

JUDICIAL SERVICE ACT 2007**Principal Act**

Act. No. 2007-26	<i>Commencement (LN. 2007/097)</i>	5.7.2007
	<i>Assent</i>	27.6.2007

Amending
enactmentsRelevant current
provisionsCommencement
date**English sources:**

None cited

EU Legislation/International Agreements involved:

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SCHEDULE

AN ACT TO MAKE PROVISION FOR JUDICIAL SERVICE, TO ENSHRINE THE INDEPENDENCE OF THE JUDICIARY, TO PROVIDE FOR RESOURCES FOR THE COURTS, TO MAKE PROVISIONS RELATING TO THE JUDICIAL SERVICE COMMISSION, FOR THE GROUNDS UPON WHICH CERTAIN MEMBERS OF THE JUDICIARY MAY BE REMOVED FROM OFFICE, FOR THE ESTABLISHMENT OF A CODE OF JUDICIAL CONDUCT AND ETHICS AND FOR DISCIPLINARY MATTERS RELATING TO THE JUDICIARY, AND FOR RELATED MATTERS.

PART 1

Preliminary

Title and Commencement.

1. This Act may be cited as the Judicial Service Act 2007 and comes into operation on a day to be appointed by the Government by notice in the Gazette and different days may be so appointed for different parts or sections.

Interpretation.

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

“appointed member” means a member of the Commission appointed under section 57(1)(d) or (e) of the Constitution;

“Chairman” means the chairman of the Commission as provided in section 57(1) of the Constitution;

“Code” means the code of judicial conduct and ethics established in accordance with section 32.

“Commission” means the Judicial Service Commission established by section 57 of the Constitution;

“Constitution” means the Constitution set out in Annex I to the Gibraltar Constitution Order 2006.

“judicial office” means any senior judicial office, junior judicial office and any other judicial office;

“junior judicial office” means any office referred to in section 57(2)(b) of the Constitution, namely Stipendiary Magistrate, Justice of the Peace, and Registrar of the Supreme Court;

“member” means a member of the Commission as provided in section 57(1) of the Constitution;

“Minister” means the Minister with responsibility for Justice.

“other judicial office” means a judicial office, other than a Senior Judicial Office and a Junior Judicial Office, specified in the Schedule.

“secretary” means the secretary to the Commission appointed under section 12.

“senior judicial office” means any office referred to in section 57(2)(a) of the Constitution, namely the Chief Justice, Puisne Judge, President of the Court of Appeal and Justice of Appeal.

PART 2

The Rule of Law and Judicial Independence

The rule of law.

3. This Act does not adversely affect—
- (a) the constitutional principle of the rule of law;
 - (b) the constitutional role of any person in relation to that principle.

Guarantee of continued judicial independence.

4.(1) The Minister, other Ministers and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice must uphold the continued independence of the judiciary.

(2) The following particular duties are imposed for the purpose of upholding that independence.

(3) The Minister, other Ministers and all with responsibility for matters relating to the judiciary or otherwise for the administration of justice must not seek to influence particular judicial decisions through any special access to the judiciary or otherwise.

(4) The Minister, other Ministers and all with responsibility for matters relating to the judiciary must have regard to—

- (a) the need to defend that independence;

- (b) the need for the judiciary to have the support necessary to enable them to exercise their functions;
- (c) the need for the public interest in regard to matters relating to the judiciary or otherwise to the administration of justice to be properly represented in decisions affecting those matters.

(5) In this section “the judiciary” includes the judiciary of any of the following—

- (a) Her Majesty in Council;
- (b) The Court of Appeal;
- (c) The Supreme Court;
- (d) The Magistrates’ Court;
- (e) The Coroner’s Court;
- (f) Any other Court established under the law of Gibraltar or under any law applicable to Gibraltar;
- (g) Any international court.

(6) In subsection (5) “international court” means the International Court of Justice or any other court or tribunal which exercises jurisdiction, or performs functions of a judicial nature, in pursuance of—

- (a) an agreement to which the United Kingdom or Her Majesty’s Government in the United Kingdom is a party and the application of which has been extended to or extends to Gibraltar; or
- (b) a resolution of the Security Council or General Assembly of the United Nations.

Representations to Parliament and to the Government.

5.(1) The President of the Court of Appeal and the Chief Justice may in the manner specified in subsection (2) below lay before Parliament written representations on matters that appear to them, or either of them, to be matters of importance relating to the Judiciary, or otherwise to the administration of justice in Gibraltar.

(2) The manner referred to in subsection (1) is that such written representations shall be sent to the Minister who shall lay them before the Parliament at its next meeting following their receipt by him.

(3) The President of the Court of Appeal and the Chief Justice may make representations to the Minister and the Government on matters that appear to them, or either of them, to be matters of importance relating to the Judiciary, or otherwise to the administration of justice in Gibraltar.

President of the Courts of Gibraltar.

6.(1) The President of the Court of Appeal holds the office of President of the Courts of Gibraltar.

(2) The President of the Courts of Gibraltar is entitled to sit in any of the following courts–

- (a) The Court of Appeal;
- (b) The Magistrates' Court;
- (c) The Coroner's Court.

(3) As President of the Courts of Gibraltar he has overall responsibility–

- (a) for representing the views of the judiciary of Gibraltar to Parliament, to the Minister and to the Government generally;
- (b) for the maintenance of appropriate arrangements for the welfare, training and guidance of the judiciary of Gibraltar within the resources made available by the Government;
- (c) for the maintenance of appropriate arrangements for the allocation of work within courts.

(4) Subject to subsection (3), for the Supreme Court and all lower courts the Chief Justice shall have direct day to day responsibility for the matters set out in subparagraphs (b) and (c) of subsection (3).

Minister's Oath.

7.(1) The oath set out –

- (a) in subsection (2) ; or
- (b) subsection (3),

as the case may be, shall be tendered to and taken by the Minister at the first Meeting of Parliament in which he is present after his appointment as Minister with responsibility for justice.

(2) The oath referred to in subsection (1)(a) is–

“I, _____, do swear that in the office of Minister with responsibility for Justice, I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible, so help me God”.

(3) The oath referred to in subsection (1)(b) is–

“I, _____, do affirm that in the office of Minister with responsibility for Justice, I will respect the rule of law, defend the independence of the judiciary and discharge my duty to ensure the provision of resources for the efficient and effective support of the courts for which I am responsible”.

(4) The oath in subsection (2) or (3) shall be administered by the Speaker.

Staff, Accommodation and other Resources.

8.(1) The Minister must ensure that the Courts are provided with such court houses, offices, other accommodation, staff and other resources as the Minister thinks are appropriate for the Courts to carry on their business.

(2) In this section “court-house” means any place where the courts sit, including the precincts of any building in which it sits.

**PART 3
Judicial Service Commission**

Appointed Members.

9.(1) At least one of the appointed members shall be a person who is qualified to practise as a barrister or solicitor in Gibraltar and who has been so qualified for at least fifteen years.

(2) Each appointed member shall be appointed for a period of three years, and may be re-appointed.

Removal of Appointed Members.

10.(1) A person who is appointed by virtue of an office, post or qualification that he holds shall cease to be an appointed member upon ceasing to hold that office, post or qualification.

- (2) An appointed member may at any time—
- (a) resign his office by notice in writing addressed to the Governor and to the Minister;
 - (b) be removed from office by the Governor acting on the advice of the Specified Appointments Commission established by section 56 of the Constitution.

(3) The Specified Appointments Commission may not under sub-section (2)(b) advise that an appointed member be removed from office unless it is satisfied that the appointed member—

- (a) has failed without reasonable excuse to discharge the functions of his office for a continuous period of at least six months;
- (b) has been convicted of an offence;
- (c) is an undischarged bankrupt, or
- (d) is otherwise unfit to hold his office or unable to discharge its functions.

provided that advice under sub-paragraph (a) may not be tendered more than 3 months after the end of the period mentioned there.

Defects in appointments not to invalidate proceedings.

11. The validity of the proceedings of the Commission shall not be affected by any defect in the appointment of a member.

Secretary to Commission and other support.

12.(1) The Chief Secretary may designate any public officer or other person to be the secretary to the Commission.

- (2) No person appointed under subsection (1) shall—
- (a) be a member of the Commission; or
 - (b) participate in the proceedings of the Commission or vote on any question that is subject matter of its deliberations.

(3) The Chief Secretary shall provide to the Commission such other logistical and administrative support as it may require to discharge its functions.

(4) In relation to the administration of its functions relating to recruitment the Commission shall act through the Governments' Human Resources Manager.

Expenses.

13. The expenses incurred by the Commission in the discharge of its functions shall be payable by the Government out of the Consolidated Fund.

Functioning of Commission.

14.(1) No meeting of the Commission shall take place unless at least ten days' notice of the meeting has been given to all members.

(2) If the Chairman certifies that the business to be undertaken is urgent and cannot reasonably in the public interest wait ten days then he may abridge the period of notice specified in subsection (1) to not less than five days.

(3) If the Chairman is unable to attend any meeting of the Commission, the Chief Justice shall act as Chairman for that meeting, and in his absence the members present shall select a chairman for that meeting.

(4) The Commission may use teleconference facilities for the purpose of its meetings, provided that all members participating in a meeting using such facilities are able to hear and be heard throughout the proceedings.

(5) The Commission may establish a procedure for taking decisions without a meeting, provided that any such procedure includes the requirements that—

- (a) no such decision shall be taken if at least two members object to the proposed decision being taken without a meeting; and
- (b) all documents and information relevant to the proposed decision have been circulated to all members and received by them at least three days before the decision is taken.

(6) Notwithstanding any other provision of this Act unless at least one of the President of the Court of Appeal and Chief Justice is present at a meeting of the Commission, then that meeting shall stand adjourned to the same time and place seven working days later, and such reconvened meeting may then proceed regardless of the provisions of this subsection provided it is otherwise quorate.

(7) A quorum of four members must be present at every meeting of the Commission.

Communications to be privileged.

15. No person shall in any legal proceedings be permitted or compelled to produce or disclose any communication, written or oral, that has taken place—

- (a) between the Commission, or any member, or the secretary, and the Governor, the Government, a Minister, a Secretary of State, or a public officer; or
- (b) between any persons who are members or the secretary in exercise of or in connection with the exercise of their functions, unless the Governor and the Minister, acting after consultation with the Chairman, consent in writing to such production or disclosure.

Powers of Commission to conduct examinations and appoint boards.

16.(1) The Commission may conduct such examinations, interviews and investigations, and appoint such selection or other boards as it may consider necessary for the proper discharge of its functions.

(2) Only members of the Commission may be members of a board.

(3) The Commission may delegate to any board any of the functions of the Commission relating to the examination or interview of or investigation of any circumstances affecting candidates for appointment, promotion, disciplinary matter or termination of any appointment of any member of the Judiciary.

Protection of members.

17. Every member shall have such and the like protection and privileges, in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duties under the Constitution or this Act, as is by law given to any magistrate acting in the exercise of his office.

False information.

18. A person who, in connection with an application by himself or any other person for appointment to a judicial office or in connection with any other matter upon which it is the duty of the Commission to advise the Governor, wilfully gives to the Commission or to any member any information which is false or misleading in any material particular is guilty of an offence and is liable on conviction to imprisonment for two years and to a fine at level 3 on the standard scale.

Publication and disclosure of information.

19.(1) No member nor any other person shall without the consent in writing of the Governor and the Minister, acting after consultation with the Chairman, publish or disclose to any unauthorised person or otherwise than in the course of duty the contents or any part of the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties under the Constitution or this Act, and a person who knowingly acts in contravention of this subsection is guilty of an offence and is liable on conviction to imprisonment for one year and to a fine at level 2 of the standard scale.

(2) A person who, having possession of any information which to his knowledge has been published or disclosed in contravention of subsection (1), publishes or communicates to any other person any such information, otherwise than for the purpose of any prosecution under this Act or in the course of his duty, is guilty of an offence and is liable to conviction to imprisonment for one year and to a fine at level 2 on the standard scale.

Attorney-General's fiat.

20. A prosecution in respect of any offence against this Act shall not be instituted except by, or with the consent of, the Attorney-General.

PART 4

Appointments to Judicial Offices

Appointments to judicial offices: Commission to advise.

21. The Commission shall advise the Governor upon the making and confirming of appointments to judicial offices.

Merit and good character.

22.(1) Subsections (2) and (3) apply to any recommendation under this Part by the Commission.

(2) Selection for recommendation must be solely on merit.

(3) A person must not be selected for recommendation unless the Commission is satisfied that he is of good character.

Guidance about procedures.

23.(1) The Minister may issue guidance about procedures for the performance by the Commission of its functions of—

(a) identifying persons willing to be considered for selection, and

(b) assessing such persons for the purposes of selection.

(2) The guidance may, among other things, relate to consultation or other steps in determining such procedures.

Guidance: supplementary.

24.(1) Before issuing any guidance the Minister must—

(a) consult the President of the Courts of Gibraltar and the Chief Justice;

(b) after doing so, lay a draft of the proposed guidance in the Parliament.

(2) If the draft is approved by a resolution of the Parliament within the period of 40 days the Minister must issue the guidance in the form of the draft.

(3) In any other case the Minister must take no further steps in relation to the proposed guidance.

(4) Subsection (3) does not prevent a new draft of the proposed guidance from being laid before the Parliament after consultation as aforesaid.

(5) The guidance comes into force on such date as the Minister may appoint by order.

(6) The Minister may—

(a) from time to time revise the whole or part of any guidance and re-issue it;

(b) after consulting the President of the Courts of Gibraltar and the Chief Justice by order revoke any guidance.

(7) In this section “guidance” means guidance issued by the Minister under section 23 and includes guidance which has been revised and re-issued.

Filling vacancies.

25. Any vacancy in a senior judicial office shall be filled as soon as may be practicable.

Request for selection.

26. The Governor, after consultation with the Minister, may make a request to the Commission for a person to be selected for a recommendation to fill a vacancy in the following circumstances—

- (a) when a new post has been created;
- (b) when it is anticipated that a vacancy will arise through the forthcoming retirement or resignation of a judicial office holder;
- (c) when a judicial office holder is to be appointed on a temporary basis or acting basis;
- (d) when a judicial office is vacant;
- (e) otherwise when it appears to the Minister appropriate.

Selection process.

27.(1) Upon the existence of a vacancy or the receiving of a request for selection the Commission must appoint a selection panel (a panel).

(2) A panel may comprise the Commission or a board appointed by it under section 16.

(3) The panel must—

- (a) determine the selection process to be applied;
- (b) apply the selection process, and
- (c) make a selection or selections for a recommendation accordingly.

(4) More than one person, in order of preference, may be selected.

Report.

28.(1) After complying with section 27(3) the Commission must submit a report to the Governor and to the Minister.

(2) The report must—

- (a) state who has been selected for recommendation;
- (b) contain any other information required by the Governor.

(3) The report may name only one person as selected for recommendation for a post.

(4) After submitting the report the Commission must provide any further information the Governor or the Minister may request.

The Governor's Options.

29. Upon receipt of the Report containing the Commission's recommendation the Governor must do one of the following—

- (a) accept the recommendation and appoint the person recommended by the Commission;
- (b) reject the recommendation in accordance with section 57(3) of the Constitution and require the Commission to make another recommendation.

Recommendation following Rejection.

30.(1) In the event of the Governor rejecting the Commission's recommendation under section 57(3) of the Constitution the Commission may report to the Governor on the next selection (if any) made by it in accordance with section 27(4) above, failing which the Commission shall repeat the selection process.

(2) If the Governor rejects a recommendation under section 57(3) of the Constitution, the Commission may not select the person rejected.

Withdrawal and modification of requests.

31. The Governor, following consultation with the Minister may withdraw or modify a request under section 26.

PART 5 Judicial Conduct and Discipline

Code of judicial conduct and ethics.

32.(1) The President of the Courts of Gibraltar in consultation with the Chief Justice and the Chairman of the Bar Council shall draw up and propose to the Commission a draft of a Code of judicial conduct and ethics for application to persons holding or acting in any judicial office in Gibraltar, and may from time to time propose modifications of any such Code.

(2) The Commission shall consider the draft Code and any proposed modifications to a Code and, after amending or modifying it as it shall consider appropriate, shall adopt it subject to subsection (5) below.

(3) Upon adopting the draft Code or any modification of a Code, the Commission shall deliver it to the Minister.

(4) The Minister shall, upon receipt by him of the Code or any proposed modification thereof lay the same in the Parliament within 30 days or at the next sitting of the Parliament after the expiration of such 30 day period and shall move a motion inviting the Parliament to consider and approve such draft Code.

(5) If the Parliament approves such draft Code it will become effective seven working days thereafter and the Minister shall cause a copy of such Code to be published in the Gazette as soon as is practicable.

(6) In considering its advice to the Governor as regards any disciplinary matter relating to any person holding a judicial office, the Commission shall have full regard to any Code for the time being applicable to that person.

**Termination of office and discipline of junior judicial officers:
Commission to advise the Governor.**

33.(1) Subject to the provisions of section 35, the Commission shall advise the Governor in relation to the termination of appointment and any disciplinary matter relating to any junior judicial office holder.

(2) Upon receipt of any formal complaint or allegation to which it attaches credibility about the behaviour of a junior judicial office holder or upon its own motion for good and sufficient cause the Commission must—

- (a) determine the disciplinary process to be applied;
- (b) apply the disciplinary process, and
- (c) make a determination for a recommendation, including a sanction.

(3) Upon making a determination under subsection (2) above the Commission must submit a report to the Governor and the Minister.

(4) The report must—

- (a) state the determination of the Commission including its recommendation as to the sanction;

- (b) contain any other information required by the Governor or the Minister.

(5) After submitting the report the Commission must provide any further information the Governor or the Minister may request.

The Governor's Options.

34. Upon receipt of the Report containing the determination and recommendation of the Commission the Governor must do one of the following—

- (a) accept the determination and recommendation of the Commission and apply the sanction advised by it;
- (b) reject the determination of the Commission and/or the sanction advised by it in whole or in part in accordance with section 57(3) of the Constitution and, if it seems to the Governor appropriate, request the Commission to reconsider the matter.

Removal from junior judicial office : Grounds.

35. A person holding a junior judicial office may only be removed from office 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 accordingly the Commission shall not advise the Governor to terminate the appointment of any such person on any other ground.

Removal from senior judicial office : advice of Commission.

36.(1) The Commission shall not advise the Governor to remove from office the holder of a senior judicial office.

(2) The Commission shall advise the Governor whether the question of removing the holder of a senior judicial office from office for inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour should be referred to a tribunal in accordance with section 64(4) of the Constitution, and if so, whether the senior judicial office holder should be suspended from performing the functions of his office upon such reference.

(3) In any case where the holder of a senior judicial office has been suspended from performing the functions of his office under section 64 (6) of the Constitution the Commission shall advise the Governor whether the suspension should be revoked.

Disciplinary Powers.

37.(1) The Governor, acting on the advice of the Commission may–

- (i) give a junior judicial office holder formal advice, or a formal warning or reprimand, for disciplinary purposes;
- (ii) suspend a person from a junior judicial office for any period during which any of the following applies–
 - (a) the person is subject to criminal proceedings;
 - (b) the person is serving a sentence imposed in criminal proceedings;
 - (c) the person has been convicted of a criminal offence; and
 - (d) in any of the above circumstances it appears to the Governor, acting with the agreement of the President of the Courts of Gibraltar, that the suspension is necessary for maintaining of confidence in the judiciary;
- (iii) terminate the appointment and remove from office a person holding a junior judicial office.

(2) While a person is suspended under this section from any judicial office he may not perform any of the functions of the office (but his other rights as holder of the office are not affected).

(3) The President of the Courts of Gibraltar, acting after consultation with the Judicial Service Commission, may exercise the powers set out in subsection (1)(i) and (ii) in relation to the holder of a senior judicial office.

Disciplinary powers: interpretation.

38.(1) This section has effect for the purpose of section 37.

(2) A person is subject to criminal proceedings if in Gibraltar or in any part of the United Kingdom proceedings against him for an offence have been begun and have not come to an end.

(3) “Sentence” includes any sentence other than a fine (and “serving” is to be read accordingly).

Regulations about procedures.

39. The Commission may, with the agreement of the Minister, make regulations providing for the procedures that are to be followed in the investigation and determination of allegations by any person of misconduct by judicial office holders.

Contents of regulations.

40.(1) Regulations under section 39 may include provision as to any of the following—

- (a) circumstances in which an investigation must or may be undertaken (on the making of a complaint or otherwise);
- (b) steps to be taken by a complainant before a complaint is to be investigated;
- (c) the conduct of an investigation, including steps to be taken by the office holder under investigation or by a complainant or other person;
- (d) time limits for taking any step and procedures for extending time;
- (e) persons by whom an investigation or part of an investigation is to be conducted;
- (f) matters to be determined by the Commission, the Governor, the Minister, office holder under investigation or any other person;
- (g) requirements as to records of investigations;
- (h) requirements as to confidentiality of communications or proceedings;
- (i) requirements as to the publications of information or its provision to any person.

(2) Where regulations under section 39 impose any requirement on the office holder under investigation or on a complainant, a person contravening the requirement does not incur liability other than liability to such procedural penalty if any (which may include the suspension or dismissal of a complaint) as may be prescribed by the regulations,

Prejudice to Her Majesty's Service.

41. It is hereby declared for the avoidance of doubt that if the Governor rejects the advice of the Commission pursuant to the power conferred on him by section 57(3) of the Constitution he may not proceed in the matter without the further advice of the Commission.

PART 6

Other matters upon which Commission shall advise Governor.

42.(1) The Commission shall advise the Governor in relation to the matters specified in the following sections of the Constitution–

- (a) 63(1) (Acting Chief Justice);
- (b) 63(2) (Acting judges);
- (c) 63(3) (Acting President of the Court of Appeal)
- (d) 63(4) (Acting Justice of Appeal) and
- (e) 63(5) (continuation and terms of Acting Judge of Supreme Court or Court of Appeal);
- (f) Section 64(1)(c) (sitting after vacating offices);

(2) The Commission shall tender advice on the matters referred to in subsection (1) at the request of the Governor or the Minister or upon its own motion.

SCHEDULE

Section 2

Judicial Offices to which this Act applies which are not referred to in sections 57(2)(a) and 57(2)(b) of the Constitution—

- (a) Registrar of the Court of Appeal.
- (b) Coroner.
- (c) Deputy Coroner
- (d) Such other judicial or quasi – judicial offices as the Minister may specify by notice in the Gazette