté de mouvement [art. 14 7)]. Cela signifie qu'il sera possible de respecter ces droits dans le cas de certaines personnes, et de ne pas les reconnaître à d'autres en raison de leur race, de leur classe sociale, de leur pays d'origine, de leurs opinions politiques, de leur couleur ou de leur religion [art. 14 3)].

28. En troisième lieu, des restrictions sont imposées en ce qui concerne le droit de tout membre d'un syndicat, s'il ne réside pas à Gibraltar, d'exercer des fonctions au sein du syndicat et d'être membre de son comité de direction, y compris de prendre part à un vote sur une décision quelconque d'un syndicat en vue du lancement d'un ordre de grève ou de l'octroi d'un soutien financier aux grévistes [alin. e) de l'art. 11 2)]. On sait que la grande majorité des travailleurs de Gibraltar sont jusqu'ici des Espagnols à qui on a refusé la permission de résider ou même de passer la nuit à Gibraltar en application de l'"Immigration Control Ordinance", du 1er juin 1962, et de dispositions complémentaires.

29. En quatrième lieu, on rappelle expressément que des restrictions sont imposées à la liberté de mouvement et au droit de résider à Gibraltar dans le cas d'une personne qui ne jouit pas du statut de gibraltarien et que les autorités sont habilitées à la refouler ou à l'expulser de Gibraltar sans qu'elle puisse invoquer la protection de la Constitution [alin. b) de l'art. 13 3)].

#### IV. CONCLUSIONS

30. En se fondant sur les considérations qui précèdent, on peut formuler les conclusions suivantes :

1) La promulgation du Décret et de la Constitution de Gibraltar de 1969 constitue un acte accompli au mépris des demandes adressées à la Grande-Bretagne par l'Assemblée générale de l'Organisation des Nations Unies.

2) Le Décret et la Constitution maintiennent le statut colonial de Gibraltar, fondé sur une soumission complète au Royaume-Uni, tout en conférant au territoire des caractéristiques tendant à en faire une entité politique distincte, dont la création constituerait une violation du Traité d'Utrecht.

3) La Constitution reconnaît les dispositions législatives concernant le "statut de gibraltarien", qui ont un caractère restrictif et dont l'application est contrôlée par le Gouverneur. Seules les personnes qui possèdent ce statut sont considérées comme constituant le "peuple de Gibraltar" ou étant des "personnes appartenant à Gibraltar" et elles sont seules à jouir des droits politiques et d'une entière protection constitutionnelle.

4) Toutes les lois en vigueur à Gibraltar continuent à être subordonnées au système juridique constitutionnel britannique.

5) La Constitution prévoit que tous les pouvoirs restent concentrés dans les mains des autorités britanniques, à l'exception - et encore ne s'agit-il que d'une exception partielle - des questions définies comme questions intérieures par le Gouvernement britannique. Bien que le Gouverneur puisse toujours imposer des lois concernant ces questions, il devra, en tant que pouvoir exécutif, agir à leur sujet en accord avec les ministres gibraltariens.

6) En ce qui concerne les droits et libertés fondamentales de l'individu, la Constitution permet d'exercer une discrimination réelle contre tous ceux qui ne jouissent pas du statut de "personne appartenant à Gibraltar".

Madrid, le 13 juin 1969

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ANNEXE II

SUPPLEMENT A LA GIBRALTAR GAZETTE

No 1195 du 30 mai 1969

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LE GIBRALTAR CONSTITUTION ORDER DE 1969

NOTE ADRESSEE A SON EXCELLENCE LE GOUVERNEUR  
PAR LE SECRETAIRE D'ETAT



## THE GIBRALTAR CONSTITUTION ORDER 1969

*At the Court at Holyroodhouse*

THE 23rd DAY OF MAY 1969

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

Whereas Gibraltar is part of Her Majesty's dominions and Her Majesty's Government have given assurances to the people of Gibraltar that Gibraltar will remain part of Her Majesty's dominions unless and until an Act of Parliament otherwise provides, and furthermore that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes:

And whereas Her Majesty is pleased to make provision for a new Constitution for Gibraltar:

Now, therefore, Her Majesty, by virtue and in exercise of all the powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order may be cited as the Gibraltar Constitution Order 1969.

*Citation,  
commence-  
ment and  
interpreta-  
tion.*

(2) This Order shall be published in the Gazette and shall come into operation on the day on which it is so published.

(3) In this Order—

“the appointed day” means such day (being later than the day prescribed for polling at the general election of Elected Members of the Assembly next following the commencement of this Order) as may be prescribed by the Governor;

“the Constitution” means the Constitution set out in Annex 1 to this Order;

“the existing Order” means the Gibraltar (Constitution) Order 1964(a).

(4) The provisions of sections 79 and 86 of the Constitution shall apply for the purposes of interpreting this section, the next following section and Annex 2 to this Order and otherwise in relation thereto as they apply for the purpose of interpreting and in relation to the Constitution.

*Establish-  
ment of  
Constitution.*

2. With effect from the appointed day—

(a) Gibraltar shall be known as the City of Gibraltar;

(b) the Constitution set out in Annex 1 to this Order shall (subject to the transitional provisions set out in Annex 2 to this Order) have effect in Gibraltar; and

(c) the existing Order and the Gibraltar Royal Instructions 1964(a) shall be revoked:

Provided that, if it is so prescribed by the Governor, any provision of the Constitution (not being a provision of Chapter III or Chapter IV) that he may specify shall come into effect on, and any provision of the existing Order that he may specify shall be revoked with effect from, such earlier day (or, in the case of sections 63, 64, 65, 66 and 67 of the Constitution, such earlier or later day) as he may specify.

*W. G. Agnew*

(a) 1964 II, p. 3143.

(a) 1964 II, p. 3162.

## ANNEX 1 TO THE ORDER

### THE CONSTITUTION OF GIBRALTAR

#### ARRANGEMENT OF SECTIONS

#### Section 2.

#### CHAPTER I

##### PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

##### Section

1. Fundamental rights and freedoms of the individual.
2. Protection of right to life.
3. Protection of right to personal liberty.
4. Protection from slavery and forced labour.
5. Protection from inhuman treatment.
6. Protection from deprivation of property.
7. Protection for privacy of home and other property.
8. Provisions to secure protection of law.
9. Protection of freedom of conscience.
10. Protection of freedom of expression.
11. Protection of freedom of assembly and association.
12. Protection of freedom to establish schools.
13. Protection of freedom of movement.
14. Protection from discrimination on the grounds of race, etc.
15. Enforcement of protective provisions.
16. Provisions for periods of public emergency.
17. Interpretation and savings.

#### CHAPTER II

##### THE GOVERNOR AND THE DEPUTY GOVERNOR

18. Office of Governor.
19. Powers and duties of Governor.
20. Governor's taking of oath.
21. Office of Deputy Governor.
22. Succession to government.
23. Deputy to Governor.

#### CHAPTER III

##### THE LEGISLATURE

##### *Part I—The Gibraltar House of Assembly*

##### Section

24. Legislature of Gibraltar.
25. Gibraltar House of Assembly.
26. Speaker.
27. Qualifications for Elected Members.
28. Disqualifications for Elected Members.
29. Tenure of office of Elected Members.
30. Vacation of seat on sentence, etc.
31. Determination of questions as to membership.

##### *Part II—Legislation and Procedure in the Gibraltar House of Assembly*

32. Power to make laws.
33. Mode of exercise of legislative power.
34. Governor's special legislative powers.
35. Bills and motions.
36. Privileges of Assembly and members.
37. Disallowance of laws.
38. Sessions.
39. Prorogation and dissolution.
40. Rules of procedure.
41. Oath of allegiance.
42. Presiding in Assembly.
43. Quorum, etc.
44. Voting.

#### CHAPTER IV

##### THE EXECUTIVE

45. Executive authority of Gibraltar.
46. Gibraltar Council.
47. Council of Ministers.
48. Assignment of business to Ministers.
49. Consultation with Gibraltar Council.
50. Consultation with Council of Ministers.
51. Proceedings in Gibraltar Council.
52. Proceedings in Council of Ministers.
53. Governor to be kept informed.
54. Oaths of members of Gibraltar Council and Council of Ministers.
55. Defined domestic matters.

#### CHAPTER V

##### THE JUDICATURE

56. Supreme Court.
57. Court of Appeal.
58. Appointment of judges.
59. Additional judges.
60. Tenure of office of judges.
61. Oaths to be taken by judges.
62. Appeals to Her Majesty in Council.

#### CHAPTER VI

##### FINANCE

63. Consolidated Fund.
64. Withdrawals from Consolidated Fund or other public funds.
65. Authorisation of expenditure.
66. Authorisation of expenditure in advance of appropriation.
67. Contingencies Fund.
68. Remuneration of certain officers.
69. Public debt.
70. Audit.

## CHAPTER VII

### THE PUBLIC SERVICE

71. Power to constitute offices and make appointments, etc.
72. Public Service Commission.
73. Public Service Commission to advise Governor.
74. Performance of functions of Public Service Commission.

## CHAPTER VIII

### MISCELLANEOUS

75. Powers to dispose of land.
76. Powers of pardon, etc.
77. Powers of Attorney-General in relation to criminal proceedings.
78. Mayor of Gibraltar.
79. Interpretation.
80. References to public office, etc.
81. Acting appointments.
82. Re-appointments and concurrent appointments.
83. Resignations.
84. Saving for jurisdiction of courts.
85. Removal from office.
86. Power reserved to Her Majesty.

## SCHEDULE TO THE CONSTITUTION

### OATHS

## CHAPTER I

### PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

1. It is hereby recognised and declared that in Gibraltar there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms, namely—

Fundamental  
rights and  
freedoms  
of the  
individual.

- (a) the right of the individual to life, liberty, security of the person and the protection of the law ;
- (b) freedom of conscience, of expression, of assembly and association and of freedom to establish schools ; and
- (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,

and the provisions of this Chapter shall have effect for the purpose of affording protection to the said rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.

2.—(1) No person shall be deprived of his life intentionally save in execution of the sentence of a court in respect of a criminal offence of which he has been convicted.

Protection  
of right  
to life.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably justifiable—

- (a) for the defence of any person from violence or for the defence of property ;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained ;
- (c) for the purpose of suppressing a riot, insurrection or mutiny ; or
- (d) in order to prevent the commission by that person of a criminal offence,

or if he dies as the result of a lawful act of war.

Protection  
of right to  
personal  
liberty.

3.—(1) No person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases, that is to say—

- (a) in consequence of his unfitness to plead to a criminal charge or in execution of the sentence or order of a court, whether in Gibraltar or elsewhere, in respect of a criminal offence of which he has been convicted ;
- (b) in execution of the order of a court punishing him for contempt of that court or of another court ;
- (c) in execution of the order of a court made to secure the fulfilment of any obligation imposed on him by law ;
- (d) for the purpose of bringing him before a court in execution of the order of a court ;
- (e) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence ;
- (f) in the case of a person who has not attained the age of eighteen years, for the purpose of his education or welfare ;
- (g) for the purpose of preventing the spread of an infectious or contagious disease ;
- (h) in the case of a person who is, or is reasonably suspected to be, of unsound mind or addicted to drugs or alcohol for the purpose of his care or treatment or the protection of the community ;
- (i) for the purpose of preventing the unlawful entry of that person into Gibraltar, or for the purpose of effecting the expulsion, extradition or other lawful removal of that person from Gibraltar or the taking of proceedings relating thereto.

(2) Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands, of the reasons for his arrest or detention.

(3) Any person who is arrested or detained—

- (a) for the purpose of bringing him before a court in execution of the order of a court ; or
- (b) upon reasonable suspicion of his having committed, or being about to commit, a criminal offence,

and who is not released, shall be brought without undue delay before a court ; and if any person arrested or detained as mentioned in

paragraph (b) of this subsection is not tried within a reasonable time, then, without prejudice to any further proceedings that may be brought against him, he shall be released either unconditionally or upon reasonable conditions, including in particular such conditions as are reasonably necessary to ensure that he appears at a later date for trial or for proceedings preliminary to trial.

(4) Any person who is unlawfully arrested or detained by any other person shall be entitled to compensation therefor from that other person.

4.—(1) No person shall be held in slavery or servitude.

(2) No person shall be required to perform forced labour.

(3) For the purposes of this section, the expression "forced labour" does not include—

(a) any labour required in consequence of the sentence or order of a court ;

(b) labour required of any person while he is lawfully detained that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interests of hygiene or for the maintenance of the place at which he is detained ;

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, any labour that that person is required by law to perform in place of such service ; or

(d) any labour required during a period of public emergency or in the event of any other emergency or calamity that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable, in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation.

5.—(1) No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorises the infliction of any description of punishment that was lawful in Gibraltar immediately before this section came into force.

6.—(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where the following conditions are satisfied, that is to say—

(a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such a manner as to promote the public benefit ; and

(b) there is reasonable justification for the causing of any hardship that may result to any person having an interest in or right over the property ; and

Protection  
from slavery  
and forced  
labour.

Protection  
from  
inhuman  
treatment.

Protection  
from  
deprivation  
of property.

(c) provision is made by a law applicable to that taking of possession or acquisition—

(i) for the prompt payment of adequate compensation ; and

(ii) securing to any person having an interest in or right over the property a right of access to the Supreme Court, whether direct or on appeal from any other authority, for the determination of his interest or right, the legality of the taking of possession or acquisition of the property, interest or right, and the amount of any compensation to which he is entitled, and for the purpose of obtaining prompt payment of that compensation.

(2) No person who is entitled to compensation under this section shall be prevented from remitting, within a reasonable time after he has received any amount of that compensation, the whole of that amount (free from any deduction, charge or tax imposed in respect of its remission) to any country of his choice outside Gibraltar.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the last preceding subsection to the extent that the law in question authorises—

(a) the attachment, by order of a court, of any amount of compensation to which a person is entitled in satisfaction of the judgment of a court or pending the determination of civil proceedings to which he is a party ;

(b) the imposition of reasonable restrictions on the manner in which any amount of compensation is to be remitted ;

(c) the imposition of—

(i) any deduction, charge or tax ; or

(ii) any obligation or restriction relating to exchange control,

that is imposed generally in respect of the remission of moneys from Gibraltar and that is not discriminatory within the meaning of section 14(2) of this Constitution.

(4) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) of this section—

(a) to the extent that the law in question makes provision for the taking of possession or acquisition of property—

(i) in satisfaction of any tax, rate or due ;

(ii) by way of penalty for breach of the law or forfeiture or seizure in consequence of a breach of the law ;

(iii) as an incident of a lease, tenancy, mortgage, charge, sale, pledge or contract ;

(iv) in the execution of the judgment, or order of a court ;

(v) by reason of its being in a dangerous state or injurious to the health of human beings, animals, trees or plants ;

(vi) in consequence of any law with respect to the limitation of actions or acquisitive prescription ;

(vii) for so long only as may be necessary for the purposes of any examination, investigation, trial or inquiry or, in the case of land, the carrying out thereon—

(A) of work of soil conservation or the conservation of other natural resources ; or

(B) of agricultural development or improvement that the owner or occupier of the land has been required, and has, without reasonable and lawful excuse, refused or failed to carry out ;

(viii) by way of the taking of a sample for the purposes of any law ; or

(ix) where the property consists of an animal upon its being found trespassing or straying ;

(b) to the extent that the law in question makes provision for the taking of possession or acquisition of—

(i) enemy property ;

(ii) property of a person who has died or is unable, by reason of legal incapacity, to administer it himself, for the purpose of its administration for the benefit of the persons entitled to the beneficial interest therein ;

(iii) property of a person adjudged bankrupt or a body corporate in liquidation, for the purpose of its administration for the benefit of the creditors of the bankrupt or body corporate and, subject thereto, for the benefit of other persons entitled to the beneficial interest in the property ; or

(iv) property subject to a trust, for the purpose of vesting the property in persons appointed as trustees under the instrument creating the trust or by a court or, by order of a court, for the purpose of giving effect to the trust.

(5) Nothing in this section shall affect the making or operation of any law so far as it provides for the vesting in the Crown the ownership of underground water or unextracted minerals.

(6) Nothing in this section shall affect the making or operation of any law for the compulsory taking of possession in the public interest of any property, or the compulsory acquisition in the public interest of any property, or the compulsory acquisition in the public interest of any interest in or right over property, where that property, interest or right is held by a body corporate established by law for public purposes in which no moneys have been invested other than moneys provided from public funds.

7.—(1) Except with his own consent, no person shall be subjected to the search of his person or his property or the entry by others on his premises.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development or utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit ;

(b) for the purpose of protecting the rights or freedoms of other persons ;

(c) to enable an officer or agent of the Government, a local government authority, or a body corporate established by law for public purposes, to enter on the premises of any person in order to value those premises for the purpose of any tax, rate or due, or in order to carry out work connected with any property that is lawfully on those premises and that belongs to the Government, that local government authority or that body corporate, as the case may be ; or

(d) to authorise, for the purpose of enforcing the judgment or order of a court in any civil proceedings, the search of any person or property by order of a court or the entry upon any premises by such order,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Provisions  
to secure  
protection  
of law.

8.—(1) If any person is charged with a criminal offence, then, unless the charge is withdrawn, the case shall be afforded a fair hearing within a reasonable time by an independent and impartial court established by law.

(2) Every person who is charged with a criminal offence—

(a) shall be presumed to be innocent until he is proved or has pleaded guilty ;

(b) shall be informed as soon as reasonably practicable, in a language that he understands and in detail, of the nature of the offence ;

(c) shall be given adequate time and facilities for the preparation of his defence ;

(d) shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense ;

(e) shall be afforded facilities to examine, in person or by his legal representative, the witnesses called by the prosecution before any court, and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before that court on the same conditions as those applying to witnesses called by the prosecution ; and

(f) shall be permitted to have without payment the assistance of an interpreter if he cannot understand the language used at the trial of the offence,

and, except with his own consent, the trial shall not take place in his absence unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the court has ordered him to be removed and the trial to proceed in his absence.

(3) When a person is tried for any criminal offence, the accused person or any person authorised by him in that behalf shall, if he so requires and subject to payment of such reasonable fee as may be specified by or under any law, be given within a reasonable time after judgment a copy for the use of the accused person of any record of the proceedings made by or on behalf of the court.

Protection  
for privacy  
of home  
and other  
property.



(4) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence that is severer in degree or description than the maximum penalty that might have been imposed for that offence at the time when it was committed.

(5) No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial of that offence, save upon the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

(6) No person shall be tried for a criminal offence if he shows that he has been granted a pardon, by competent authority, for that offence.

(7) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(8) Any court or other authority required or empowered by law to determine the existence or extent of any civil right or obligation shall be established by law and shall be independent and impartial; and where proceedings for such a determination are instituted by any person before such a court or other authority, the case shall be given a fair hearing within a reasonable time.

(9) Except with the agreement of all the parties thereto, all proceedings of every court and proceedings for the determination of the existence or extent of any civil right or obligation before any other authority, including the announcement of the decision of the court or other authority, shall be held in public.

(10) Nothing in the last foregoing subsection shall prevent the court or other authority from excluding from the proceedings (except the announcement of the decision of the court or other authority) persons other than the parties thereto and their legal representatives to such extent as the court or other authority—

(a) may by law be empowered so to do and may consider necessary or expedient in circumstances where publicity would prejudice the interests of justice, or in interlocutory proceedings, or in the interests of public morality, the welfare of persons under the age of eighteen years or the protection of the private lives of persons concerned in the proceedings; or

(b) may by law be empowered or required to do so in the interests of defence, public safety or public order.

(11) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of—

(a) subsection (2)(a) of this section, to the extent that the law in question imposes upon any person charged with a criminal offence the burden of proving particular facts;

(b) subsection (2)(e) of this section, to the extent that the law in question imposes conditions that must be satisfied if witnesses called to testify on behalf of an accused person are to be paid their expenses out of public funds;

(c) subsection (5) of this section, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of that force, so, however, that any court so trying such a member and convicting him shall in sentencing him to any punishment take into account any punishment awarded him under that disciplinary law.

(12) In this section—

“criminal offence” means a crime, misdemeanour or contravention punishable under the law of Gibraltar;

“legal representative” means a person lawfully in or entitled to be in Gibraltar and entitled to practise in Gibraltar as a barrister or, except in relation to proceedings before a court in which a solicitor has no right of audience, as a solicitor.

Protection of  
freedom of  
conscience.

9.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) Except with his own consent (or, if he is under the age of eighteen years, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.

(3) No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Gibraltar, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.

(4) No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.

(5) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of subsection (1) or (3) of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief,

except so far as that provision, or as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

10.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.

Protection of  
freedom of  
expression.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health ;

(b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the courts, or regulating telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments ; or

(c) for the imposition of restrictions upon public officers, except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

11.—(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of assembly and association, that is to say, his right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his interests.

Protection of  
freedom of  
assembly and  
association.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health ;

(b) for the purpose of protecting the rights or freedoms of other persons ;

(c) for the imposition of restrictions upon public officers ;

(d) for the registration of trades unions in a register established by or under a law and for imposing reasonable conditions relating to the procedure for entry on such a register (including conditions as to the minimum number and qualifications of persons necessary to constitute a trade union qualified for registration) ; or

(e) for the imposition of restrictions upon persons who are not resident in Gibraltar with respect to the holding of office in a trade union or membership of the general committee of management of a trade union or with respect to voting in any proceedings of a trade union relating to or connected with the calling or financing of a strike,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

Protection of  
freedom to  
establish  
schools.

12.—(1) No religious denomination and no religious, social, ethnic or cultural association or group shall be prevented from establishing and maintaining schools at its own expense.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of the preceding subsection to the extent that the law in question makes provision—

(a) in the interests of defence, public safety, public order, public morality or public health ; or

(b) for regulating such schools in the interests of persons receiving instruction therein,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

(3) No person shall be prevented from sending his child (including a person of whom he is the guardian) to any such school by reason only that the school is not a school established or maintained by the Government.

Protection of  
freedom of  
movement.

13.—(1) No person shall be deprived of his freedom of movement, and for the purposes of this section the said freedom means the right to move freely throughout Gibraltar, the right to reside in any part of Gibraltar, the right to enter Gibraltar, the right to leave Gibraltar and immunity from expulsion from Gibraltar.

(2) Any restriction on a person's freedom of movement that is involved in his lawful detention shall not be held to be inconsistent with or in contravention of this section.

(3) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—

(a) for the imposition of restrictions, by order of a court, on the movements or residence within Gibraltar of any person either in consequence of his having been found guilty of a criminal offence under the law of Gibraltar or for the purpose of ensuring that he appears before a court at a later date for trial in respect of such a criminal offence or for proceedings preliminary to trial or for proceedings relating to his extradition or other lawful removal from Gibraltar ;

(b) for the imposition of restrictions on the movement or residence within Gibraltar of any person who does not belong to Gibraltar or the exclusion or expulsion from Gibraltar of any such person ;

(c) for the imposition of restrictions on the acquisition or use by any person of land or other property in Gibraltar ;

(d) for the imposition of restrictions on the movement or residence in Gibraltar or on the right to leave Gibraltar of persons generally or any class of persons that are reasonably required—

(i) in the interests of defence, public safety, public order, public morality or public health ; or

(ii) for the purpose of protecting the rights and freedoms of other persons,

except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society ;

(e) for the removal of a person from Gibraltar to be tried outside Gibraltar for a criminal offence or to undergo imprisonment outside Gibraltar in execution of the sentence of a court in respect of a criminal offence of which he has been convicted ; or

(f) for the imposition of restrictions on the right of any person to leave Gibraltar in order to secure the fulfilment of any obligations imposed upon that person by law, except so far as the provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society.

14.—(1) Subject to the provisions of subsections (4), (5) and (7) of this section, no law shall make any provision that is discriminatory either of itself or in its effect.

Protection from discrimination on the grounds of race, etc.

(2) Subject to the provisions of subsections (6), (7) and (8) of this section, no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority.

(3) In this section, the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description.

(4) Subsection (1) of this section shall not apply to any law so far as that law makes provision—

(a) for the appropriation of revenues or other funds of Gibraltar

(b) with respect to persons who do not belong to Gibraltar ;

(c) for the application, in the case of persons of any such description as is mentioned in the last preceding subsection (or of persons connected with such persons), of the law with respect to adoption, marriage, divorce, burial, devolution of property on death or other like matters that is the personal law applicable to persons of that description ; or

(d) for conferring the status of a Gibraltarian for the purposes of the Gibraltarian Status Ordinance<sup>(a)</sup> upon any person or for withdrawing that status from any person or for deeming a firm or company to be under non-Gibraltarian control for the purposes of the Trade Restriction Ordinance<sup>(b)</sup>.

(5) Nothing contained in any law shall be held to be inconsistent with or in contravention of subsection (1) of this section to the extent that—

(a) it requires a person to belong to Gibraltar or to possess any other qualification (not being a qualification specifically relating to race, caste, place of origin, political opinions, colour or creed)

(a) Chapter 70 of the Laws of Gibraltar.  
(b) Chapter 152 of the Laws of Gibraltar.

in order to be eligible for appointment to any office in the public service or in a disciplined force or in the service of a local government authority or in a body corporate established by law for public purposes ; or

(b) it makes reasonable provision for ensuring that persons holding office as aforesaid and giving instruction in schools maintained by the Government of Gibraltar and attended wholly or mainly by pupils of a particular religious community or denomination are acceptable on moral and religious grounds to that religious community or denomination, or to the authorities of that community or denomination.

(6) Subsection (2) of this section shall not apply to anything which is expressly or by necessary implication authorised to be done by any such provision of law as is referred to in subsection (4) or (5) of this section.

(7) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision whereby persons of any such description as is mentioned in subsection (3) of this section may be subjected to any restriction on the rights and freedoms guaranteed by sections 7, 9, 10, 11, 12 and 13 of this Constitution, being such a restriction as is authorised by section 7(2), 9(5), 10(2), 11(2), 12(2) or 13(3) of this Constitution, as the case may be.

(8) Subsection (2) of this section shall not affect any discretion relating to the institution, conduct or discontinuance of civil or criminal proceedings in any court that is vested in any person by or under this Constitution or any other law.

Enforcement of protective provisions.

15.—(1) If any person alleges that any of the foregoing provisions of this Chapter has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter that is lawfully available, that person may apply to the Supreme Court for redress.

(2) The Supreme Court shall have original jurisdiction to hear and determine any application made by any person in pursuance of the preceding subsection, and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the foregoing provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The Supreme Court shall have such powers in addition to those conferred by the preceding subsection as may be prescribed for the purpose of enabling that court more effectively to exercise the jurisdiction conferred upon it by this section.

(4) The Chief Justice may make rules with respect to the practice and procedure of the Supreme Court in relation to the jurisdiction and powers conferred upon it by or under this section (including rules with respect to the time within which applications to that court may be made).

Provisions for periods of public emergency.

16.—(1) Nothing contained in or done under the authority of any regulation made under the Emergency Powers Order in Council 1939<sup>(a)</sup>, shall be held to be inconsistent with or in contravention of section 3,

(a) See S.I. 1952 I, at p. 621.

section 4(2) or any provision of sections 7, 9, 10, 11 or 12, section 13(1) or (3) or section 14 of this Constitution to the extent that the regulation in question makes in relation to any period of public emergency provision, or authorises the doing during any such period of anything, that is reasonably justifiable in the circumstances of any situation arising or existing during that period for the purpose of dealing with that situation.

(2) Where any person who is lawfully detained in pursuance only of such a regulation as is referred to in the preceding subsection so requests at any time during the period of that detention (but if he has already made such a request during that period not earlier than six months after he last made such a request during that period), his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person, entitled to practise as a barrister in Gibraltar, appointed by the Chief Justice.

(3) On any review by a tribunal in pursuance of this section of the case of a detained person, the tribunal may make recommendations concerning the necessity or expediency of continuing his detention to the authority by which it was ordered but, unless it is otherwise prescribed, that authority shall not be obliged to act in accordance with any such recommendations.

17.—(1) In this Chapter, unless the context otherwise requires—

Interpretation and savings.

“child” includes a stepchild and a child adopted in a manner recognised by law;

“contravention”, in relation to any requirement, includes a failure to comply with that requirement, and cognate expressions shall be construed accordingly;

“court” means any court of law having jurisdiction in Gibraltar, including Her Majesty in Council, but excepting, save in sections 2 and 4 of this Constitution and this section, a court established by a disciplinary law;

“member”, in relation to a disciplined force, includes any person who, under the law regulating the discipline of that force, is subject to that discipline.

(2) In this Chapter “a period of public emergency” means any period during which—

(a) Her Majesty is at war; or

(b) the provisions of Part II of the Emergency Powers Order in Council 1939 are in operation in Gibraltar.

(3) For the purposes of this Chapter a person shall be deemed to belong to Gibraltar if that person is a Gibraltarian for the purposes of the Gibraltarian Status Ordinance:

Provided that a company or firm shall be deemed not to belong to Gibraltar if (but only if) it is deemed to be under non-Gibraltarian control for the purposes of the Trade Restriction Ordinance.

(4) In relation to any person who is a member of a disciplined force raised in accordance with such provisions as may be prescribed by the Legislature, nothing contained in or done under the authority of the

disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter other than sections 2, 4 and 5.

(5) In relation to any person who is a member of a disciplined force raised otherwise than as aforesaid and lawfully present in Gibraltar, nothing contained in or done under the authority of the disciplinary law of that force shall be held to be inconsistent with or in contravention of any of the provisions of this Chapter.

(6) Nothing contained in section 10, 11 or 13 of this Constitution shall be construed as precluding the inclusion in the terms and conditions of service of public officers of reasonable requirements as to their communication or association with other persons or as to their movements or residence.

(7) References in this Chapter to any Ordinance are references to that Ordinance as from time to time amended and include references to any law replacing that Ordinance.

## CHAPTER II

### THE GOVERNOR AND THE DEPUTY GOVERNOR

Office of Governor.

18. There shall be a Governor and Commander-in-Chief for Gibraltar who shall be appointed by Her Majesty and shall hold office during Her Majesty's pleasure and who shall be Her Majesty's representative in Gibraltar.

Powers and duties of Governor.

19. The Governor shall have such functions as may be prescribed and such other functions as Her Majesty may be pleased to assign to him and, subject to the provisions of this Constitution and any law by which any such functions are prescribed, shall do or execute all things that belong to his office (including the exercise of any functions that are expressed to be exercisable by him in his discretion) according to such instructions (if any) as Her Majesty may see fit to address to him:

Provided that the question whether or not the Governor has in any matter complied with any such instructions shall not be enquired into in any court of law.

Governor's taking of oath.

20. Every person appointed to the office of Governor shall, before entering upon that office, take and subscribe oaths of allegiance and for the due execution of the office in the forms set out in the Schedule to this Constitution.

Office of Deputy Governor.

21.—(1) There shall be a Deputy Governor who shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State and shall hold office during Her Majesty's pleasure.

(2) If the office of Deputy Governor is vacant or the person holding that office is administering the government of Gibraltar or is absent from Gibraltar or is for any other reason unable to discharge the functions of the office, then the Governor, acting in his discretion, may appoint a person to act as Deputy Governor and any such person shall continue to act until his appointment is revoked by the Governor, acting in his discretion.

22.—(1) During any period when the office of Governor is vacant or the Governor is absent from Gibraltar or is for any other reason unable to discharge the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and discharged by such person as Her Majesty may have designated in that behalf by instructions given through a Secretary of State.

Succession to  
government.

(2) Before assuming the functions of the office of Governor, any such person as aforesaid shall make the oaths directed by the last foregoing section to be made by the Governor.

(3) Any such person as aforesaid shall not continue to perform the functions of the office of Governor after the Governor or some other person having a prior right to perform the functions of that office has notified him that he is about to assume or resume those functions.

(4) The Governor or any other person as aforesaid shall not for the purposes of this section be regarded as absent from Gibraltar or as unable to perform the functions of the office of Governor at any time when there is a subsisting appointment of a deputy under the next following section.

23.—(1) Whenever the Governor—

Deputy to  
Governor.

(a) has occasion to be absent from Gibraltar for a period which he has reason to believe will be of short duration; or

(b) is suffering from an illness which he has reason to believe will be of short duration,

he may by writing under his hand appoint any person in Gibraltar to be his deputy during such absence or illness and in that capacity to perform on his behalf such of the functions of the office of Governor as may be so specified.

(2) The power and authority of the Governor shall not be abridged, altered or in any way affected by the appointment of a deputy under this section, and a deputy shall conform to and observe all instructions that the Governor may from time to time address to him:

Provided that the question whether or not a deputy has conformed to and observed any such instructions shall not be enquired into in any court of law.

(3) A person appointed as a deputy under this section shall hold that appointment for such period as may be specified in the instrument by which he is appointed, and his appointment may be revoked at any time by Her Majesty by instructions given through a Secretary of State or by the Governor.

(4) In this section "the Governor" means any person holding the office of Governor and includes any person discharging the functions of that office under the last foregoing section.

(5) The powers of the Governor under this section shall be exercised by him acting in his discretion.

(6) In subsection (1) of this section the reference to any functions of the office of Governor does not include a reference to any functions conferred upon the Governor by any Act of the Parliament of the United Kingdom or by any Order of Her Majesty in Council or other instrument made in relation to Gibraltar under any such Act.

## CHAPTER III

### THE LEGISLATURE

#### *Part I—The Gibraltar House of Assembly*

Legislature  
of Gibraltar.

24. There shall be a Legislature for Gibraltar, which, subject to the provisions of this Chapter, shall consist of the Governor and the Assembly.

Gibraltar  
House of  
Assembly.

25.—(1) There shall be a House of Assembly for Gibraltar, which shall be styled the Gibraltar House of Assembly.

(2) The Assembly shall consist of—

(a) the Speaker;

(b) the Attorney-General and the Financial and Development Secretary, who shall be ex-officio members of the Assembly; and

(c) fifteen Elected Members elected in such manner as may be prescribed.

Speaker.

26.—(1) The Speaker of the Assembly shall be appointed by the Governor, acting after consultation with the Chief Minister and with the Leader of the Opposition (if any).

(2) No person shall be qualified for appointment as Speaker if—

(a) he is an Elected Member of the Assembly;

(b) he is not a British subject who has attained the age of twenty-one years; or

(c) he is a person disqualified for election as an Elected Member of the Assembly under section 28 of this Constitution.

(3) A person shall vacate the office of Speaker—

(a) if, at the sitting of the Assembly next following his appointment, his appointment is not confirmed by resolution of the Assembly;

(b) if the Governor, acting after consultation with the Chief Minister and with the Leader of the Opposition (if any), so directs;

(c) if any circumstances arise that would cause him to be disqualified for election as an Elected Member of the Assembly by virtue of section 28(1) of this Constitution;

(d) if he is nominated for election as an Elected Member of the Assembly; or

(e) when the Assembly first sits after any general election of Elected Members.

(4) If the person holding the office of Speaker is absent from Gibraltar or is for any other reason unable to perform the functions of his office, those functions may be performed by such person (being a person qualified for appointment as Speaker) as may from time to time be designated in that behalf by the Governor, acting after consultation with the Chief Minister and with the Leader of the Opposition (if any).

(5) No business shall be transacted in the Assembly at any time when the office of Speaker is vacant.

27. Subject to the provisions of the next following section of this Constitution, a person shall be qualified to be elected an Elected Member of the Assembly if, and shall not be qualified to be so elected unless, at the date of his nomination as a candidate for election, he is a British subject who has attained the age of twenty-one years.

Qualifications for Elected Members.

28.—(1) No person shall be qualified to be elected as an Elected Member of the Assembly who—

Disqualifications for Elected Members.

- (a) is, by virtue of his own act, under any acknowledgment of allegiance, obedience or adherence to a foreign power or state ; or
- (b) is a member of the regular armed forces of Her Majesty ; or
- (c) is a minister of religion ; or
- (d) holds, or is acting in, a public office ; or
- (e) has been adjudged or otherwise declared bankrupt under any law in force in any part of the Commonwealth and has not been discharged ; or
- (f) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in Gibraltar ; or
- (g) is under sentence of death imposed on him by a court of law in any part of the Commonwealth, or is under a sentence of imprisonment (by whatever name called) exceeding twelve months imposed on him by such a court or substituted by competent authority for some other sentence imposed on him by such a court, or is under such a sentence of imprisonment the execution of which has been suspended ; or
- (h) is not qualified to be registered as a voter at elections of Elected Members of the Assembly or, being so qualified, is not so registered ; or
- (i) is disqualified for election by any law for the time being in force in Gibraltar by reason of his holding, or acting in, any office the functions of which involve—
  - (i) any responsibility for, or in connection with, the conduct of any election ; or
  - (ii) any responsibility for the compilation or revision of any electoral register ; or
- (j) is disqualified for election by any law in force in Gibraltar relating to offences connected with elections.

(2) For the purpose of paragraph (g) of the last foregoing subsection—

- (a) two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of imprisonment for the aggregate period of those terms ;
- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.

(3) The reference in subsection (1)(b) of this section to a member of the regular armed forces of Her Majesty shall not include a reference to an officer of the Reserve of Officers of the Gibraltar Regiment or to a member of the Reserve of that Regiment or the Royal Naval Reserve except while he is called out for actual military or naval service.

(4) If it is so prescribed by the Legislature—

- (a) a person shall not be disqualified for election as an Elected Member of the Assembly by virtue of his holding or acting in any public office specified (either individually or by reference to a class of office) by the Legislature ;
- (b) a person may stand as a candidate for election as such notwithstanding that he holds or is acting in any public office specified (in the manner aforesaid) by the Legislature if he undertakes to relinquish or, as the case may be, to cease to act in that office if he is elected as an Elected Member of the Assembly ; or
- (c) any office specified (in the manner aforesaid) by the Legislature being an office the emoluments of which are paid, directly or indirectly, out of public funds, but which would not otherwise be a public office for the purposes of this section, shall be deemed to be a public office for those purposes.

(5) Any law made in pursuance of paragraph (b) of the last foregoing subsection may contain incidental and consequential provisions, including provision that an Elected Member who has given such an undertaking as is referred to in that subsection shall be incapable of taking his seat in the Assembly until he has fulfilled that undertaking and shall vacate his seat if he has not fulfilled it within such time as is specified by such law ; and for the avoidance of doubts it is hereby declared that, where provision is made in pursuance of paragraph (c) of that subsection in respect of any office, provision may also be made in pursuance of paragraph (b) of that subsection in respect of that office.

Tenure of office of Elected Members.

29.—(1) An Elected Member of the Assembly shall vacate his seat therein—

- (a) on a dissolution of the Assembly ;
- (b) if he is absent from six consecutive meetings of the Assembly without having obtained before the termination of any of such meetings from the Speaker permission to be or to remain absent therefrom ;
- (c) if he ceases to be a British subject ; or
- (d) subject to the provisions of the next following section, if any other circumstances arise that, if he were not an Elected Member of the Assembly, would cause him to be disqualified for election as such by virtue of subsection (1) of the last foregoing section.

(2) The provisions of subsection (1) of this section shall be without prejudice to any provision contained in any law made in pursuance of subsection (4)(b) of the last foregoing section for the vacation by an Elected Member of the Assembly of his seat.

(3) An Elected Member of the Assembly may resign his seat therein by writing under his hand addressed to the Speaker and the seat shall become vacant when the writing is received by the Speaker (or, if the office of Speaker is vacant or the Speaker is for any reason unable to perform the functions of his office, by such other person as may be specified in the rules of procedure of the Assembly).

(4) If the seat in the Assembly of an Elected Member becomes vacant otherwise than by reason of a dissolution of the Assembly,

the writ for an election to fill the vacancy shall, unless the Assembly is sooner dissolved, be issued within ninety days of the occurrence of the vacancy.

30.—(1) If circumstances such as are referred to in subsection (1)(d) of the last foregoing section arise because an Elected Member of the Assembly is under sentence of death or imprisonment, declared bankrupt, adjudged to be of unsound mind or convicted of an offence relating to elections and it is open to the member to appeal against the decision (either with the leave of a court or other authority or without such leave), he shall forthwith cease to perform his functions as a member of the Assembly but, subject to subsection (3) of this section, he shall not vacate his seat until the expiration of a period of thirty days thereafter:

Vacation  
of seat on  
sentence, etc.

Provided that the Speaker may, at the request of the Elected Member, from time to time extend that period for thirty days to enable the member to pursue any appeal in respect of his conviction or sentence so however that extensions of time exceeding in the aggregate three hundred and thirty days shall not be given without the approval of the Assembly signified by resolution.

(2) If, on the determination of any appeal, such circumstances as aforesaid continue to exist and no further appeal is open to the member, or if, by reason of the expiration of any period for entering an appeal or notice thereof or the refusal of leave to appeal or for any other reason, it ceases to be open to the Elected Member to appeal, he shall forthwith vacate his seat.

(3) If at any time before the Elected Member vacates his seat such circumstances as aforesaid cease to exist, his seat shall not become vacant on the expiration of the period referred to in subsection (1) of this section and he may resume the performance of his functions as an Elected Member.

31.—(1) The Supreme Court shall have jurisdiction to hear and determine any question whether—

Determina-  
tion of  
questions  
as to  
membership.

(a) any person has been validly elected as an Elected Member of the Assembly;

(b) any person who has been appointed as Speaker was qualified to be so appointed or has vacated the office of Speaker; or

(c) any Elected Member of the Assembly has vacated his seat or is required, under the provisions of the last foregoing section, to cease to perform his functions as such.

(2) An application to the Supreme Court for the determination of any question under paragraph (a) of the foregoing subsection may be made by any person entitled to vote in the election to which the application relates or by any person who was a candidate at that election or by the Attorney-General and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(3) An application to the Supreme Court for the determination of any question under subsection (1)(b) of this section may be made by any Elected Member of the Assembly or by the Attorney-General

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(4) An application to the Supreme Court for the determination of any question under subsection (1)(c) of this section may be made—

(a) by any Elected Member of the Assembly or by the Attorney-General; or

(b) by any person registered as a voter at elections of Elected Members of the Assembly,

and, if it is made by a person other than the Attorney-General, the Attorney-General may intervene and may then appear or be represented in the proceedings.

(5) The Legislature may make provision with respect to—

(a) the circumstances and manner in which and the imposition of conditions upon which any application may be made to the Supreme Court for the determination of any question under this section; and

(b) the powers, practice and procedure of the Supreme Court in relation to any such application.

(6) A determination by the Supreme Court in proceedings under this section shall not be subject to appeal.

(7) In the exercise of his functions under this section, the Attorney-General shall not be subject to the direction or control of any other person or authority.

## Part II—Legislation and Procedure in the Gibraltar House of Assembly

Power to  
make laws.

32. Subject to the provisions of this Constitution, the Legislature may make laws for the peace, order and good government of Gibraltar.

Mode of  
exercise of  
legislative  
power.

33.—(1) Subject to the provisions of the next following section, the power of the Legislature to make laws shall be exercisable by bills passed by the Assembly and assented to by Her Majesty or by the Governor on behalf of Her Majesty.

(2) When a bill is submitted to the Governor for assent in accordance with the provisions of this Constitution he shall signify that he assents, or withholds assent, thereto, or that he reserves the bill for the signification of Her Majesty's pleasure:

Provided that the Governor shall reserve for the signification of Her Majesty's pleasure any bill—

(a) that appears to him, acting in his discretion, to be in any way repugnant to or inconsistent with the provisions of this Constitution; or

(b) that determines or regulates the privileges, immunities or powers of the Assembly or of its members,

unless he has been authorised by a Secretary of State to assent to it.

(3) When a bill has been reserved for the signification of Her Majesty's pleasure and the Governor is informed by a Secretary of State that Her Majesty is pleased to assent, the Governor shall signify such assent by Proclamation published in the Gazette.

(4) No law made by the Legislature shall come into operation until it has been published in the Gazette but the Legislature may postpone the coming into operation of any such law and may make laws with retrospective effect.

(5) All laws made by the Legislature shall be styled "Ordinances" and the words of enactment shall be "Enacted by the Legislature of Gibraltar".

34.—(1) If the Governor considers that the enactment of legislation is necessary or desirable with respect to or in the interests of any matter other than a defined domestic matter, but, after consultation with the Gibraltar Council, it appears to him that Ministers are unwilling to support the introduction into the Assembly of a bill for the purpose or that the Assembly is unlikely to pass a bill introduced therein for the purpose, the Governor may, with the prior approval of a Secretary of State, cause a bill for the purpose to be published in the Gazette and may (notwithstanding that the bill has not been passed by the Assembly) assent thereto on behalf of Her Majesty:

Governor's special legislative powers.

Provided that the bill shall be published in the Gazette for at least twenty-one days prior to assent unless the Governor certifies by writing under his hand that the matter is too urgent to permit such a delay in the giving of assent and so informs a Secretary of State.

(2) If the Governor considers that the enactment of legislation is necessary or desirable with respect to any defined domestic matter in the interests of maintaining the financial and economic stability of Gibraltar, but, after consultation with the Gibraltar Council, it appears to him that Ministers are unwilling to support the introduction into the Assembly of a bill for the purpose or that the Assembly is unlikely to pass a bill introduced therein for the purpose, the Governor may, with the prior approval of a Secretary of State, introduce a bill for the purpose into the Assembly by means of a message addressed to the Speaker, in which case—

(a) the Assembly shall have power to debate and pass the bill, but shall not have power to amend the bill without the consent of the Governor, signified by the Attorney-General or by the Financial and Development Secretary;

(b) if the bill is not passed by the Assembly within one month of introduction the Governor may (notwithstanding that the bill has not been passed by the Assembly), with the prior approval of a Secretary of State, assent thereto (either without amendments or with amendments to which the Governor has signified his consent) on behalf of Her Majesty.

(3) The powers of the Governor under this section shall be exercised by him acting in his discretion.

35.—(1) Except on the recommendation of the Governor signified by the Financial and Development Secretary or by a Minister, the Assembly shall not—

Bills and motions.

(a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding in the Assembly makes provision for imposing or increasing any tax, rate or duty, for imposing or increasing any charge on the revenues or other

funds of Gibraltar, or for altering any such charge otherwise than by reducing it, or for compounding or remitting any debt due to Gibraltar; or

(b) proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding in the Assembly, would be to make provision for any of the purposes aforesaid.

(2) Except with the consent of the Governor, acting in his discretion, signified by the Attorney-General or by the Financial and Development Secretary, the Assembly shall not proceed upon any bill (including any amendment to a bill) that, in the opinion of the Governor, acting in his discretion, signified as aforesaid, relates to or closely concerns a matter that is not a defined domestic matter.

Privileges of Assembly and members.

36. The Legislature may prescribe the privileges, immunities and powers of the Assembly and its members, but no such privileges, immunities or powers shall exceed those of the Commons House of Parliament of the United Kingdom or of the members thereof.

Disallowance of laws.

37.—(1) Any law to which the Governor has given his assent may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever such a law has been disallowed by Her Majesty the Governor shall cause notice of such disallowance to be published in the Gazette and the law shall be annulled with effect from the date of the publication of the notice.

(3) Section 38(2) of the Interpretation Act 1889(a) shall apply to the annulment of any law under this section as it applies to the repeal of an Act of Parliament of the United Kingdom, save that any enactment repealed or amended by or in pursuance of that law shall have effect as from the date of the annulment as if that law had not been made.

Sessions.

38.—(1) The sessions of the Assembly shall be held at such place and begin at such time as the Governor, acting after consultation with the Gibraltar Council, may from time to time by Proclamation published in the Gazette appoint; but a period of twelve months shall not elapse between the date when the Assembly last sat in one session and the date appointed for its first sitting in the next session.

(2) Writs for a general election of Elected Members of the Assembly shall be issued within sixty days of the date of any dissolution of the Assembly and a session of the Assembly shall be appointed to commence within thirty days of the date prescribed for polling at any such general election.

Prorogation and dissolution.

39.—(1) The Governor, acting after consultation with the Chief Minister, may at any time by Proclamation published in the Gazette prorogue or dissolve the Assembly.

(2) The Governor shall dissolve the Assembly at the expiration of four years from the date when the Assembly first meets after any general election of Elected Members unless it has been sooner dissolved.

(a) 52 & 53 Vict. c. 63.



40. The Assembly may from time to time make, amend and revoke rules of procedure for the regulation and orderly conduct of their proceedings and the despatch of business, and for the passing, intituling and numbering of bills and for the presentation thereof to the Governor for assent.

Rules of procedure.

41. No member of the Assembly shall be permitted to take part in the proceedings of the Assembly (other than proceedings necessary for the purpose of this section) until he has made before the Assembly an oath of allegiance in the form set out in the Schedule to this Constitution.

Oath of allegiance.

42. There shall preside at any sitting of the Assembly the Speaker, or in his absence a member of the Assembly elected by the Assembly for the sitting.

Presiding in Assembly.

43.—(1) A quorum of the Assembly shall consist of five persons besides the Speaker or other person presiding at the sitting.

Quorum.

(2) If at any sitting of the Assembly any member who is present draws the attention of the Speaker or other person presiding at the sitting to the absence of a quorum and, after such interval as may be prescribed in the rules of procedure of the Assembly, the Speaker or other person presiding at the sitting ascertains that a quorum of the Assembly is still not present, the Assembly shall be adjourned.

(3) Subject to section 26(5) of this Constitution, the Assembly shall not be disqualified for the transaction of business by reason of any vacancy in the membership thereof including any vacancy not filled when the Assembly first sits after any general election of Elected Members; and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in those proceedings.

44.—(1) All questions proposed for decision in the Assembly shall be determined by a majority of the votes of the members present and voting:

Voting.

Provided that the ex-officio members of the Assembly shall not vote on any motion that, in the opinion of the Speaker or other person presiding in the Assembly, is a motion of confidence or of no-confidence in the Council of Ministers or in any individual Minister.

(2) The Speaker shall have neither an original nor a casting vote.

(3) A member of the Assembly who is presiding in the Assembly in the absence of the Speaker shall have no casting vote but may exercise an original vote that he would be entitled to exercise if he were not presiding.

(4) If upon any question before the Assembly the votes are equally divided, the motion shall be declared lost.

#### CHAPTER IV THE EXECUTIVE

45.—(1) The executive authority of the Government of Gibraltar shall vest in the Governor on behalf of Her Majesty; and, save as otherwise provided in this Constitution, that authority may be exercised by the Governor either directly or through officers subordinate to him.

Executive authority of Gibraltar.

(2) Nothing in this section shall preclude persons or authorities other than the Governor from exercising such functions as may be conferred upon them by any law.

Gibraltar Council.

46.—(1) There shall be for Gibraltar a Gibraltar Council, which shall consist of—

(a) the Deputy Governor, the Deputy Fortress Commander, the Attorney-General and the Financial and Development Secretary; and

(b) the Chief Minister and such four other Ministers as may for the time being be designated in that behalf by the Governor, acting after consultation with the Chief Minister.

Council of Ministers.

47.—(1) There shall be for Gibraltar a Council of Ministers, which shall consist of a Chief Minister and such number of other Ministers (not being less than four nor more than eight) as may be prescribed by the Governor, acting after consultation with the Chief Minister.

(2) The Governor, acting in his discretion, shall appoint as Chief Minister the Elected Member of the Assembly who in his judgment is most likely to command the greatest measure of confidence among the Elected Members of the Assembly.

(3) The Ministers other than the Chief Minister shall be appointed by the Governor, acting after consultation with the Chief Minister, from among the Elected Members of the Assembly.

(4) If occasion arises for making an appointment under this section while the Assembly is dissolved, a person who was an Elected Member of the Assembly immediately before the dissolution may be appointed as if he were still an Elected Member of the Assembly.

(5) The Governor, acting in his discretion, may remove the Chief Minister from office if in his judgment the Chief Minister has ceased to command the greatest measure of confidence among the Elected Members of the Assembly and the Chief Minister shall also vacate his office—

(a) when, after any dissolution of the Assembly, he is informed by the Governor that the Governor is about to re-appoint him as Chief Minister or to appoint another person as Chief Minister; or

(b) if for any reason other than the dissolution of the Assembly he ceases to be an Elected Member of the Assembly.

(6) A Minister other than the Chief Minister shall vacate his office—

(a) whenever the Governor appoints or re-appoints any person to be Chief Minister;

(b) if for any reason other than a dissolution of the Assembly he ceases to be an Elected Member of the Assembly; or

(c) if the Governor, acting after consultation with the Chief Minister, so directs.

(7) Whenever the office of Chief Minister is vacant or the Chief Minister is absent from Gibraltar or is unable, by reason of illness or for any other cause, to perform the functions of his office, the Governor may authorise any other Minister to perform the functions of the Chief Minister, and any Minister so authorised may perform those functions until his authority is revoked by the Governor:

Provided that the Governor shall, so far as is practicable, consult the Chief Minister before exercising his powers under this subsection.

48.—(1) The Governor, acting after consultation with the Chief Minister, may, by directions in writing, charge any member of the Council of Ministers with responsibility for any business of the Government of Gibraltar (including the administration of any department of government) relating to any defined domestic matter.

Assignment  
of business.

(2) Ministers shall be collectively responsible to the Assembly with respect of any matter for which a Minister is responsible under this section.

49.—(1) Subject to the provisions of this section, the Governor shall consult with the Gibraltar Council in the formulation of policy and in the exercise of all powers conferred upon him by this Constitution or any other law.

Consultation  
with  
Gibraltar  
Council.

(2) The Governor shall not be obliged to consult the Gibraltar Council in the formulation of policy in respect of any defined domestic matter or in the exercise of any power conferred upon him by this Constitution or any other law, to the extent that that power relates to a defined domestic matter.

(3) The Governor shall not be obliged to consult the Gibraltar Council in respect of any of the following powers, to the extent that those powers relate to any matter that is not a defined domestic matter:—

- (a) any power conferred upon him by this Constitution or by any other law that he is empowered to exercise in pursuance of instructions from Her Majesty;
- (b) any power conferred on him by this Constitution that he is directed or empowered by this Constitution to exercise in his discretion or after consultation with any person or authority other than the Council;
- (c) any power conferred upon him by or under the Emergency Powers Order in Council 1939; or
- (d) any power conferred upon him by any other law that he is empowered, either expressly or by implication, to exercise without consulting the Council.

(4) The Governor shall not be obliged to consult the Gibraltar Council in any case in which, in his judgment—

- (a) it is in the public interest that he should act without consulting the Council thereon; or
- (b) the matters to be decided are too unimportant to require the advice of the Council thereon; or
- (c) the matters to be decided are too urgent to admit of his obtaining the advice of the Council by the time within which it may be necessary for him to act:

Provided that before acting in pursuance of paragraph (c) of this subsection the Governor shall, if practicable, consult with the Chief Minister, and he shall in any case at the next convenient opportunity communicate to the Council the measures that he has adopted, with the reasons therefor.

(5) In any case in which the Governor has consulted the Gibraltar Council then, subject to the provisions of subsection (4) of the next following section, he may, if he thinks it right to do so, act against the advice given to him by the Council; but if he so acts he shall without delay report the matter to a Secretary of State with the reasons for his action.

(6) Whenever the Governor acts against the advice of the Gibraltar Council any member of the Council may require that there shall be recorded in the minutes any advice or opinion he may give upon the question at issue and his reasons.

Consultation  
with Council  
of Ministers.

50.—(1) Subject to the provisions of this section, the Governor shall consult with, and act in accordance with the advice of, the Council of Ministers or a Minister acting under the general authority of the Council in the formulation of policy relating to any defined domestic matter and in the exercise of any power conferred upon him by this Constitution or any other law, to the extent that that power relates to a defined domestic matter.

(2) The Governor shall not be obliged to consult with, or act in accordance with the advice of, the Council of Ministers or a Minister in the exercise of—

- (a) any power conferred upon him by this Constitution or by any other law that he is empowered to exercise in pursuance of instructions from Her Majesty;
- (b) any power conferred on him by this Constitution that he is directed or empowered by this Constitution to exercise in his discretion or after consultation with any person or authority other than the Council or a Minister;
- (c) any power conferred upon him by or under the Emergency Powers Order in Council 1939; or
- (d) any power conferred upon him by any other law that he is empowered, either expressly or by implication, to exercise without consulting the Council or a Minister.

(3) The Governor may consult with the Gibraltar Council with respect to any defined domestic matter instead of consulting with, or acting in accordance with the advice of, the Council of Ministers or a Minister in respect of that matter—

- (a) if in the opinion of the Governor, acting in his discretion, that matter closely concerns a matter that is not a defined domestic matter; or
- (b) if the Chief Minister requests the Governor to consult the Gibraltar Council concerning that matter.

(4) Where in pursuance of the last preceding subsection the Governor has consulted the Gibraltar Council in respect of a defined

domestic matter he shall act in accordance with the advice of the Gibraltar Council in respect of that matter unless—

(a) he is satisfied that it is necessary or desirable for him to act against the advice of the Council in the interests of a matter that is not a defined domestic matter ; or

(b) he has been authorised by a Secretary of State so to act in the interests of maintaining financial and economic stability in Gibraltar.

in which case he may act against the advice of the Gibraltar Council in respect of that matter.

51.—(1) The Gibraltar Council shall not be summoned except by the authority of the Governor :

Proceedings  
in Gibraltar  
Council.

Provided that the Governor shall summon the Council if the Chief Minister so recommends.

(2) The Governor shall determine what business shall be transacted at meetings of the Gibraltar Council and shall, so far as is practicable, attend and preside at meetings of the Council.

(3) In the absence of the Governor there shall preside at any meeting of the Gibraltar Council—

(a) the Deputy Governor ; or

(b) in the absence of the Deputy Governor, such other member of the Council as may have been designated in that behalf by the Governor.

(4) No business shall be transacted in the Gibraltar Council if objection is taken by any member present that there are less than four members of the Council present besides any member presiding.

(5) Subject to the last foregoing subsection, the Gibraltar Council shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy when the Council is first constituted or is reconstituted at any time); and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

(6) (a) The Governor or other person presiding, when in his opinion the business before the Gibraltar Council makes it desirable, may summon any person to a meeting of the Council, notwithstanding that the person is not a member of the Council.

(b) Any person so summoned shall be entitled to take part as if he were a member in the proceedings of the Gibraltar Council relating to the matter in respect of which he was summoned, except that he shall not have a right to vote.

(7) The powers of the Governor under this section shall be exercised by him acting in his discretion.

52.—(1) The Council of Ministers shall not be summoned except by the authority of the Chief Minister :

Proceedings  
in Council of  
Ministers.

Provided that the Chief Minister shall summon the Council if the Governor so requests.

(2) The Chief Minister or, in the absence of the Chief Minister, such other Minister as may have been designated in that behalf by the Chief Minister, shall determine what business shall be transacted, and shall preside, at meetings of the Council of Ministers.

(3) No business shall be transacted in the Council of Ministers if objection is taken by any Minister present that there are less than two Ministers present besides the Minister presiding.

(4) Subject to the preceding subsection, the Council of Ministers shall not be disqualified for the transaction of business by reason of any vacancy in the membership of the Council (including any vacancy when the Council is first constituted or is reconstituted at any time); and any proceedings in the Council shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

(5) If the Attorney-General or the Financial and Development Secretary is invited to attend any meeting of the Council of Ministers for the purposes of any matter, he shall be entitled to take part in the proceedings of the Council relating to that matter as if he were a member of the Council, except that he shall not have a right to vote.

Governor  
to be kept  
informed.

53.—(1) The Chief Minister shall—

(a) cause to be transmitted to the Governor copies of all papers submitted for consideration by the Council of Ministers or any committee thereof and all papers summoning the Council or any such committee to meet, at the same time as those papers are transmitted to its members ; and

(b) cause the Governor to be furnished as soon as possible after each meeting of the Council of Ministers or any committee thereof, with a copy of the minutes of the meeting showing the matters discussed and the conclusions reached at that meeting.

(2) The Chief Minister shall keep the Governor fully informed concerning the general conduct of those matters for which he or any other Minister is responsible and shall furnish the Governor with such information as he may request in respect of any particular matter.

(3) The Chief Minister shall (unless he is satisfied that the Governor has already been informed) inform the Governor forthwith if it appears to him that any matter that has been or about to be considered by himself or by any other Minister is not a defined domestic matter or closely concerns a matter that is not a defined domestic matter.

Oaths of  
members of  
Gibraltar  
Council and  
Council of  
Members.

54.—(1) Before assuming the functions of his office a member of the Gibraltar Council or of the Council of Ministers shall make before the Governor, or some person authorised in that behalf by the Governor, oaths of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.

(2) For the purposes of the preceding subsection, any person summoned to a meeting of the Gibraltar Council under section 51(6) of this Constitution shall be deemed to be a member of the Council.

Defined  
domestic  
matters.

55.—(1) For the purposes of this Constitution "defined domestic matters" means such matters as may from time to time be specified, by directions in writing, by the Governor, acting in accordance with instructions given by Her Majesty through a Secretary of State.

(2) Any question whether any matter is a defined domestic matter for the purposes of this Constitution shall be determined by the Governor, acting in his discretion, and the determination of the Governor therein shall not be enquired into in any court of law.

## CHAPTER V

### THE JUDICATURE

56.—(1) There shall be a Supreme Court for Gibraltar which shall have unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

Supreme Court.

(2) The Supreme Court shall, subject to section 59 of this Constitution, consist of one judge, that is to say, the Chief Justice.

57.—(1) There shall be a Court of Appeal for Gibraltar which shall have such jurisdiction and powers as may be conferred upon it by this Constitution or any other law.

Court of Appeal.

(2) The Court of Appeal shall, subject to section 59 of this Constitution, consist of—

(a) a President and two Justices of Appeal or such a greater number of Justices of Appeal as the Governor, acting after consultation with the Gibraltar Council, may prescribe ; and

(b) the Chief Justice of the Supreme Court as an *ex-officio* member of the Court of Appeal for all purposes except for the purpose of constituting the Court of Appeal for the hearing and determination of an appeal from his own decision.

(3) The office of a Justice of Appeal shall not without his consent be abolished during his continuance in office.

(4) For the purposes of any determination of the Court of Appeal—

(a) an uneven number of judges shall sit, which, in the case of any final determination by the court other than the summary dismissal of an appeal, shall not be less than three ; and

(b) any determination by the court on any matter (whether final or otherwise) shall, where more than one judge sits, be according to the opinion of a majority of the judges who sit to determine that matter.

58.—(1) The Chief Justice, the President of the Court of Appeal and the Justices of Appeal shall be appointed by the Governor in pursuance of instructions given by Her Majesty through a Secretary of State.

Appointment of judges.

(2) No person shall be qualified for appointment as Chief Justice, President of the Court of Appeal or Justice of Appeal unless—

(a) he is, or has been, a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or in the Republic of Ireland, or of a court having jurisdiction in appeals from any such court ; or

(b) he is entitled to practise as an advocate in such a court and has been entitled for not less than ten years to practise as an advocate or as a solicitor in such a court.

(3) For the purposes of this section, a person shall be regarded as entitled to practice as an advocate or, as the case may be, as a solicitor if he has been called, enrolled or otherwise admitted as such (and has not subsequently been disbarred or removed from the roll of advocates or, as the case may be, of solicitors) notwithstanding that—

(a) he holds or acts in any office the holder of which is, by reason of his office, precluded from practising in a court ; or

(b) he does not hold a practising certificate or has not satisfied any other like condition of his being permitted to practise.

Additional judges.

59.—(1) If—

(a) the office of Chief Justice is vacant, or if the holder thereof is for any reason unable to perform the functions of his office ; or

(b) if it appears to the Governor, acting after consultation with the Chief Justice, that the state of business in the Supreme Court so requires,

the Governor, acting in his discretion, may appoint a person possessing such legal qualifications and experience as he may deem appropriate—

(a) to sit as an additional judge of the Supreme Court ; and

(b) to discharge such of the functions of the office of Chief Justice (if any) as may be specified in the instrument of appointment.

(2) If the office of the President of the Court of Appeal is vacant, or if the holder thereof is absent from Gibraltar or is for any other reason unable to perform the functions of his office, then, until some other person has been appointed to, and has assumed the functions of, that office, or until the holder thereof has resumed those functions, as the case may be, such one of the Justices of Appeal as the Governor, acting in his discretion, may appoint for the purpose shall discharge those functions.

(3) If the office of a Justice of Appeal is vacant, or if any Justice of Appeal is discharging the functions of the office of President or is absent from Gibraltar or is for any other reason unable to perform the functions of his office, the Governor, acting in his discretion, may appoint a person possessing such legal qualifications and experience as he, after consultation with the President, may deem appropriate to sit as an additional judge of the Court of Appeal.

(4) Any person appointed under this section to sit as an additional judge of the Supreme Court or of the Court of Appeal shall, unless he is removed from office under the next following section, continue to sit for such period as may be specified in the instrument of his appointment or, if no such period is specified, until his appointment is revoked by the Governor, acting in his discretion :

Provided that a person whose appointment so to sit has expired or been revoked may, unless he has been removed from office as aforesaid, continue so to sit for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to proceedings that were commenced before the expiration or revocation of his appointment.

60.—(1) Subject to the provisions of this section, a person holding the office of Chief Justice shall vacate that office when he attains the age of 67 years and a person holding the office of President of the Court of Appeal or of Justice of Appeal shall vacate his office upon the expiration of such period as may be specified in the instrument of his appointment to that office:

Tenure of  
office of  
judges.

Provided that—

(a) the Governor may permit a Chief Justice who has attained that age to remain in office for such period not exceeding three years as may have been agreed between that Chief Justice and the Governor;

(b) the Governor, being satisfied that it is desirable so to do because of exceptional circumstances, may permit a Chief Justice to remain in office for such a further period as may have been agreed between that Chief Justice and the Governor, but so that in any event the Chief Justice shall not hold office after attaining the age of 72 years;

(c) a Chief Justice, a President of the Court of Appeal or a Justice of Appeal may, unless he has been removed from office under subsection (3) of this section, sit after the date on which he vacates his office under this subsection as an additional judge of the Supreme Court or, as the case may be, of the Court of Appeal for such period as may be necessary to enable him to deliver judgment or to do any other thing in relation to any proceeding commenced before him before that date.

(2) The Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court of Appeal may be removed from office only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of the next following subsection.

(3) The Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court of Appeal, shall be removed from office by the Governor if the question of the removal of that judge from office has, at the request of the Governor, made in pursuance of subsection (4) of this section, been referred by Her Majesty to the Judicial Committee of Her Majesty's Privy Council under section 4 of the Judicial Committee Act 1833(a) or any other enactment enabling Her Majesty in that behalf, and the Judicial Committee has advised Her Majesty that the judge ought to be removed from office for inability as aforesaid or misbehaviour.

(4) If the Governor considers that the question of removing the Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court of Appeal from office for inability as aforesaid or misbehaviour ought to be investigated, then—

(a) the Governor shall appoint a tribunal, which shall consist of a chairman and not less than two other members selected by the Governor from among persons who hold or have held high judicial office;

(b) the tribunal shall inquire into the matter and report on the facts thereof to the Governor and advise the Governor whether he should request that the question of the removal of that judge should be referred by Her Majesty to the Judicial Committee; and

(c) if the tribunal so advises, the Governor shall request that the question should be referred accordingly.

(5) The provisions of sections 4, 7, 8, 9, 10, 11, 12, 13 and 14 of the Commissions of Inquiry Ordinance(a) shall apply in relation to a tribunal appointed under the last foregoing subsection as they apply in relation to the Commissions appointed under that Ordinance and for that purpose those provisions shall have effect as if they formed part of this section.

(7) If the question of removing the Chief Justice, the President of the Court of Appeal, a Justice of Appeal or an additional judge of the Supreme Court or of the Court of Appeal from his office has been referred to a tribunal under subsection (5) of this section, the Governor may suspend him from performing the functions of his office, and any such suspension may at any time be revoked by the Governor and shall in any case cease to have effect—

(a) if the tribunal advises the Governor that he should not request that the question of the removal of the judge from office should be referred by Her Majesty to the Judicial Committee; or

(b) if the Judicial Committee advises Her Majesty that the judge ought not to be removed from office.

(8) The powers of the Governor under this section shall be exercised by him acting in his discretion.

Oaths to  
be taken by  
judges.

61. Before entering upon the functions of his office the Chief Justice, any additional judge of the Supreme Court and every judge of the Court of Appeal shall make and subscribe before the Governor, or some other person authorised in that behalf by the Governor, oaths of allegiance and for the due execution of his office in the forms set out in the Schedule to this Constitution.

Appeals to  
Her  
Majesty in  
Council.

62.—(1) In the following cases, an appeal shall lie from decisions of the Supreme Court to the Court of Appeal and thence to Her Majesty in Council as of right, that is to say:—

(a) final decisions, in any civil or criminal proceedings, on questions as to the interpretation of this Constitution;

(b) where the matter in dispute on the appeal is of the value of £500 or upwards or where the appeal involves, directly or indirectly, a claim to or a question respecting property or a right of the value of £500 or upwards, final decisions in any civil proceedings;

(c) final decisions in proceedings under section 15 of this Constitution;

(d) final decisions in proceedings for dissolution or nullity of marriage; and

(e) in such other cases as may be prescribed by the Legislature.

(2) In the following cases, an appeal shall lie from decisions of the Supreme Court to the Court of Appeal with the leave of the Supreme Court or of the Court of Appeal and thence to Her Majesty in Council with the leave of the Court of Appeal, that is to say:—

(a) where the decision appealed against is a final decision in civil proceedings and, in the opinion of the court giving leave, the question involved in the appeal is one that, by reason of its great general or public importance or otherwise, ought to be submitted to the Court of Appeal or to Her Majesty in Council, as the case may be; and

(b) in such other cases as may be prescribed by the Legislature.

(3) The foregoing provisions of this section shall be subject to the provisions of section 31(6) of this Constitution.

(4) In this section the references to final decisions of a court do not include any determination thereof that any application made thereto is merely frivolous or vexatious.

(5) Nothing in this section shall affect any right of Her Majesty to grant special leave to appeal to Her Majesty in Council from the decision of any court in any civil or criminal matter.

## CHAPTER VI

### FINANCE

63. All revenues or other moneys raised or received for the purposes of the Government of Gibraltar (not being revenues or other moneys that are payable by or under any law into some other fund established for a specific purpose or that may by or under any law be retained by the authority that received them for the purposes of defraying the expenses of that authority) shall be paid into and form one Consolidated Fund.

Consolidated Fund.

64.—(1) No moneys shall be withdrawn from the Consolidated Fund except—

(a) to meet expenditure that is charged upon the Fund by this Constitution or by any other law in force in Gibraltar; or

(b) where the issue of those moneys has been authorised by an appropriation law or such manner, and subject to such conditions, as may be prescribed in pursuance of section 66 of this Constitution.

Withdrawals from Consolidated Fund or other public funds.

(2) No moneys shall be withdrawn from any public fund of Gibraltar other than the Consolidated Fund unless the issue of those moneys has been authorised by or under a law.

(3) No moneys shall be withdrawn from the Consolidated Fund except in such manner as may be prescribed by the Legislature.

(4) The deposit of any moneys forming part of the Consolidated Fund with a bank or with the Crown Agents for Overseas Governments and Administrations or the investment of any such moneys in such securities as may be prescribed by the Legislature shall not be regarded as a withdrawal of those moneys from the Fund for the purposes of this section.

Authorisation of expenditure.

65.—(1) The Financial and Development Secretary shall cause to be prepared and laid before the Assembly, before or not later than thirty days after the commencement of each financial year, estimates of the revenues and expenditure of Gibraltar for that year.

(2) The heads of expenditure contained in the estimates for a financial year (other than expenditure charged upon the Consolidated Fund by this Constitution or any other law) shall be included in a bill, to be known as an appropriation bill, introduced into the Assembly to provide for the issue from the Consolidated Fund of the sums necessary to meet that expenditure and the appropriation of those sums for the purposes specified in the bill.

(3) If in any financial year it is found—

(a) that the amount appropriated by the appropriation law for the purposes included in any head of expenditure is insufficient or that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the appropriation law; or

(b) that any moneys have been expended on any head of expenditure in excess of the amount appropriated for the purposes included in that head by the appropriation law or for a purpose for which no amount has been appropriated by the appropriation law,

the Financial and Development Secretary shall cause a supplementary estimate showing the sums required or spent to be prepared and laid before the Assembly and the heads of expenditure shall be included in a supplementary appropriation bill introduced in the Assembly to provide for the appropriation of those sums.

Authorisation of expenditure in advance of appropriation.

66. If the appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Financial and Development Secretary may, to such extent and subject to such conditions as may be prescribed by the Legislature, authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government until the expiration of four months from the beginning of that financial year or the coming into operation of the appropriation law, whichever is the earlier.

Contingencies Fund.

67.—(1) There shall be such provision as may be prescribed by the Legislature for the establishment of a Contingencies Fund and for authorising the Financial and Development Secretary, if he is satisfied that there has arisen an urgent and unforeseen need for expenditure for which no other provision exists, to make advances from that Fund to meet that need.

(2) Where any advance is made from the Contingencies Fund, a supplementary estimate shall be laid before the Assembly, and an appropriation bill shall be introduced therein, as soon as possible for the purpose of replacing the amount so advanced.

Remuneration of certain officers.

68.—(1) There shall be paid to the holders of the offices to which this subsection applies such salaries and such allowances as may be prescribed by the Legislature.

(2) The salaries and any allowances payable to the holders of the offices to which the preceding subsection applies and the remuneration

and allowances payable to any judge of the Court of Appeal or additional judge of the Supreme Court shall be a charge on the Consolidated Fund.

(3) Any alteration to the salary or remuneration payable to any person holding any office to which the last preceding subsection applies or to his terms of office, other than allowances, that is to his disadvantage shall not have effect in relation to that person after his appointment unless he consents to its having effect.

(4) Where a person's salary, remuneration or terms of office depend upon his option, the salary or terms for which he opts shall, for the purposes of the last preceding subsection, be deemed to be more advantageous to him than any others for which he might have opted.

(5) Subsection (1) of this section applies to the offices of Governor, Chief Justice, Deputy Governor, Attorney-General, Financial and Development Secretary, Commissioner of Police and Principal Auditor.

69.—(1) All debt charges for which Gibraltar is liable shall be a charge on the Consolidated Fund. Public debt.

(2) For the purposes of this section debt charges include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the revenues of Gibraltar or the Consolidated Fund and the service and redemption of debt thereby created.

70.—(1) The public accounts of Gibraltar and of all courts of law and all authorities and officers of the Government shall be audited and reported on by the Principal Auditor and for that purpose the Principal Auditor or any person authorised by him in that behalf shall have access to all books, records, reports and other documents relating to those accounts: Audit.

Provided that, if it is so prescribed in the case of any body corporate directly established by law, the accounts of that body corporate shall be audited and reported on by such person as may be specified by or under that law.

(2) The Principal Auditor shall submit his reports to the Governor, who shall cause them to be laid before the Assembly.

(3) In the exercise of his functions under this Constitution the Principal Auditor shall not be subject to the direction or control of any other person or authority.

## CHAPTER VII

### THE PUBLIC SERVICE

71.—(1) The Governor may, in Her Majesty's name and on Her Majesty's behalf, constitute offices for Gibraltar and shall so constitute the offices of Attorney-General, Financial and Development Secretary, Commissioner of Police and Principal Auditor. Power to constitute offices and make appointments, etc.

(2) Subject to the provisions of this Constitution, the Governor, acting in his discretion, may, in Her Majesty's name and on Her Majesty's behalf—

- (a) make, confirm and terminate appointments to any public office;
- (b) exercise disciplinary control over public officers;

(c) except as otherwise prescribed, make and terminate appointments to any other office under the Crown in Gibraltar,

and, except as otherwise prescribed, all such appointments shall be held during Her Majesty's pleasure.

Public Service Commission.

72.—(1) There shall be a Public Service Commission, which shall consist of a chairman and four other members appointed by the Governor.

(2) No person shall be qualified for appointment as a member of the Public Service Commission if he is an Elected Member of the Assembly or a candidate for election as such.

(3) Whenever the office of chairman of the Public Service Commission is vacant or the chairman is absent from Gibraltar or is for any other reason unable to discharge the functions of his office, those functions shall be discharged by such one of the other members of the Commission as the Governor may appoint.

(4) If at any time there are less than three members of the Public Service Commission besides the chairman or if any such member is acting as chairman or is absent from Gibraltar or is for any other reason unable to discharge the functions of his office, the Governor may appoint a person qualified for appointment as a member of the Commission to sit as an additional member.

(5) The Governor may terminate the appointment of any member of the Public Service Commission at any time and, subject as aforesaid, any such member shall vacate his office—

(a) at the expiration of three years from the date of his appointment ; or

(b) in the case of an additional member, at such time or in such circumstances as may be specified in the instrument of his appointment.

(6) The powers of the Governor under this section shall be exercised by him acting in his discretion.

Public Service Commission to advise Governor.

73.—(1) The Governor, acting in his discretion, may refer to the Public Service Commission for their advice any question that relates to the appointment, promotion, transfer, or termination of appointment, dismissal or other disciplinary control of public officers, and any other question that, in his opinion, affects the public service:

Provided that the provisions of this subsection shall not apply in relation to any of the following—

- (a) the Chief Justice, an additional judge of the Supreme Court or a judge of the Court of Appeal ;
- (b) the Deputy Governor ;
- (c) the Attorney-General ;
- (d) the Financial and Development Secretary ;
- (e) the Commissioner of Police ;
- (f) the Principal Auditor ;
- (g) the Clerk to the Assembly ;
- (h) the members of the Governor's personal staff.

(2) It shall be the duty of the Public Service Commission to advise the Governor on any question that he refers to them under this section, but the Governor shall not be obliged to act in accordance with their advice.

74.—(1) The Governor, acting after consultation with the Public Service Commission, may by regulations make provision for regulating and facilitating the performance by the Commission of their functions under this Constitution.

Performance  
of functions  
of Public  
Service  
Commis-  
sion.

(2) Any decision of the Public Service Commission shall require the concurrence of a majority of all the members thereof and, subject as aforesaid, the Commission may act notwithstanding the absence of any member.

(3) Subject to the provisions of this section, the Public Service Commission may regulate their own procedure.

(4) In the exercise of their functions under this Constitution, the Public Service Commission shall not be subject to the direction or control of any other person or authority.

(5) In addition to the functions conferred upon them by or under this Constitution, the Public Service Commission shall have such powers and other functions (if any) as may be prescribed.

## CHAPTER VIII

### MISCELLANEOUS

75. Subject to the provisions of any law for the time being in force in Gibraltar, the Governor, acting after consultation with the Gibraltar Council, may in Her Majesty's name and on Her Majesty's behalf, make grants and dispositions of any lands or other immovable property in Gibraltar that may lawfully be granted or disposed of by Her Majesty.

Powers  
to dispose  
of land.

76.—(1) The Governor, acting after consultation with the Gibraltar Council, may in Her Majesty's name and on Her Majesty's behalf—

Powers of  
pardon,  
etc.

- (a) grant to any person concerned in or convicted of an offence a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any punishment imposed on that person for any offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for any offence; or
- (d) remit the whole or any part of any punishment imposed on any person for any offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) Whenever any person has been sentenced to death by any court of law in Gibraltar, the Governor shall cause a report on the case by the judge who presided at the trial (or, if a report cannot be obtained from that judge, a report on the case by the Chief Justice), together with such other information derived from the record of the case or elsewhere as may be required by or furnished to the Governor, to be taken into consideration at a meeting of the Gibraltar Council.

(3) The Governor shall not exercise his powers under this section in relation to any such person as is referred to in the last preceding subsection unless it appears to him to be expedient to do so upon receiving the advice of the Gibraltar Council thereon; but he shall decide either to extend or to withhold a pardon or respite according to his own deliberate judgment, whether the members of the Council concur therein or not; causing nevertheless to be entered in the minutes of the Council his reasons, in case he should decide any such question in opposition to the judgment of the majority of the members of the Council.

(4) The provisions of this section shall not apply in relation to any conviction by a court-martial established under any Act of the Parliament of the United Kingdom, any punishment imposed in respect of any such conviction or any penalty or forfeiture due under any such Act.

Powers of  
Attorney-  
General in  
relation to  
criminal  
proceedings.

77.—(1) The Attorney-General shall have power in any case in which he considers it desirable so to do—

- (a) to institute and undertake criminal proceedings before any court of law (not being a court established by a disciplinary law);
- (b) to take over and continue any such criminal proceedings that may have been instituted by any other person or authority; and
- (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.

(2) The powers of the Attorney-General under the preceding subsection may be exercised by him in person or through other persons acting in accordance with his general or special instructions.

(3) The powers conferred upon the Attorney-General by paragraphs (b) and (c) of subsection (1) of this section shall be vested in him to the exclusion of any other person or authority:

Provided that, where any other person or authority has instituted criminal proceedings, nothing in this subsection shall prevent the withdrawal of those proceedings by or at the instance of that person or authority at any stage before the person against whom the proceedings have been instituted has been charged before the court.

(4) In the exercise of the powers conferred upon him by this section the Attorney-General shall not be subject to the direction or control of any other person or authority.

(5) For the purposes of this section, any appeal from any determination in any criminal proceedings before any court of law, or any case stated or question of law reserved for the purposes of any such proceedings to any other court of law, shall be deemed to be part of those proceedings.

Mayor of  
Gibraltar.

78.—(1) There shall be a Mayor of Gibraltar, who shall be elected from among the members of the Assembly (other than the ex-officio members) by the Elected Members of the Assembly.

(2) A person elected to the office of Mayor shall hold office upon such terms and conditions, and shall perform such functions (being ceremonial functions of a civic character), as may be determined by the Governor, acting after consultation with the Gibraltar Council.



**79.—(1)** In this Constitution, unless the context otherwise requires— Interpretation.

“the Assembly” means the Gibraltar House of Assembly;

“the Court of Appeal” means the Court of Appeal for Gibraltar;

“defined domestic matter” means a matter specified by the Governor under section 55(1) of this Constitution;

“disciplinary law” means a law regulating the discipline—

(a) of any disciplined force; or

(b) of persons serving prison sentences;

“disciplined force” means—

(a) a naval, military or air force;

(b) the Gibraltar Police Force or any other police force established by any law in force in Gibraltar;

(c) a fire service established by any such law;

“financial year” means the period of twelve months ending on the thirty-first day of December in any year or such other day as may be prescribed by the Governor, acting after consultation with the Gibraltar Council;

“the Gazette” means the Gibraltar Gazette;

“the Governor” means the Governor and Commander-in-Chief of Gibraltar;

“law” includes any rule of law, whether written or unwritten;

“the Legislature” means the Legislature established by this Constitution and includes the Governor acting in exercise of the powers conferred upon him by section 34 of this Constitution.

“meeting”, in relation to the Assembly, means all sittings of the Assembly commencing when the Assembly first meets after being summoned at any time, and terminating when the Assembly is adjourned *sine die*, or at the conclusion of a session;

“oath” includes affirmation;

“prescribed” means prescribed in a law in force in Gibraltar:

Provided that—

(a) in relation to anything that may be prescribed only by the Legislature, it means prescribed in an Ordinance; and

(b) in relation to anything that may be prescribed only by the Governor, it means prescribed in an order made by the Governor;

“public office” means, subject to the provisions of the next following section, any civil office of emolument under the Crown in Gibraltar;

“public officer” means the holder of a public office or a person appointed to act in a public office;

“session”, in relation to the Assembly, means the sittings of the Assembly commencing when the Assembly first meets after any general election of Elected Members or after its prorogation and terminating when the Assembly is prorogued or is dissolved without having been prorogued;

“sitting”, in relation to the Assembly, means a period during which the Assembly is sitting continuously without adjournment, and includes any period during which the Assembly is in committee;

(2) Where any power is conferred by this Constitution to make any Proclamation, order, regulation or rule, or give any direction, the power shall be construed as including the power, exercisable in like manner, to amend or revoke any such Proclamation, order, regulation, rule or direction.

(4) Where the Governor is directed by any provision of this Constitution other than section 49 or 50 to exercise any power after consultation with any person or authority he shall not be obliged to exercise that power in accordance with the advice of that person or authority.

(5) Where the Governor is required by this Constitution to act in accordance with the advice of or after consultation with any person or authority, the question whether he has in any matter so acted shall not be enquired into in any court of law.

(6) The Interpretation Act 1889 shall apply, with the necessary adaptations, for the purpose of interpreting this Constitution and otherwise in relation thereto as it applies for the purpose of interpreting, and in relation to, Acts of Parliament of the United Kingdom.

(7) References in this Constitution to the Emergency Powers Order in Council 1939 are references to that Order as from time to time amended and include references to any Order or other law replacing that Order in relation to Gibraltar.

References  
to public  
office, etc.

**80.—(1)** In this Constitution, unless the context otherwise requires, the expression “public office”—

(a) shall be construed as including the offices of the judges of the Supreme Court and of the Court of Appeal, the offices of members of all other courts of law in Gibraltar (other than courts-martial), the offices of members of the Gibraltar Police Force or any other police force established by any law in force in Gibraltar and any offices on the Governor's personal staff; and

(b) shall not be construed as including the offices of Speaker of the Assembly, Minister, Elected Member of the Assembly, member of the Public Service Commission, member of any tribunal established under section 60 of this Constitution or Mayor of Gibraltar.

(2) For the purposes of this Constitution, a person shall not be considered as holding a public office by reason only of the fact that he is in receipt of a pension or other like allowance in respect of service under the Crown or under a local government authority.

Acting  
appoint-  
ments.

**81.—(1)** In this Constitution, unless the context otherwise requires, a reference to the holder of an office by the term designating his office shall be construed as including a reference to any person for the time being lawfully acting in or exercising the functions of that office.

(2) Where power is vested by this Constitution in any person or authority to appoint any person to act in or perform the functions of any office if the holder thereof is himself unable to perform those functions, no such appointment shall be called in question on the ground that the holder of the office was not unable to perform those functions.

Re-appoint-  
ments and  
concurrent  
appoint-  
ments.

**82.—(1)** Where any person has vacated any office established by this Constitution, he may, if qualified, again be appointed or elected to hold that office in accordance with the provisions of this Constitution.

(2) Where a power is conferred by this Constitution upon any person to make any appointment to any office, a person may be appointed to that office notwithstanding that some other person may be holding that office, when that other person is on leave of absence pending the relinquishment of the office; and where two or more persons are holding the same office by reason of an appointment made in pursuance of this subsection, then, for the purposes of any function conferred upon the holder of that office, the person last appointed shall be deemed to be the sole holder of the office.

83. Any person who has been appointed to any office established by this Constitution may resign from that office by writing under his hand addressed to the person or authority by whom he was appointed; and the resignation shall take effect, and the office shall accordingly become vacant—

(a) at such time or on such date (if any) as may be specified in the writing; or

(b) when the writing is received by the person or authority to whom it is addressed or by such other person as may be authorised by that person or authority to receive it,

whichever is the later:

Provided that the resignation may be withdrawn before it takes effect if the person or authority to whom the resignation is addressed consents to its withdrawal.

84. No provision of this Constitution that any person or authority shall not be subject to the direction or control of any other person or authority in the exercise of any functions under this Constitution shall be construed as precluding a court of law from exercising jurisdiction in relation to any question whether that person or authority has performed those functions in accordance with this Constitution or any other law or should not perform those functions.

85.—(1) References in this Constitution to the power to remove a public officer from his office shall be construed as including references to any power conferred by any law to require or permit that officer to retire from the public service and to any power or right to terminate a contract on which a person is employed as a public officer and to determine whether any such contract shall or shall not be renewed.

(2) Any provision in this Constitution that vests in any person or authority power to remove any public officer from his office shall be without prejudice to the power of any person or authority to abolish any office or to any law providing for the compulsory retirement of public officers generally or any class of public officer on attaining an age specified therein.

(3) If any circumstances arise that, under the provisions of this Constitution, require the Governor to remove a judge from office for inability to discharge the functions of his office, the Governor, acting in his discretion, may carry out such removal either by dismissing that officer or by requiring him to retire.

(4) Any power conferred by any law to permit a judge to retire before the date on which, under the provisions of this Constitution, he is required to vacate his office shall vest in the Governor, acting in his discretion.

Power reserved to Her Majesty.

86. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking this Constitution).

Sections 20, 22, 41, 54 and 61.

## SCHEDULE TO THE CONSTITUTION

### OATHS

#### *Oath of Allegiance*

I, , do swear [or solemnly affirm] that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, Her Heirs and Successors, according to law. [So help me God.]

#### *Oath for the due execution of the office of Governor.*

I, , do swear [or solemnly affirm] that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of Governor and Commander-in-Chief of the City of Gibraltar. [So help me God.]

#### *Oath for the due execution of the office of member of the Gibraltar Council or member of the Council of Ministers of the City of Gibraltar.*

I, , being a member of the Gibraltar Council/Council of Ministers of the City of Gibraltar, do swear [or solemnly affirm] that I will to the best of my judgment, at all times when so required, freely give my counsel and advice to the Governor and Commander-in-Chief of the City of Gibraltar (or any other person for the time being lawfully performing the functions of the office of Governor) for the good management of the public affairs of the City of Gibraltar, and I do further swear [or solemnly affirm] that I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any particular member of the Gibraltar Council/Council of Ministers, and that I will not, except with the authority of the Governor and to such extent as may be required for the good management of the affairs of Gibraltar, directly or indirectly reveal the business or proceedings of the Gibraltar Council/Council of Ministers or any matter coming to my knowledge in my capacity as a member of the Gibraltar Council/Council of Ministers and that in all things I will be a true and faithful member of the Gibraltar Council/Council of Ministers. [So help me God.]

#### *Judicial Oath.*

I, , do swear [or solemnly affirm] that I will well and truly serve Our Sovereign Lady Queen Elizabeth II, Her Heirs and Successors, in the office of Chief Justice/President of the Court of Appeal/Justice of Appeal/additional judge of the Supreme Court/Court of Appeal/of the City of Gibraltar and I will do right to all manner of people after the laws and usages of the City of Gibraltar without fear or favour, affection or ill will. [So help me God.]

## ANNEX 2 TO THE ORDER TRANSITIONAL PROVISIONS

### ARRANGEMENT OF SECTIONS

#### Section 2.

1. Interpretation.
2. Existing laws.
3. Existing offices.
4. Provisions relating to elections.
5. Procedure of Assembly.
6. Supreme Court.
7. Remuneration of certain officers.
8. Privileges, etc. of Public Service Commission.
9. Abolition of City Council.
10. Financial provisions.

Existing  
offices.

3.—(1) Where any office has been provided for by or under the existing Order or any existing law and any provision of the Constitution provides for a similar or an equivalent office any person who, immediately before the appointed day, holds or is acting in the former office shall, so far as is consistent with the provisions of the Constitution, be deemed to have been appointed on the day on which that provision of the Constitution came into force to hold or to act in the latter office in accordance with the provisions of the Constitution and to have taken any necessary oaths under the Constitution.

(2) The provisions of this section shall be without prejudice to any powers conferred by or under the Constitution upon any person or authority to make provision for the abolition of offices and the removal from office of persons holding or acting in any office.

(3) The reference in subsection (1) of this section to offices established by or under the existing Order or any existing law does not include a reference to the office of Minister, Speaker, member of the Legislative Council or Mayor.

Provisions  
relating to  
elections.

4.—(1) Writs for a general election of Elected Members of the Assembly shall be issued within sixty days of the dissolution of the Legislative Council established by the existing Order and the provisions of the Constitution shall apply in relation to that general election as they would apply in relation to a general election held after the appointed day.

(2) The Governor may at any time before the appointed day by regulations make such provision for the holding of elections to the Assembly in accordance with the provisions of the Constitution and matters relating thereto as he may consider necessary or expedient for the purpose of enabling elections of Elected Members of the Assembly to be held.

(3) Any regulation made under this section may amend or revoke any law relating to elections to the Legislative Council established by the existing Order and may be amended or revoked by the Legislature.

Procedure of  
Gibraltar House  
Assembly.

5. The rules and orders of the Legislative Council established by the existing Order, as those rules and orders were in force immediately before the appointed day, shall, except as may be otherwise provided under section 33 of the Constitution, have effect on and after the appointed day as if they had been made under that section but shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

Supreme Court.

6.—(1) All proceedings commenced or pending immediately before the day on which section 56 of the Constitution comes into force before the Supreme Court established by the existing laws may be carried on before the Supreme Court established by that section.

(2) Any judgment of the Supreme Court established by the existing laws given, but not satisfied, before the day on which section 56 of the Constitution comes into force may be enforced, appealed against or otherwise dealt with on and after that day as if it was a judgment of the Supreme Court established by that section.

(3) Any reference in any existing law to the Supreme Court established by the existing laws shall have effect in relation to the period commencing on the day on which section 56 comes into force as if it were a reference to the Supreme Court established by the Constitution.

(4) The foregoing provisions of this section shall be without prejudice to the generality of sections 2 and 3 of this Annex.

Remuneration  
of certain  
officers.

7. Until such time after the day on which section 68 of the Constitution comes into force as a salary and allowances are prescribed by the Legislature, there shall be paid to the holder of any office to which that section applies a salary and allowances calculated at the same rate as the salary and allowances paid immediately before that day to the holder of the office corresponding thereto.

1. In this Annex "the existing laws" means any Ordinances, rules, regulations, orders or other instruments made, or having effect as if they had been made, in pursuance of the existing Order and having effect as part of the law of Gibraltar and includes any Order of Her Majesty in Council (other than the existing Order or any Order made under an Act of Parliament of the United Kingdom) having effect as part of the law of Gibraltar.

Interpretation.

2.—(1) Subject to the provisions of this section, the existing laws shall have effect on and after the appointed day as if they had been made in pursuance of the Constitution and shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution.

Existing laws.

(2) The Governor, acting after consultation with the Gibraltar Council, may, by order published in the Gazette, at any time within six months after the commencement of this Order prescribe that any existing law shall be read and construed with such adaptations and modifications as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of the Constitution or of any directions given by the Governor under any of those provisions or otherwise for giving effect, or enabling effect to be given, to those provisions or directions; and any existing law shall have effect accordingly from such date (not being earlier than the commencement of this Order) as may be specified in the order.

(3) An order made under this section may be amended or revoked by the Legislature or, in relation to any existing law affected thereby, by any other authority having power to amend, repeal or revoke that existing law.

(4) Where any matter that falls to be prescribed or otherwise provided for the purposes of the Constitution by the Legislature or by any other person or authority is prescribed or provided for by or under any existing law (including any adaptation or modification of any such law made under this section) or is otherwise prescribed or provided for by or under the existing Order, that prescription or provision shall have effect as if it had been made for those purposes by the Legislature or, as the case may be, by the other person or authority.

(5) The provisions of this section shall be without prejudice to any powers conferred by the Constitution or any other law upon any person or authority to make provision for any matter, including the amendment or repeal of any existing law.

8.—(1) The Governor, acting after consultation with the Gibraltar Council, may at any time within six months after the commencement of this Order by regulations make provision for the protection and privileges of members of the Public Service Commission established by the Constitution in respect of the performance of their functions, the privilege of communications to and from the Commission and its members in relation to legal proceedings, the definition and trial of offences connected with the functions of the Commission and the imposition of penalties for such offences.

Privileges, etc.  
of Public  
Service  
Commission.

(2) Any regulation made under this section may amend or revoke any existing law and may be amended or revoked by the Legislature.

9.—(1) The Governor, acting after consultation with the Gibraltar Council, shall by regulations make provision for the abolition, within twelve months of the commencement of this Order, of the City Council of Gibraltar.

Abolition of  
City Council.

(2) Regulations made under the foregoing subsection may (without prejudice to the generality of the powers conferred by that subsection) include provision—

(a) for the discharge of functions hitherto discharged by the City Council (including the establishment of authorities to discharge such of those functions as in the opinion of the Governor cannot appropriately be discharged by the Government of Gibraltar);

(b) for the transfer of the assets, rights and liabilities of the City Council to the Government of Gibraltar or to any such other authority as the Governor may consider appropriate;

(c) for the transfer of persons in the service of the City Council to the public service or to the service of any such other authority as the Governor may consider appropriate.

(3) Until such time as the City Council is abolished, references in section 28 of the Constitution to public offices shall, except as otherwise provided by regulations made by the Governor, include references to any civil office of emolument under the City Council the remuneration attaching to which is paid at intervals greater than one week.

(4) Any regulation made under this section may amend or revoke any existing law and may be amended or revoked by the Legislature.

10. Until sections 63, 64, 65, 66 and 67 of the Constitution come into force references in other provisions of the Constitution to the Consolidated Fund shall have effect as if they were references to the general revenues of Gibraltar.

Financial  
provisions.

## DESPATCH

FOREIGN AND COMMONWEALTH OFFICE,

LONDON S.W.1.

(HGG.1/8).

23rd May, 1969.

Sir,

The Gibraltar Constitution Order 1969 has today been made by Her Majesty in Council. At the constitutional discussion held in Gibraltar in July 1968 under the chairmanship of Lord Shepherd, at which agreement was reached on the main lines of the constitution, as now incorporated in the Order in Council, it was also agreed that certain matters could appropriately be dealt with by a despatch from the Secretary of State to the Governor accompanying the publication of the new constitution. I should accordingly be obliged if you would cause this despatch to be published in the Gibraltar Gazette at the same time as the Order in Council itself. It will be understood that this despatch does not attempt to summarise the new constitution but is designed simply to supplement it on certain important points.

2. As agreed in the 1968 discussions, the position of Gibraltar as part of Her Majesty's dominions is set out in the preamble to the Order in Council which embodies the assurances then given. The constitutional instruments in no way change the international status of Gibraltar. Similarly the constitution in no way affects the existing status of the people of Gibraltar, that is to say, British Subject, citizen of the United Kingdom and Colonies, which they continue to enjoy by virtue of the British Nationality Act 1948.

3. While the Governor remains the head of the executive government, the new constitution provides, as agreed at the discussions in 1968, for the devolution of certain responsibilities to Ministers in a more formal manner than hitherto. These responsibilities relate to matters of domestic concern and are to be devolved upon Ministers by

ADMIRAL OF THE FLEET

SIR VARYL BEGG, G.C.B., D.S.O., D.S.C.,

ETC., ETC., ETC.

means of directions given by the Governor under Section 55(1) of the constitution. I consider that, generally speaking, the matters of domestic concern to be devolved should comprise the matters which have hitherto been within the competence of the City Council and the existing Council of Ministers. These, broadly speaking, fall within certain well defined spheres, as for example, municipal and public utilities services (e.g. electricity, water), social services (e.g. housing, public health, labour and social security, and education); and matters which clearly affect the economy of Gibraltar (e.g. tourism and trade and commerce). Directions specifying the defined domestic matters should be given at the stage when the constitution has been brought into operation and the Ministers are appointed following the General Election. You have, however, recommended that particulars should be made known in advance for general information. Accordingly I annex to this despatch a list of matters which in my view should be specified as defined domestic matters at that stage. It must be recognised that this list may need adjustment from time to time. The devolution of authority to Ministers in defined domestic matters should also be read as subject to what is said in the following paragraphs of this despatch.

4. The Governor will retain direct responsibility for all matters primarily concerned with external affairs, defence and internal security, including the police, and for such matters as, by reason of their close connection with these matters, would most appropriately be placed under the day-to-day control of the Deputy Governor, the Attorney-General or the Financial and Development Secretary. Since everything which is not a defined domestic matter automatically remains within the Governor's direct responsibility, it is unnecessary and undesirable to attempt an exhaustive definition of all matters retained by the Governor. It is desirable, however, to draw attention to certain general exceptions which must qualify the list of defined domestic matters, in the sense that wider considerations would require responsibility to be retained by the Governor even though the subject matter may at first sight appear to be "domestic." Such exceptions should, in my view, include all matters relating to Her Majesty (for example honours, flags, etc.); the application to Gibraltar of international agreements, the implementation in Gibraltar of international obligations and the participation of Gibraltar in specialised international bodies; matters affecting the armed forces and United Kingdom civilian departments in Gibraltar, including their land and property, facilities provided by them (e.g. schools and hospitals) and their privileges and exemptions; labour from outside Gibraltar;

certain land matters; and appointments to public bodies other than appointments specifically devolved upon Ministers. Although the Governor has this responsibility, section 49 of the new constitution provides machinery under which such matters may continue to be discussed, as appropriate, with Ministers in the Gibraltar Council. Provision has also been included in the constitution to protect the independence of the judiciary and of the Principal Auditor and to vest powers with respect to criminal proceedings in the Attorney-General; administrative matters in those fields should also remain within the direct responsibility of the Governor. Similarly administrative responsibility for the public service generally should remain within the direct responsibility of the Governor (see also paragraph 6 below).

5. The significance of Gibraltar's economic problems at this time, as well as the nature of the new constitution itself and the merging of the finances of the Gibraltar Government and the City Council, make it important that all financial affairs, both as regards defined domestic matters and as regards residual matters not so defined, should as hitherto be fully coordinated. It was for this reason that all those who took part in the constitutional discussions in July 1968 recognised that the Financial and Development Secretary would be in a special position under the new constitution and that the Governor should have certain powers in relation to the maintenance of financial and economic stability. Accordingly responsibility for the financial business of the Government of Gibraltar should continue to be entrusted to the Financial and Development Secretary, and it is thus necessary that there should be very close liaison and consultation between him and the Ministers responsible for defined domestic matters. I should hope, therefore, that the Financial and Development Secretary will be invited by the Chief Minister to attend all meetings of the Council of Ministers when any matters affecting his sphere of responsibility are discussed. Matters for which the Financial and Development Secretary should remain responsible will include customs control; the collection of taxes, duties, licences and fees etc.; payment of salaries, wages and accounts; and the general coordination of financial and economic business and accounting. Subject to the provisions of the new constitution the Legislature will, of course, continue to be responsible for the authorisation of expenditure and taxation measures.

6. There will be a single public service in Gibraltar. Since the matters for which the Governor and Ministers will respectively be directly responsible are intrinsically incapable of being completely separated and are bound to overlap, it would not be conducive to effi-

cient administration to divide the public service into two separate groups. As agreed at the constitutional discussions in July 1968 the Governor will in practice, subject to certain exceptions, consult the Chief Minister over appointments to posts of Head of Department level, but will not be bound to act in accordance with his advice. Civil servants will work to the Deputy Governor in respect of matters which remain within the direct responsibility of the Governor. In respect of defined domestic matters, which are the responsibility of Ministers, the civil servants concerned will work direct to the Ministers responsible. But when and where matters arise which overlap or appear to overlap both fields, there will need to be direct contact between the civil servants concerned and the Deputy Governor. The successful operation of the new constitution will depend on a continuance of the harmonious cooperation and working relationships at all levels that have characterised the public affairs of Gibraltar in the past. This cooperation will be even more important in view of the increase in the direct responsibilities of the Gibraltar Government, and accordingly in the size of its public service, resulting from its assumption of functions hitherto delegated to the City Council.

7. In conclusion I would hope that the fullest use would be made under the new constitution of the Gibraltar Council as provided for in sections 46, 49 and 50(3). The Council is so constituted as to bring together the senior elected representatives of the people of Gibraltar with the Governor's senior official advisers, in a body small enough and flexible enough in its procedures to permit frank, intimate and confidential discussion of problems of mutual concern. The great importance of such a forum needs no emphasis in the special circumstances of Gibraltar today, and I am confident that under Your Excellency's chairmanship the Gibraltar Council will continue to fulfil a most valuable function.

I have the honour to be,  
Sir,  
Your most obedient, humble servant,

MICHAEL STEWART.

## DEFINED DOMESTIC MATTERS

(List referred to in paragraph 3 of Despatch)

	<i>Reference to Laws Cap.</i>
<b>I MUNICIPAL SERVICES (INCLUDING PUBLIC UTILITIES BUT EXCLUDING THOSE TRANSFERRED TO APPROPRIATE HEADS e.g. PUBLIC HEALTH)</b>	
(a) Animals and Birds	4
(b) City Council	22
Provisions requiring retention, e.g. Bye-Laws made under S.26; Freemen—S.31	
(c) Entertainments	51
(d) Food and Drugs	61
(e) Markets	98
including Street Pedlars and Traders	
(f) Public Utilities	135
(i) Electricity	
(ii) Telephones	
(iii) Water Supply	131
<b>II. SOCIAL SERVICES</b>	
(a) Education	
(i) Education	
(ii) Youth Welfare including Youth Employment	47
(iii) Undertakings by Students	
(iv) John Mackintosh Hall	
(b) Housing	
(i) Construction and Allocation of Accommodation	
(ii) Rent Relief	83
(iii) Landlord and Tenant	
(c) Labour and Social Security	
(i) Labour (from within Gibraltar)	
(ii) Control of Employment	33
(iii) Dock Workers	46
(iv) Employment Injuries Insurance	49
(v) Employment of Women, Young Persons and Children	50

	<i>Reference to Laws Cap.</i>
(vi) Factories	56
(vii) Family Allowances	58
(viii) Friendly Societies	63
(ix) Non-Contributory Social Insurance	113
(x) Public Assistance	
(xi) Regulation of Wages and Conditions of Employment	139
(xii) Shop Hours	144
(xiii) Social Insurance	145
(xiv) Trade Unions and Trade Disputes	153
(d) Medical and Public Health	
(i) Hospitals and Laboratory	
(ii) Medical Practitioners and Dentists	72-131
(iii) Mental Treatment	102
(iv) Midwives	103
(v) Nurses Registration	107
(vi) Pharmacy and Medicines	114
(vii) Quarantine	125
(viii) Sanitation of Buildings	137
(ix) Nuisances and Offensive Trades	151
(x) Notification and Prevention of Diseases	
(xi) Rats and Mice Extermination	
(xii) Vaccination	
(xiii) Baths, Washhouses, Bathing Places, etc.	
(xiv) Cellar Dwelling, Lodging Houses, etc.	
(xv) General Provisions of Public Health Ordinance	
<b>III. REVENUE-CONTRIBUTING SERVICES</b>	
(a) Economic Development	
(as hitherto)	
(b) Government Lottery and Gaming	
(c) Postal Services	
(i) Post Office	
(ii) Savings Bank	128
(d) Tourism	142
(i) Tourist Promotion in Gibraltar	
(ii) London Office (i.e. a Gibraltar Tourist Office in London with the same functions as are at present prescribed)	

	<i>Reference to Laws Cap.</i>
(iii) Tourist Sites	
(iv) Museum and Antiquities	111
(v) Hotels and Restaurants	
(vi) Hotel Proprietors	73
<b>(e) Trade and Commerce</b>	
(i) Business Names	16
(ii) Carriage of Goods by Sea	17
(iii) Companies	30
(iv) Contract and Tort	32
(v) Copyright	App. II
(vi) Deeds of Arrangement	41
(vii) Designs	43
(viii) Factors	57
(ix) Marine Insurances	97
(x) Merchandise Marks	104
(xi) Partnership	118
(xii) Patents	119
(xiii) Pawnbrokers	120
(xiv) Sale of Goods	141
(xv) Trade Generally including Supplies	
(xvi) Price Control	

NOTE: The Registrar of the Supreme Court is responsible for the following registries:

- (1) Companies
  - (2) Business Names
  - (3) Trade Marks
  - (4) Patents
  - (5) Deeds of Arrangements
- The Registrar is also responsible for the registers of:
- (6) Births, Deaths and Marriages
  - (7) Gibraltarians
  - (8) Land Titles
  - (9) Building Societies

#### IV. PUBLIC SERVICES

(a) Civil Air Terminal	24
(b) Fires and Fire-Fighting	

- (c) Management and control in relation to the areas of land known as Waterport and Waterport Wharf and those parts of the North Mole under lease to the Government with respect to commercial and tourist activities.

#### (d) Public Works

(i) Building (Interim Control)	15
(ii) Building Bye-Laws	131
(iii) Public Highways	131
(iv) Recreation Grounds	131
(v) Cemeteries	18

#### (e) Vehicles

(i) Motor Vehicles Insurance (Third Party)	110
(ii) Traffic (including Licensing)	154

#### V. PERSONAL STATUS

(i) Gibraltarian Status and permits of residence	70
(ii) Adoption—Infants—Legitimacy	3-78-89
(iii) Births, Deaths and Marriages	12-99
(iv) Maintenance	96
(v) Married Women	100
(vi) Matrimonial Causes	101

#### VI. MISCELLANEOUS

(i) Census	19
(ii) Charities	20
(iii) Clubs	26
(iv) Elections	48
(v) Hire Purchase	71
(vi) Noise Abatement	
(vii) Oaths	115
(viii) Performers Protection	
(ix) Petroleum	124
(x) Prison	129
(xi) Probates	130
(xii) Public Holidays	79
(xiii) Public relations and information media in respect of defined domestic matters.	