

# MEDICINAL CANNABIS ACT 2021

## Principal Act

Act. No. 2021-24

*Commencement  
Assent*

**Not In Force**  
24.9.2021

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**SCHEDULE 2  
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**SCHEDULE 3  
MEDICINAL CANNABIS LICENSING APPEALS TRIBUNAL**

AN ACT TO MAKE PROVISION FOR THE REGULATION OF THE PRODUCTION, IMPORT, EXPORT, MARKETING AND SUPPLY OF CANNABIS FOR MEDICINAL PURPOSES; AND FOR CONNECTED PURPOSES.

## **PART 1**

### **PRELIMINARY**

#### **Short title.**

1. This Act may be cited as the Medicinal Cannabis Act 2021.

#### **Commencement.**

2.(1) This Act comes into operation as specified by the Minister responsible for finance by Notice in the Gazette.

(2) A Notice may make different provision for different purposes.

#### **Overview.**

3. This Act—

- (a) establishes a body to oversee the regulation of the production, import, export, marketing and supply of cannabis for medicinal purposes;
- (b) articulates regulatory principles for medicinal use of cannabis;
- (c) makes provision about the licensing of the production, import, export, marketing and supply of cannabis for medicinal purposes; and
- (d) creates offences and makes other enforcement provision.

## **PART 2**

### **INTERPRETATION OF KEY CONCEPTS**

#### *Principal concepts*

#### **The regulatory objectives.**

4. In this Act a reference to the regulatory objectives is a reference to the objectives of—

- (a) recognising that the medical use of narcotic drugs continues to be indispensable for the relief of suffering and that adequate provision must be made to ensure the availability of narcotic drugs for such purposes;

- (b) taking effective measures to permit appropriate medical use while preventing abuse of narcotic drugs as part of the coordinated and universal action mandated by the Convention; and
- (c) in particular, ensuring that cannabis is used for medicinal purposes in accordance with best scientific understanding while protecting children and other vulnerable persons from being harmed or exploited by the trade in or use of cannabis and other narcotic drugs.

**The Convention.**

5. In this Act “the Convention” means the Single Convention on Narcotic Drugs, 1961, done at New York on 30 March 1961, as amended—

- (a) by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961, and
- (b) by any future protocol or other amending instrument which applies in relation to Gibraltar.

**Cannabis.**

6.(1) In this Act “cannabis” means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated.

(2) In this Act a reference to cannabis includes (subject to subsection (3)) any substance, preparation or other product which is or contains—

- (a) cannabis;
- (b) a botanical or other extract of cannabis;
- (c) cannabis resin;
- (d) cannabinol; or
- (e) a cannabinol derivative.

(3) But a reference to cannabis in this Act does not include—

- (a) dronabinol or its stereoisomers;
- (b) hemp products; or
- (c) a product of the kind specified in paragraph 10 of Schedule 2 to the Drugs (Misuse) Regulations 2005 (liquid spray botanical extract of cannabis).

- (4) For the purposes of subsections (2) and (3)—
- (a) “cannabis resin” means the separated resin, whether crude or purified, obtained from any plant of the genus *cannabis*;
  - (b) “dronabinol” does not include any substance which—
    - (i) has the international non-proprietary name dronabinol (recommended by the World Health Organisation); and
    - (ii) is derived from cannabis, cannabis resin or their constituents; and
  - (c) “hemp products” means products derived or extracted from a variety of the plant of genus *cannabis*, including products that contain Cannabidiol (CBD), which have a Tetrahydrocannabinol (THC) content of less than 0.3%.

**Medicinal cannabis.**

7.(1) In this Act “medicinal cannabis” means cannabis that is intended to be used for medicinal purposes.

(2) In this Act “medicinal purposes” is to be construed in accordance with regulations under section 47.

**Licensable activities.**

8.(1) For the purposes of this Act the “licensable activities” are—

- (a) the production of medicinal cannabis;
- (b) the import of medicinal cannabis;
- (c) the export of medicinal cannabis;
- (d) the marketing of medicinal cannabis; and
- (e) the supply of medicinal cannabis.

(2) For the purposes of subsection (1)—

- (a) “production” includes—
  - (i) any kind of cultivation of cannabis, and
  - (ii) any kind of processing of cannabis to make it usable for medicinal purposes;



- (b) “import” includes any arrangement for bringing cannabis into Gibraltar;
- (c) “export” includes any arrangements for taking cannabis out of (or through) Gibraltar;
- (d) “marketing” includes advertising and any arrangement for facilitating or inducing supply; and
- (e) “supply” includes any arrangements for the provision of cannabis, whether on commercial terms or otherwise.

(3) It is immaterial for the purposes of subsection (2)(a), (d) and (e) whether or not all or any part of an activity takes place in, or in relation to, Gibraltar.

*General*

**Interpretation: general.**

9. For the purposes of this Act—

“Advisory Council” means the Council constituted under section 530 of the Crimes Act 2011;

“cannabis” has the meaning given by section 6;

“the Commission” has the meaning given by section 14;

“company” has the same meaning as in the Companies Act 2014;

“the Convention” has the meaning given by section 5;

“country” includes territory;

“export licence” means an operating licence if and in so far as it relates to the licensable activity of exporting medicinal cannabis;

“import licence” means an operating licence if and in so far as it relates to the licensable activity of importing medicinal cannabis;

“licensing authority” has the meaning given by section 23;

“marketing licence” means an operating licence if and in so far as it relates to the licensable activity of marketing medicinal cannabis;

“medicinal purposes” has the meaning given by section 7(2);

“the Minister” means the Minister responsible for finance;

“operating licence” means a licence under Part 7;

“personal licence” means a licence under Part 8;

“police officer” means a member of the Royal Gibraltar Police;

“prescribed” means prescribed by the Minister by regulations;

“production licence” means an operating licence if and in so far as it relates to the licensable activity of producing medicinal cannabis;

“relevant offence” means—

- (a) an offence listed in Schedule 1; and
- (b) an offence under the law of a country or territory outside Gibraltar (a “foreign offence”) which prohibits a kind of activity prohibited by an offence listed in that Schedule (a “domestic offence”); and

for the purpose of paragraph (b) it is immaterial—

- (i) whether or not the foreign offence prohibits all the kinds of activity prohibited by the domestic offence, and
- (ii) whether or not the foreign offence prohibits kinds of activity not prohibited by the domestic offence;

“supply licence” means an operating licence if and in so far as it relates to the licensable activity of supplying medicinal cannabis; and

“the Tribunal” means the Medicinal Cannabis Licensing Appeals Tribunal established by section 86.

### PART 3

#### RELATIONSHIP WITH MISUSE OF DRUGS REGIME

##### **Cultivation of cannabis.**

10. After section 508(2) of the Crimes Act 2011 (offence of cultivation of *cannabis*) insert—

“(3) Subsection (1) does not apply to anything done in accordance with the provisions of a licence under the Medicinal Cannabis Act 2021.”

**Authorisation procedures.**

11.(1) Regulations and notices under the following provisions of the Crimes Act 2011 may not make provision in relation to the authorisation or regulation of anything that may be the subject of a licence under this Act—

- (a) section 509 (authorisation of activities otherwise unlawful);
- (b) section 510 (power to make regulations for preventing misuse);
- (c) section 511 (special provision for safe custody); and
- (d) section 513 (regulations about Scheduled Substances).

(2) The powers under section 523 (powers of search and seizure) may not be exercised in relation to—

- (a) premises licensed in accordance with this Act, in respect of a licensable activity;
- (b) possession of a kind that may be the subject of a licence under this Act in respect of a licensable activity.

**Other amendments of Crimes Act 2011.**

12.(1) The Crimes Act 2011 is amended as follows.

(2) After section 503(2) (import and export of controlled drugs) add—

“(3) Subsection (1) does not apply to anything done in accordance with the provisions of a licence under the Medicinal Cannabis Act 2021.”.

(3) After section 504(3) (production and supply of controlled drugs) add—

“(4) Subsections (1) to (3) do not apply to anything done in accordance with the provisions of a licence under the Medicinal Cannabis Act 2021.”.

(4) After section 506(6) (restriction of possession) add—

“(7) Subsections (1) to (3) do not apply to anything done in accordance with the provisions of a licence under the Medicinal Cannabis Act 2021.”.

(5) After section 507(6) (prohibition of supply etc. of articles for administering or preparing controlled drugs) add—

“(7) Subsections (1) to (4) do not apply to anything done in accordance with the provisions of a licence under the Medicinal Cannabis Act 2021.”.

(6) After section 512(4) (manufacture and supply of Scheduled Substances) add—

“(5) Subsection (1) does not apply to anything done in accordance with the provisions of a licence under the Medicinal Cannabis Act 2021.”.

(7) After section 515(4) (ships used for illicit traffic) add—

“(5) Subsection (1) does not apply to anything done in accordance with the provisions of a licence under the Medicinal Cannabis Act 2021.”.

### **Advisory Council.**

13.(1) The Advisory Council may not advise the Government on any matter which falls within the class of matters for which the Commission is responsible.

(2) The Commission may—

(a) coordinate any of its activities with the Advisory Council with a view to supporting the work of the Advisory Council; and

(b) consult the Advisory Council on specific matters in respect of which the Commission thinks the Advisory Council will be able to advise the Commission.

(3) Subsection (2) does not apply in relation to individual licensing decisions under this Act.

## **PART 4**

### **THE MEDICINAL CANNABIS COMMISSION**

#### **Establishment of the Commission.**

14.(1) There shall be a body corporate to be known as the Medicinal Cannabis Commission (“the Commission”).

(2) Schedule 2 (which makes provision about the constitution and proceedings of the Commission) shall have effect.

#### **Duty to promote the regulatory objectives.**

15. In exercising its functions under this Act the Commission shall aim—

(a) to pursue, and wherever appropriate to have regard to, the regulatory objectives, and

- (b) to regulate the licensable activities in such a way as to ensure that commercial activity is permitted in relation to medicinal cannabis in so far as the Commission thinks it consistent with pursuit of the regulatory objectives.

**Statement of principles for licensing and regulation.**

16.(1) The Commission shall prepare a statement setting out the principles to be applied by it and the licensing authority in exercising functions under this Act.

(2) The statement under this section shall, in particular, explain how the principles to be applied are expected to assist the Commission in its pursuit of the regulatory objectives.

(3) The Commission shall—

- (a) review the statement from time to time, and
- (b) revise the statement when the Commission thinks it appropriate.

(4) The Commission shall as soon as is reasonably practicable publish—

- (a) the statement, and
- (b) any revision.

(5) Before issuing or revising a statement under this section the Commission shall consult—

- (a) the Minister;
- (b) the Advisory Council;
- (c) the Director of Public Health;
- (d) one or more persons who appear to the Commission to represent law enforcement;
- (e) one or more persons who appear to the Commission to represent the commercial interests relating to medicinal cannabis;
- (f) one or more persons who appear to the Commission to represent the interests of persons with conditions that may benefit from the use of medicinal cannabis; and
- (g) to such extent and in such manner as the Commission thinks appropriate, persons who have knowledge about health and social problems relating to the use of cannabis and other drugs.

(6) The Commission may also consult persons with responsibility for, or experience of, the regulation of medicinal cannabis in other jurisdictions.

**Codes of practice.**

17.(1) The Commission shall issue one or more codes of practice about—

- (a) the exercise of licensing powers under this Act; and
- (b) the manner in which licensable activities are undertaken (whether by the holder of a licence under this Act or by another person).

(2) In particular, the codes shall address the matters set out in subsections (3) and (4).

(3) A code shall set out criteria to be applied for the purposes of ensuring that—

- (a) the limits on manufacture and importation specified in Article 21 of the Convention (limitation of manufacture and importation) are not exceeded;
- (b) cultivation of cannabis is permitted only in so far as consistent with Article 22 of the Convention (special provision applicable to cultivation);
- (c) the system of controls required in accordance with Articles 23 and 28(1) (control of cannabis: cultivation) is implemented;
- (d) measures are adopted to prevent misuse of and illicit traffic in the leaves of the cannabis plant in accordance with Article 28(3) of the Convention (control of cannabis: misuse and illicit traffic);
- (e) the licensing system achieves the objectives of Article 29 of the Convention (manufacture);
- (f) the licensing system achieves the objectives of Article 30 of the Convention (trade and distribution);
- (g) the licensing system achieves the objectives of Article 31 of the Convention (special provisions relating to international trade);
- (h) the licensing system satisfies the requirements of Article 33 of the Convention (possession of drugs);
- (i) the provisions of this Act and the terms and conditions of licences under this Act achieve the objectives of Article 34 of the Convention (measures of supervision and inspection); and

- (j) the enforcement provisions of this Act are applied so as to achieve the objectives of Articles 35 to 38 of the Convention (action against illicit traffic; penal provisions; seizure and confiscation; measures against the abuse of drugs).
- (4) A code shall describe arrangements that should be made by a person undertaking licensable activities for the purposes of—
- (a) ensuring that licensable activities are conducted in a way that promotes the regulatory objectives;
  - (b) protecting children and other vulnerable persons from being harmed or exploited by licensable activities; and
  - (c) making assistance available to persons who are or may be affected by problems related to cannabis or other drugs.
- (5) A code may be revised or revoked by the Commission.
- (6) A code, and any revision, must state when it comes into force.
- (7) The Commission shall publish a code and any revision in a manner which the Commission thinks likely to bring it to the attention of those whose activities it concerns.
- (8) The Commission may make different provision under this section for different cases or circumstances (whether or not by way of separate codes of practice).
- (9) A failure to comply with a provision of a code shall not of itself make a person liable to criminal or civil proceedings; but—
- (a) this subsection is subject to any provision of or by virtue of this Act making an exception to an offence dependent on compliance with a code;
  - (b) a code shall be admissible in evidence in criminal or civil proceedings;
  - (c) a code may be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant; and
  - (d) a code shall be taken into account by the Commission in the exercise of a function under this Act.
- (10) Before issuing or revising a code under this section the Commission shall consult—
- (a) the Minister;
  - (b) the Advisory Council;
  - (c) the Director of Public Health;

- (d) one or more persons who appear to the Commission to represent law enforcement;
- (e) one or more persons who appear to the Commission to represent the commercial interests relating to medicinal cannabis;
- (f) one or more persons who appear to the Commission to represent the interests of persons with conditions that may benefit from the use of medicinal cannabis; and
- (g) to such extent and in such manner as the Commission thinks appropriate, persons who have knowledge about health and social problems relating to the use of cannabis and other drugs.

(11) The Commission may also consult persons with responsibility for, or experience of, the regulation of medicinal cannabis in other jurisdictions.

**Duty to advise Minister.**

18.(1) The Commission shall give advice to the Minister about—

- (a) the incidence of licensable activities;
- (b) the manner in which licensable activities are carried on;
- (c) the effects of licensable activities; and
- (d) the regulation of licensable activities.

(2) Advice under this section shall be given—

- (a) in response to a request from the Minister, and
- (b) on such other occasions as the Commission thinks appropriate.

**Compliance.**

19. The Commission may undertake activities for the purpose of assessing—

- (a) compliance with provision made by or by virtue of this Act; or
- (b) whether an offence is being committed under or by virtue of this Act.

**Investigation and prosecution of offences.**

20.(1) The Commission—



- (a) may investigate whether an offence has been committed under this Act; and
- (b) may refer a case to the Director of Public Prosecutions for consideration of the institution of criminal proceedings in respect of an offence under this Act.

(2) The power in subsection (1)(a) may be exercised whether in response to information received by the Commission or otherwise.

**Exchange of information.**

21.(1) The Commission may provide information received by it in the exercise of its functions to any of the persons listed in subsection (2)—

- (a) for use in the exercise of the person's or body's functions; or
- (b) for the purpose of a function of the Commission.

(2) Those persons are—

- (a) the Commissioner of Income Tax;
- (b) the Collector of Customs (if not the licensing authority);
- (c) a customs officer;
- (d) the Commissioner of the Royal Gibraltar Police; and
- (e) a police officer.

(3) Any of those persons may provide to the Commission, for use in the exercise of its functions, information received by the person in the exercise of the person's functions.

(4) The Commission may provide information received by it in the exercise of its functions to a person if the provision is for the purpose of—

- (a) a criminal investigation (whether in Gibraltar or elsewhere); or
- (b) criminal proceedings (whether in Gibraltar or elsewhere).

(5) Provision of information in reliance on this section may be subject to conditions (whether as to use, storage, disposal or otherwise).

**Consultation.**

22.(1) If in the course of the exercise of its functions the Commission becomes aware of a matter about which any of the relevant persons is likely to have an opinion, the Commission shall consult that person.

(2) The Commission shall comply with any direction of the Minister (which may be general or specific) to consult any of the relevant persons.

(3) For the purposes of this section the “relevant persons” are—

- (a) the Commissioner of Income Tax;
- (b) the Collector of Customs;
- (c) the Commissioner of the Royal Gibraltar Police; and
- (d) the Director of Public Health.

## **PART 5**

### **LICENSING AUTHORITY**

#### **Licensing authority.**

23.(1) The licensing authority for the purposes of this Act is—

- (a) the Collector of Customs; or
- (b) such other individual or body as the Minister may appoint.

(2) Before appointing an individual or body under subsection (1)(b) the Minister must be satisfied that the individual or body—

- (a) is a fit and proper person to exercise the functions of the licensing authority; and
- (b) is willing, and appropriately resourced, to exercise those functions.

#### **Exercise of functions.**

24.(1) Before taking any decision in the exercise of a function under this Act the licensing authority must give the Minister notice of the decision that it proposes to make.

(2) If the Minister considers that the proposed decision would be prejudicial to the economic or other public interest, or good reputation, of Gibraltar, the Minister may direct the licensing authority—

- (a) not to make the decision proposed; and
- (b) to reconsider the exercise of its functions having regard to any relevant directions under section 25.

(3) If the Minister is satisfied that it is necessary having regard to the economic or other public interest, or good reputation, of Gibraltar, the Minister—

- (a) may direct the licensing authority to make a specified decision; or
- (b) if satisfied that the licensing authority has failed to comply with subsection (2)(b) in respect of the exercise of a function under this Act, may exercise that function.

(4) The licensing authority may establish and operate a procedure for the giving of decisions in principle as to the exercise of any function under this Act; and where the licensing authority gives a decision in principle by virtue of this subsection—

- (a) subsection (1) applies to the decision in principle as to a decision in the exercise of a function under this Act; and
- (b) if the Minister indicates that the Minister does not intend to take action under subsection (2) or (3) in respect of the decision in principle, subsection (1) does not apply to any final decision given by the licensing authority pursuant to the decision in principle (without prejudice to the application of subsections (2) and (3) to a final decision).

**Directions.**

25.(1) In the exercise of its functions under this Act the licensing authority shall—

- (a) have regard to the general policy of the Government in relation to matters to which those functions relate; and
- (b) comply with any general directions given by the Minister pursuant to that policy.

(2) Nothing in subsection (1) shall be construed as authorising the Minister to give any direction in respect of a particular licence application or any other particular decision of the licensing authority (subject to section 24(2) and (3)).

**PART 6**

**GENERAL OFFENCES**

**Licensable activities.**

26.(1) A person commits an offence if he carries out a licensable activity unless an exception provided for in this section, or elsewhere in this Act, applies.

(2) Subsection (1) does not apply to activity by a person if—

- (a) the person holds an operating licence authorising the activity; and

- (b) the activity is carried on in accordance with the terms and conditions of the licence.
- (3) Subsection (1) does not apply to activity by a person if—
- (a) the person acts in the course of a business carried on by a person who holds an operating licence authorising the activity; and
  - (b) the activity is carried on in accordance with the terms and conditions of the licence.
- (4) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for 14 years, to a fine, or to both; or
  - (b) on summary conviction, to imprisonment for 12 months, to a fine at level 5 on the standard scale, or to both.
- (5) For the purposes of this section it is immaterial whether actions are performed—
- (a) wholly or partly by means of remote communication; or
  - (b) wholly or partly in Gibraltar.

**Investigation and enforcement.**

27. Section 523 of the Crimes Act 2011 (powers of search and seizure) applies for the purposes of the enforcement of this Part.

**Use of premises.**

28.(1) It is an offence for a person to use premises, or to cause or permit premises to be used, for a licensable activity unless an exception provided for in this section, or elsewhere in this Act, applies.

(2) Subsection (1) does not apply in relation to the use of premises by a person if the use is authorised by a premises licence held by the person.

(3) Subsection (1) does not apply in relation to the use of premises by a person who acts in the course of a business carried on by another person who holds a premises licence authorising the use.

(4) A person commits an offence if, being the occupier or concerned in the management of any premises, he knowingly permits or suffers an activity which amounts to an offence under this Act to take place on those premises.

- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for 14 years, to a fine, or to both; or
  - (b) on summary conviction, to imprisonment for 12 months, to a fine at level 5 on the standard scale, or to both.

**Children and young persons.**

29.(1) It is an offence for a person to invite, cause or permit a child or young person to acquire or use a cannabis product otherwise than—

- (a) for medicinal purposes; and
- (b) in accordance with a licence under this Act.

(2) A person guilty of an offence under this section shall be liable—

- (a) on conviction on indictment, to imprisonment for 14 years, to a fine, or to both; or
- (b) on summary conviction, to imprisonment for 12 months, to a fine at level 5 on the standard scale, or to both.

**PART 7**

**OPERATING LICENCES**

*Introductory*

**Nature of licence.**

30.(1) The licensing authority may issue operating licences in accordance with the provisions of this Part.

(2) An operating licence is a licence which states that it authorises the licensee to carry on one or more specified licensable activities.

**Form of licence.**

31.(1) An operating licence must specify—

- (a) the licensable activities to which it relates;
- (b) the person to whom it is issued;

- (c) the period during which it is to have effect; and
  - (d) any condition attached by the licensing authority.
- (2) The Minister may by regulations make provision about—
- (a) the form of operating licences; and
  - (b) the information to be included in operating licences (which may, in particular, include information about conditions attached to the licence).

### *Applications*

#### **Application.**

32.(1) A person may apply to the licensing authority for an operating licence to be issued authorising him to carry out licensable activities.

- (2) An application must—
- (a) specify the activities to be authorised by the licence;
  - (b) specify an address in Gibraltar at which a document issued under this Act may be served on the applicant;
  - (c) be made in such form and manner as the licensing authority may direct;
  - (d) state whether the applicant has been convicted of a relevant offence;
  - (e) state whether the applicant has been convicted of any other offence;
  - (f) contain or be accompanied by such other information or documents as the licensing authority may direct; and
  - (g) be accompanied by the prescribed fee.
- (3) An application may not be made by—
- (a) a child or young person; or
  - (b) a group that includes a child or young person.
- (4) The Minister may by regulations—
- (a) require an applicant for an operating licence to notify specified persons within a specified period (which may be wholly or partly before the application is made); and

- (b) provide for the consequences of failure to comply with a requirement under paragraph (a) (which may, in particular, include provision for an application to be disregarded or for a licence to lapse).

**Consideration of application: general principles.**

33.(1) In considering an application under section 32 the licensing authority—

- (a) shall have regard to any guidance or directions given by the Commission;
- (b) shall have regard to the regulatory objectives; and
- (c) shall form, and have regard to, an opinion of the applicant's suitability to carry on the licensed activities.

(2) For the purpose of subsection (1)(c) the licensing authority may, in particular, have regard to—

- (a) the integrity of the applicant or of a person relevant to the application;
- (b) the competence of the applicant or of a person relevant to the application to carry on the licensed activities in a manner consistent with pursuit of the regulatory objectives; and
- (c) the financial and other circumstances of the applicant or of a person relevant to the application (and, in particular, the resources likely to be available for the purpose of carrying on the licensed activities).

(3) In considering an application for an operating licence the licensing authority shall, in particular, have regard to the applicant's commitment to—

- (a) protecting vulnerable persons from being harmed or exploited by activities in relation to cannabis or other drugs; and
- (b) making assistance available to persons who are or may be affected by problems related to cannabis or other drugs.

(4) The statement maintained by the Commission under section 16 must specify the principles to be applied by the licensing authority in considering applications under section 32.

(5) The statement must, in particular, specify the kind of evidence to which the licensing authority should have regard when assessing integrity, competence and financial or other circumstances; and that evidence may include—

- (a) interviews conducted by or on behalf of the licensing authority;

- (b) references provided to the licensing authority at the request of the applicant;
  - (c) information or opinions provided to the licensing authority (whether or not on request) by other persons;
  - (d) information sought by the licensing authority as to solvency in general and financial reserves in particular;
  - (e) the completion of training (whether provided in accordance with arrangements made by the Commission, the licensing authority or otherwise); and
  - (f) the possession of qualifications (whether awarded in accordance with arrangements made by the Commission, the licensing authority or otherwise).
- (6) The statement may specify a class of applicant or other person in relation to whom the licensing authority will or may assume integrity for the purpose of subsection (2)(a).
- (7) For the purposes of this section—
- (a) in relation to an application, a reference to the licensed activities is a reference to the activities which will be the licensed activities if the application is granted; and
  - (b) a person is relevant to an application if, in particular, the person is likely to exercise a function in connection with, or to have an interest in, the licensed activities.

**Consideration of application: criminal record.**

34.(1) The licensing authority may refuse an application under section 32 if the applicant or a person relevant to the application has a conviction for a relevant offence.

(2) This section does not prejudice the generality of section 33(1)(c).

(3) The reference in subsection (1) to a person who is relevant to an application shall be construed in accordance with section 33(7)(b).

**Procedure.**

35.(1) For the purpose of considering an application under section 32 the licensing authority may—

- (a) require the applicant to provide information;
- (b) consult, and have regard to information provided by or an opinion stated by, any person.



(2) In subsection (1) “information” and “opinion” mean information or an opinion about—

- (a) the applicant;
- (b) a person relevant to the application; or
- (c) the licensed activities.

(3) In particular, the licensing authority may require the production of a certificate issued by the police relating to the criminal record of—

- (a) the applicant; or
- (b) a person relevant to the application.

(4) The statement maintained by the Commission under section 16 must, in particular, specify the practice to be followed by the licensing authority in relation to—

- (a) the delegation of functions in relation to applications;
- (b) the holding of oral hearings of applications; and
- (c) evidence required or accepted in connection with applications.

(5) The licensing authority may disregard an irregularity or deficiency in or in relation to an application, other than a failure to pay the fee required by section 32(2)(g), if in the licensing authority’s opinion the irregularity or deficiency is immaterial in the circumstances.

(6) For the purposes of this section a reference to the licensed activities or to a person relevant to an application shall be construed in accordance with section 33(7)(b).

**Determination of application.**

36.(1) On considering an application under section 32 the licensing authority shall—

- (a) grant it;
- (b) reject it; or
- (c) grant it in respect of one or more of the licensable activities specified in accordance with section 32(2)(a) and reject it in respect of the others.

(2) Where the licensing authority grants an application in whole or in part it shall as soon as is reasonably practicable—

- (a) notify the applicant of the grant; and

(b) issue an operating licence to the applicant.

(3) Where the licensing authority rejects an application in whole or in part it shall as soon as is reasonably practicable notify the applicant of—

(a) the rejection; and

(b) the reasons for it.

### *Conditions*

#### **General conditions.**

37.(1) The Commission may specify conditions to be attached by the licensing authority to—

(a) each operating licence; or

(b) each operating licence falling within a specified class.

(2) For the purposes of subsection (1)(b) a class may be defined wholly or partly by reference to—

(a) the nature of the licensed activities;

(b) the circumstances in which the licensed activities are carried on; or

(c) the nature or circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities.

(3) Where the licensing authority issues an operating licence it shall attach to the licence any condition specified under subsection (1) as a condition to be attached to operating licences of a class within which the licence falls.

#### **General conditions: procedure.**

38.(1) The licensing authority may amend or revoke a condition specified under section 37; and a reference in this section to the specification of a condition includes a reference to the amendment or revocation of a condition.

(2) In taking or considering action under subsection (1) the licensing authority shall comply with any guidance or directions of the Commission.

(3) Before specifying a condition under section 37(1), or giving guidance or directions under subsection (2), the Commission shall consult—

- (a) one or more persons who in the Commission's opinion represent the interests of operating licensees who may be affected by the condition; and
  - (b) such of the persons specified in section 16(5) as the Commission thinks appropriate (if any).
- (4) The Commission shall publish any specification as soon as is reasonably practicable.
- (5) Where the Commission proposes to specify a condition—
- (a) the licensing authority shall give notice of it to the holder of each licence which—
    - (i) has effect at that time, and
    - (ii) is within a class affected by the specification;
  - (b) if the licensing authority issues, after that time but before the specification is made, an operating licence of a class affected by the specification, the licensing authority shall give the licensee notice of the proposed specification; and
  - (c) on the making of the specification an existing licence shall by virtue of this paragraph be subject to the condition specified.
- (6) For the purposes of subsection (5), the Commission must give—
- (a) at least six months' notice; or
  - (b) where the Commission thinks it necessary by reason of urgency to make a specification without giving at least six months' notice, as much notice as possible in the circumstances.
- (7) Subsection (5)(c), in its application to the amendment or revocation of a condition (by virtue of subsection (1)), shall be treated as—
- (a) making existing licences subject to the condition as amended; or
  - (b) relieving existing licences from the condition revoked.

**Conditions imposed by Minister.**

39.(1) The Minister may by regulations provide for specified conditions to be attached to operating licences.

- (2) Apart from the medicinal purposes condition, regulations may make provision—
- (a) for all operating licences; or

(b) only for operating licences falling within a specified description.

(3) Transitional provision of regulations under this section (made by virtue of section 113(2)(c)) may, in particular, apply a condition (with or without modification) to licences issued before the regulations are made (or come into force).

**Scope of powers to attach conditions.**

40.(1) Without prejudice to the generality of the powers conferred by sections 37 and 39, a condition attached by virtue of either of those sections may, in particular, do any of the things specified in this section.

(2) A condition may have the effect of restricting the licensed activities that may be carried on in reliance on the licence by reference to—

- (a) the nature of the activities;
- (b) the circumstances in which they are carried on;
- (c) machinery or processes used; or
- (d) their extent.

(3) A condition may make provision wholly or partly by reference to—

- (a) the nature of the licensed activities;
- (b) the circumstances in which the licensed activities are carried on; or
- (c) the nature or circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities.

(4) In regulating the licensed activities a condition may make provision about—

- (a) the facilities that may or must be provided in connection with the licensed activities;
- (b) the manner in which facilities are provided;
- (c) the number of persons that may or must be employed in the provision of facilities;
- (d) financial resources available for particular purposes to the person providing facilities; or
- (e) any other matter.

(5) A condition may relate to the financial circumstances of the licensee or of another person involved or likely to be involved in the conduct of the licensed activities; in particular, a condition may make provision about the maintenance of reserves in respect of potential liabilities.

(6) A condition may make provision about assistance for persons who are or may be affected by problems related to cannabis or other drugs.

(7) A condition may make provision about—

- (a) establishing the identity of users of facilities;
- (b) recording the identity of users of facilities; or
- (c) restricting facilities to persons registered in respect of the facilities in advance.

**Requirement for personal licence.**

41.(1) The Commission shall use its powers under section 37 to ensure that in respect of each operating licence at least two individuals—

- (a) occupy specified management offices in or in respect of the licensee or in connection with the licensed activities; and
- (b) hold a personal licence authorising the performance of the functions of the office.

(2) A condition under either of those sections may impose requirements which relate to a management office and are in addition to any required by subsection (1).

(3) A condition attached to an operating licence by virtue of section 37 may, in particular, provide that if a specified management office is held in or in respect of the licensee or in connection with a licensed activity (whether or not in pursuance of another condition)—

- (a) it must be held by an individual who holds a personal licence authorising the performance of the functions of the office; and
- (b) anything done in the performance of the functions of the office must be done in accordance with the terms and conditions of the personal licence.

(4) A condition attached to an operating licence by virtue of section 37 or 39 may, in particular, provide that if a specified operational function is performed in connection with a licensed activity it must be performed—

- (a) by an individual who holds a personal licence authorising performance of the function; and

- (b) in accordance with the terms and conditions of the personal licence.
- (5) In this section “management office” in relation to a licensee means—
- (a) if the licensee is a company, the office of director;
  - (b) if the licensee is a limited partnership, the office of partner;
  - (c) if the licensee is an unincorporated association, any office in the association; and
  - (d) in any case, any position involving sole or partial responsibility for the conduct of persons performing operational functions in connection with a licensed activity or for facilitating or ensuring compliance with terms or conditions of the operating licence.
- (6) In this section “operational function” means any function which enables the person exercising it to influence the method and process of the licensed activities.
- (7) Provision by virtue of subsection (1) may be general or may relate only to specified—
- (a) kinds of operating licence;
  - (b) cases; or
  - (c) circumstances.
- (8) The Minister may by regulations amend the definition of “management office” or “operational function” for the purposes of this section.

#### **Compliance with code of practice.**

42.(1) An operating licence shall by virtue of this section be subject to the condition that the licensee ensures compliance with any relevant provision of a code of practice issued under section 17.

(2) In subsection (1) the reference to a licensee includes a reference to anyone employed or engaged by a licensee to perform an operational function within the meaning of section 41(6).

(3) This section does not prevent compliance with a provision of a code from being made the subject of a condition under section 37 or 39.

#### **Premises.**

43.(1) An operating licence may include conditions relating to the premises in which licensed activities are carried out.

(2) An operating licence may authorise activities carried on in more than one place.

**Transportation.**

44. An operating licence may include conditions about the conditions in which, or methods by which, anything is to be transported in the course of the licensed activities.

**Equipment.**

45.(1) A condition attached to an operating licence by virtue of section 37 or 39 may make provision about equipment used in connection with the licensed activities.

(2) For the purposes of this section “equipment” includes—

- (a) machinery;
- (b) computers; and
- (c) any other piece of equipment.

**Information.**

46.(1) A condition attached to an operating licence by virtue of section 37 or 39 may require the provision of information of a specified kind to—

- (a) the Commission;
- (b) the licensing authority; or
- (c) another specified person or class of person.

(2) A condition attached by virtue of this section may, in particular—

- (a) relate to information about the use made of facilities provided in accordance with the operating licence; or
- (b) require a person to provide any information that he suspects may—
  - (i) relate to the commission of an offence under this Act, or
  - (ii) relate to a breach of a rule applied by an industry or other body.

**Specific conditions: medicinal purposes condition.**

47.(1) Every operating licence is automatically subject to the condition that it does not permit any activity which is not directed solely at medicinal cannabis (the “medicinal purposes condition”).

(2) The Minister shall make regulations setting out purposes that are to be, or not to be, treated as satisfying the medicinal purposes condition.

**Specific conditions: import and export licences.**

48.(1) An import licence is automatically subject to the conditions—

- (a) that it does not permit import from any country specified by the Commission by notice for the purposes of this subsection; and
- (b) that it does not permit import from any country in contravention of the laws of that country relating to export.

(2) An export licence is automatically subject to the conditions—

- (a) that it does not permit export to any country specified by the Commission by notice for the purposes of this subsection; and
- (b) that it does not permit export to any country in contravention of the laws of that country relating to import.

(3) A notice under this section—

- (a) must be published by the Commission as soon as is reasonably practicable in the Gazette and in such other manner (if any) as it considers appropriate;
- (b) must be drawn to the attention of each import or export licensee by the licensing authority as soon as is reasonably practicable;
- (c) may be varied or revoked by later notice;
- (d) must specify a time when it comes into force (which must not be before the duties in paragraphs (a) and (b) have been complied with);
- (e) may include transitional provision;
- (f) may apply generally or only in relation to specified cases or circumstances; and
- (g) may make different provision for different cases or circumstances.

*Annual fee*

**Annual fee.**

49.(1) The holder of an operating licence—



- (a) shall pay a first annual fee to the licensing authority within such period after the issue of the licence as may be prescribed; and
  - (b) shall pay an annual fee to the licensing authority before each anniversary of the issue of the licence.
- (2) In this section “annual fee” means a fee of such amount as may be prescribed.
- (3) Regulations under this section may, in particular, make different provision for—
- (a) different kinds of operating licence; or
  - (b) different circumstances.
- (4) Subsection (1)(b) does not apply in relation to an anniversary of the issue of a licence on or immediately before which the licence ceases to have effect by virtue of section 63.

*Changes*

**Change of circumstance.**

50.(1) An operating licence is automatically subject to the condition that the licensee complies with any regulations under this section.

- (2) The Minister may make regulations requiring the holder of an operating licence—
- (a) to notify the licensing authority of any change of circumstance of a prescribed kind in relation to him or to a licensed activity, and
  - (b) to give the licensing authority prescribed details of the change.
- (3) The regulations must specify in relation to each specified class of change of circumstance whether the notification is to be given to the licensing authority before or after the change.
- (4) If a change of circumstance notified under subsection (1) falsifies information contained in or accompanying the application for the operating licence in accordance with section 32(2) the notification must be accompanied by—
- (a) the prescribed fee; and
  - (b) either—
    - (i) the licence, or
    - (ii) (an application to the licensing authority for the issue of a copy of the licence under section 56.

- (5) Where notification is accompanied by the licence, the licensing authority shall—
- (a) make such alteration to the information contained in the licence as appears to it to be required by the change in circumstance; and
  - (b) return the licence to the licensee.
- (6) Where the notification is accompanied by an application for a copy of the licence, the licensing authority shall, if it grants the application, issue the copy in a form which appears to the licensing authority to reflect the change in circumstance.
- (7) The holder of an operating licence commits an offence if he fails without reasonable excuse to comply with regulations under this section.
- (8) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (9) This section does not prevent the imposition of a requirement to notify the licensing authority of a specified change of circumstance by way of the attachment of a condition to an operating licence.

#### **Change of corporate control.**

51.(1) An operating licence held by a company limited by shares (“the company”) is automatically subject to the condition of compliance with the provisions of this section.

- (2) If a person (“the new controller”) acquires a significant influence over the company, the company shall inform the licensing authority and either—
- (a) surrender the operating licence under section 62; or
  - (b) apply to the licensing authority under this section for a determination that the operating licence shall continue to have effect.
- (3) An application under subsection (2)(b) must be accompanied by such information as the licensing authority may direct about—
- (a) the new controller;
  - (b) the new controller’s significant influence over the company; and
  - (c) the new controller’s interest in any company of which the company is a subsidiary undertaking.
- (4) On considering an application under section (2)(b) the licensing authority shall—

- (a) make the determination sought, if satisfied that the licensing authority would have granted the operating licence to the licensee had the new controller been a controller of the company when the application for the operating licence was made; and
- (b) otherwise, revoke the operating licence.

(5) If the licensing authority becomes aware that a company has failed to comply with the duty under subsection (2) within the period of 5 working days beginning with the day on which the duty began to apply to the company, the licensing authority shall revoke the relevant operating licence.

(6) But the licensing authority may extend the period under subsection (5), for a single period not exceeding 28 working days, before it expires.

(7) In this section—

- (a) “significant influence” means any of the situations specified in section 276(2)(a) to (d) of the Companies Act 2014;
- (b) “subsidiary undertaking” has the same meaning as in section 276 of that Act;
- (c) “working day” means a day other than a public holiday, a Saturday or a Sunday.

**Section 51: supplemental.**

52.(1) The Minister may by regulations provide for section 51 not to apply to the holder of a specified description of operating licence.

(2) An application under section 51(2)(b) must be accompanied by the prescribed fee.

(3) An application may be made under section 51(2)(b) in respect of a person who is expected to become a controller of a company.

(4) The licensing authority shall as soon as is reasonably practicable inform an applicant under section 51(2)(b) of—

- (a) the licensing authority’s decision; and
- (b) the reasons for it.

(5) In giving a direction under section 51(3) the licensing authority shall have regard to normal commercial practices in relation to the confidentiality of information.

(6) Regulations under subsection (2) above may, in particular, provide for a reduction of fee where the application is a result of—

- (a) the merger of more than one company; or
- (b) the division of a company.

(7) Revocation of an operating licence under section 51(4)(b) shall be treated for all purposes (including the application of section 70) as revocation under section 69.

*Management of licence*

**Application to vary licence.**

53.(1) The holder of an operating licence may apply to the licensing authority to vary the licence by—

- (a) adding, amending or removing a licensed activity; or
- (b) adding, amending or removing a condition attached to the licence by virtue of section 37 or 39.

(2) A licence may not be varied under this section so as to authorise anyone other than the person to whom it was issued to undertake licensable activities.

(3) The provisions of this Part shall apply in relation to an application for variation as they apply in relation to an application for a licence—

- (a) subject to the provisions of this section; and
- (b) with any other necessary modifications.

(4) Regulations under this Part which relate to an application for an operating licence may make—

- (a) provision which applies only in the case of an application for variation;
- (b) provision which does not apply in the case of an application for variation;
- (c) different provision in relation to an application for variation from that made in relation to an application for an operating licence;
- (d) different provision in relation to applications for variations of different kinds.

(5) An application for variation must (in addition to anything required by section 32) be accompanied by—

- (a) a statement of the variation sought; and
- (b) either—

- (i) the licence to be varied, or
  - (ii) a statement explaining why it is not reasonably practicable to produce the licence.
- (6) In granting an application for variation the licensing authority —
- (a) shall specify a time when the variation shall begin to have effect; and
  - (b) may make transitional provision.

**Amendment.**

54.(1) The licensing authority may require the holder of an operating licence to submit it to the licensing authority for the purpose of amendment to reflect—

- (a) a general variation of conditions under section 37 or 39;
- (b) a change notified under section 50;
- (c) the grant of an application for variation under section 53;
- (d) the attachment of an additional condition, or the amendment of a condition, under section 54;
- (e) the grant of an application for renewal under section 61; or
- (f) anything done in relation to a personal licence under Part 8.

(2) A licensee shall comply with a requirement under subsection (1) within the period of 14 days beginning with the day on which he receives notice of the requirement.

(3) It is an offence to fail without reasonable excuse to comply with a requirement imposed under subsection (1).

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) Subsection (1)(a) is without prejudice to section 51.

**Register of operating licences.**

55.(1) The Commission shall—

- (a) maintain a register of operating licences containing such details of and relating to each licence as the Commission thinks appropriate;

- (b) make arrangements for the register to be accessible online at all times without payment or registration;
- (c) make arrangements for the register to be available for inspection by members of the public at all reasonable times; and
- (d) make arrangements for the provision of a copy of an entry in the register to a member of the public on request.

(2) The licensing authority must provide the Commission with the information required to maintain the register.

(3) No civil (or criminal) liability attaches to the Commission or the licensing authority in respect of any omission or other inaccuracy in the register.

**Copy of licence.**

56.(1) The licensing authority may make arrangements to issue to a licensee on request a copy of an operating licence which has been lost, stolen or damaged.

- (2) The arrangements may, in particular, include a requirement—
  - (a) for the payment of a fee not exceeding such sum as may be prescribed for the purposes of this subsection by the Minister by regulations;
  - (b) in the case of a licence being lost or stolen, that the licensee has complied with specified arrangements for reporting the loss or theft to the Royal Gibraltar Police.

(3) A copy of a licence issued under this section shall be treated as if it were the licence.

**Production of licence.**

57.(1) A constable or enforcement officer may require the holder of an operating licence to produce it to the constable or enforcement officer within a specified period.

(2) It is an offence for a licensee to fail without reasonable excuse to comply with a requirement under subsection (1).

(3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Conviction.**

58.(1) If the holder of an operating licence is convicted of an offence by or before a court in Gibraltar the holder shall as soon as is reasonably practicable notify the licensing authority of—

- (a) his conviction; and
- (b) any sentence passed in respect of it.

(2) If the holder of an operating licence is convicted of a relevant offence by or before a court in Gibraltar the holder shall immediately notify the court about the operating licence.

(3) If the holder of an operating licence is convicted of a relevant offence by or before a court outside Gibraltar the holder shall as soon as is reasonably practicable notify the licensing authority of—

- (a) the conviction; and
- (b) any sentence passed in respect of it.

(4) It is an offence to fail without reasonable excuse to comply with any of subsections (1) to (3).

(5) A person guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Duration of licence*

**Indefinite duration.**

59. An operating licence shall continue to have effect unless and until it ceases to have effect in accordance with—

- (a) a determination under section 60; or
- (b) sections 62 to 64.

**Power to limit duration.**

60.(1) The Commission may determine that operating licences, or a specified class of operating licence, shall cease to have effect at the end of a specified period (unless terminated earlier in accordance with sections 62 to 64).

- (2) The period specified under subsection (1)—
  - (a) in the case of an operating licence issued after the determination, must begin with the date on which the licence is issued; and

- (b) in the case of an operating licence issued before the determination, must begin with the date of the determination.
- (3) The Commission—
- (a) may determine different periods under subsection (1) for operating licences authorising different classes of activity (but may not otherwise determine different periods for different licences);
  - (b) may alter a determination under subsection (1) (but an alteration shall have effect only in relation to licences issued after the alteration); and
  - (c) may revoke a determination under subsection (1) (in which case the determination shall cease to have effect in relation to licences already issued).
- (4) The Commission shall publish any determination under subsection (1) as part of a statement (or revised statement) under section 16.

**Renewal of licence.**

61.(1) Where an operating licence is subject to a determination under section 60, the licensee may apply to the licensing authority for renewal of the licence.

(2) The provisions of this Part shall apply in relation to an application for renewal as they apply in relation to an application for a licence—

- (a) subject to the provisions of this section; and
- (b) with any other necessary modifications.

(3) An application for renewal of an operating licence may be made only during the period which—

- (a) begins three months before the date on which the licence would otherwise expire by virtue of section 60; and
- (b) ends one month before the date on which the licence would otherwise expire by virtue of that section.

(4) Where an application for renewal of an operating licence is awaiting determination on the date when it would expire by virtue of section 60, the licence shall continue to have effect by virtue of this subsection until the application is determined (unless it ceases to have effect by virtue of sections 62 to 64).

(5) A direction or regulations under this Part which relate to an application for an operating licence may make—



- (a) provision which applies only in the case of an application for renewal;
  - (b) provision which does not apply in the case of an application for renewal; and
  - (c) different provision in relation to an application for renewal from that made in relation to an application for an operating licence.
- (6) An application for renewal must (in addition to anything required by section 32) be accompanied by—
- (a) the licence to be renewed; or
  - (b) a statement explaining why it is not reasonably practicable to submit the licence to be renewed.
- (7) The licensing authority shall determine the period during which a renewed operating licence is to have effect (subject to sections 62 to 64); and the licensing authority —
- (a) may determine different periods for operating licences authorising different classes of activity (but may not otherwise determine different periods for different licences);
  - (b) may alter a determination (but an alteration shall have effect only in relation to licences issued after the alteration); and
  - (c) shall publish any determination under this subsection.
- (8) The Minister may by regulations amend subsection (3) so as to substitute a different time for a time specified.

**Surrender.**

62. An operating licence shall cease to have effect if the licensee—
- (a) notifies the licensing authority of the intention to surrender the licence; and
  - (b) gives the licensing authority either—
    - (i) the licence, or
    - (ii) a written statement explaining why it is not reasonably practicable to produce the licence.

**Lapse.**

- 63.(1) In the case of an operating licence issued to an individual, the licence shall lapse if—

- (a) the licensee dies;
  - (b) the licensee becomes, in the opinion of the licensing authority as notified to the licensee, incapable of carrying on the licensed activities by reason of mental or physical incapacity; or
  - (c) the licensee becomes the subject of a bankruptcy order under Part 13 of the Insolvency Act 2011.
- (2) In any other case an operating licence shall lapse if the licensee—
- (a) ceases to exist; or
  - (b) goes into liquidation (within the meaning of the Insolvency Act 2011).

**Forfeiture.**

64.(1) Where the holder of an operating licence is convicted of a relevant offence by or before a court in Gibraltar the court may order forfeiture of the licence.

(2) Forfeiture under this section shall be on such terms (which may include terms as to suspension) as may be specified by—

- (a) the court which orders forfeiture;
- (b) a court to which an appeal against the conviction, or against any order made on the conviction, has been or could be made; or
- (c) the Supreme Court, if hearing proceedings relating to the conviction.

(3) Subject to any express provision made under subsection (2), an operating licence shall cease to have effect on the making of a forfeiture order under subsection (1).

(4) The terms on which a forfeiture order is made under this section shall, in particular, include a requirement that the licensee deliver to the licensing authority, within such time as the order may specify—

- (a) the licence; or
- (b) a statement explaining why it is not reasonably practicable to produce the licence.

(5) As soon as is reasonably practicable after making an order for forfeiture under this section the court shall notify the licensing authority.

*Review of licence*

**Review.**

65.(1) The Commission may in relation to operating licences of a particular description review—

- (a) the manner in which licensees carry on licensed activities; and
- (b) in particular, arrangements made by licensees to ensure compliance with conditions attached by virtue of section 37 or 39.

(2) The Commission may review any matter connected with the provision of licensed activities as authorised by an operating licence if the Commission—

- (a) has reason to suspect that activities may have been carried on in purported reliance on the licence but not in accordance with a condition of the licence;
- (b) believes that the licensee, or a person who exercises a function in connection with or is interested in the licensed activities, has acquired a conviction for a relevant offence; or
- (c) for any reason—
  - (i) suspects that the licensee may be unsuitable to carry on the licensed activities, or
  - (ii) thinks that a review would be appropriate.

(3) For the purposes of subsection (2)(c) a reason—

- (a) may, in particular, relate to the receipt of a complaint about the licensee's activities; and
- (b) need not relate to any suspicion or belief about the licensee's activities.

(4) Before commencing a review of an operating licence under subsection (2) the Commission shall—

- (a) notify the licensee; and
- (b) inform the licensee of the procedure to be followed in the conduct of the review.

(5) In conducting a review of an operating licence under subsection (2) the Commission—

- (a) shall give the licensee an opportunity to make representations; and
- (b) may give other persons an opportunity to make representations.

(6) An operating licence may be subject to a condition requiring the holder to inform the Commission of specified matters to enable the Commission to consider whether to undertake a review under this section.

**Regulatory powers.**

66.(1) Following a review under section 65(1) or (2) the Commission may arrange for the licensing authority to—

- (a) give the holder of an operating licence a warning;
- (b) attach an additional condition to a licence under section 53;
- (c) remove or amend a condition attached to a licence under section 37;
- (d) exercise the power under section 67 to suspend a licence;
- (e) exercise the power under section 69 to revoke a licence; or
- (f) exercise the power under section 71 to impose a penalty.

(2) Where the Commission determines to take action under subsection (1) in respect of a licence it shall as soon as is reasonably practicable notify the licensee of—

- (a) the action; and
- (b) the Commission's reasons.

(3) In determining what action to take under subsection (1) following a review the Commission may have regard to a warning under that subsection given to the licensee following an earlier review (whether or not of that licence).

**Suspension.**

67.(1) The Commission may make arrangements for the licensing authority to suspend an operating licence if following a review under section 65(1) or (2) the Commission thinks that any of the conditions specified in section 70(1) applies.

(2) The Commission may make arrangements for the licensing authority to suspend an operating licence if at the time of deciding to conduct a review under section 65(1) or (2), or at any time during the course of a review, the Commission suspects that any of the conditions specified in section 71(1) may apply.

(3) The Commission may make arrangements for the licensing authority to suspend an operating licence if it thinks that any of the conditions specified in section 70(2) applies.

(4) General directions under section 25 may relate to the circumstances in which an operating licence should be suspended.

(5) Where the licensing authority suspends an operating licence it—

- (a) shall specify the time when the suspension takes effect;
- (b) shall specify either—
  - (i) a period for which the suspension shall last (which is without prejudice to the re-exercise of the power under subsection (1) on or after the expiry of that period), or
  - (ii) that the suspension shall last until some specified event occurs (which may be the giving of a notice by the licensing authority), and

may make saving or transitional provision (which may, in particular, provide for a licence to continue to have effect in relation to a licensed activity carried out, or anything done in the course of or for the purposes of a licensing authority, before the time when the suspension takes effect for other purposes).

(6) An operating licence shall have no effect in respect of anything done while it is suspended under this section.

#### **Reinstatement.**

68.(1) If an operating licence has been suspended in accordance with section 67(4), the Commission may arrange for the licensing authority to reinstate the licence.

(2) Where the licensing authority reinstates an operating licence it—

- (a) must specify the time when the reinstatement takes effect; and
- (b) may make the reinstatement subject to conditions.

(3) General directions under section 25 may relate to the circumstances in which an operating licence should be reinstated.

#### **Revocation.**

69.(1) The Commission may make arrangements for the licensing authority to revoke an operating licence if following a review under section 65(1) or (2) the Commission thinks that any of the conditions specified in section 70(1) applies.

(2) The Commission may make arrangements for the licensing authority to revoke an operating licence if it thinks that any of the conditions specified in section 70(2) applies.

(3) The Commission shall make arrangements for the licensing authority to revoke an operating licence if the licensee fails to pay the annual fee in accordance with section 49; but

the Commission may disapply this subsection if it thinks that a failure to pay is attributable to administrative error.

(4) The Commission may make arrangements for the licensing authority to revoke an operating licence.

(5) General directions under section 25 may relate to the circumstances in which an operating licence should be revoked.

(6) Where the licensing authority revokes an operating licence it—

- (a) shall specify the time when the revocation takes effect; and
- (b) may make saving or transitional provision (which may, in particular, provide for a licence to continue to have effect in relation to a licensed activity carried out, or anything done in the course of or for the purposes of a licensing authority, before the time when the revocation takes effect for other purposes).

#### **Conditions for suspension or revocation.**

70.(1) The conditions referred to in sections 67(1) and (2) and 69(1) are—

- (a) that a licensed activity is being or has been carried on in a manner which is inconsistent with the regulatory objectives;
- (b) that a condition of the licence has been breached;
- (c) that the licensee has failed to cooperate with a review under section 65(1) or (2);  
and
- (d) that the licensee is unsuitable to carry on the licensed activities.

(2) The conditions referred to in sections 67(3) and 69(2) are—

- (a) that the licensee has failed to comply with a requirement of regulations under section 50; and
- (b) that the licensee has failed to submit the licence to the licensing authority for amendment in accordance with section 54.

(3) In considering a licensee's suitability for the purpose of subsection (1)(d) the licensing authority may, in particular, have regard to—

- (a) the integrity of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities;

- (b) the competence of the licensee, or of any person who exercises a function in connection with the licensed activities, to carry on the licensed activities in a manner consistent with pursuit of the regulatory objectives; or
- (c) the financial and other circumstances of the licensee or of any person who exercises a function in connection with or is interested in the licensed activities (and, in particular, the resources available for the purpose of carrying on the licensed activities).

*Penalties*

**Financial penalty.**

71.(1) The Commission may require the holder of an operating licence to pay a penalty if the Commission thinks that a condition of the licence has been breached.

(2) Before imposing a requirement on a licensee to pay a penalty under this section the Commission must notify the licensee—

- (a) that the Commission proposes to require the licensee to pay a penalty;
- (b) of the amount of the proposed penalty;
- (c) of the Commission's reasons; and
- (d) of a period within which the licensee may make representations to the Commission.

(3) The Commission may not give a notice under subsection (2) in respect of the breach of a condition after the end of the period of two years beginning with—

- (a) the day on which the breach occurred or began to occur; or
- (b) if later, the day on which the breach came to the knowledge of the Commission.

(4) After the end of the period specified under subsection (2)(d) the Commission may give the licensee a notice requiring the licensee to pay a penalty under this section.

(5) A penalty imposed by notice under subsection (4)—

- (a) shall be payable by the licensee to the Commission;
- (b) may be enforced as if it were a debt owed by the licensee to the Commission; and
- (c) on receipt by the Commission shall be paid into the Consolidated Fund.

(6) The Commission shall—

- (a) prepare a statement setting out the principles to be applied by the Commission in exercising the powers under this section;
- (b) review the statement from time to time;
- (c) revise the statement when the Commission thinks it necessary;
- (d) as soon as is reasonably practicable—
  - (i) send the statement and any revision to the Minister, and
  - (ii) publish the statement and any revision; and
- (e) have regard to the statement when exercising a power under this section.

(7) The statement maintained under subsection (6) must, in particular, require the Commission in considering the imposition of a penalty under this section or the amount of a penalty to have regard, in particular, to—

- (a) the seriousness of the breach of condition in respect of which the penalty is proposed;
- (b) whether or not the licensee knew or ought to have known of the breach; and
- (c) the nature of the licensee (including, in particular, his financial resources).

(8) Before preparing or revising a statement under subsection (6) the Commission shall consult—

- (a) the Minister; and
- (b) such other persons as the Commission thinks appropriate.

#### *Information*

#### **Information.**

72.(1) The holder of an operating licence shall comply with a request of the Commission to—

- (a) produce a written or electronic record relating to the licensed activities;
- (b) provide a copy of a written or electronic record relating to the licensed activities; and
- (c) provide information about the licensed activities.



- (2) A request under subsection (1) may specify—
  - (a) the form and manner in which a record or information is to be produced or provided;
  - (b) the period within which a record or information is to be produced or provided.
- (3) The Commission may retain anything provided under subsection (1).
- (4) The Commission may exercise a power under this section only for the purpose of—
  - (a) determining whether activities have been carried on in purported reliance on the licence but not in accordance with a condition of the licence;
  - (b) determining the suitability of the licensee to carry on the licensed activities; or
  - (c) compiling information for the purposes of making or contributing to the statistical returns required by Article 20 of the Convention (statistical returns to be furnished to the Board).
- (5) It is an offence to fail without reasonable excuse to comply with subsection (1).
- (6) A person guilty of an offence under subsection (5) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Levy*

**Levy.**

- 73.(1) The Minister may make regulations requiring holders of operating licences to pay an annual levy to the Commission.
- (2) The regulations shall, in particular, make provision for—
    - (a) the amount of the levy;
    - (b) timing of payment of the levy.
  - (3) The regulations may, in particular, make provision—
    - (a) determining the amount of the levy by reference to a percentage of specified receipts of an operating licence holder;
    - (b) determining the amount of the levy by reference to a percentage of specified profits of an operating licence holder;

- (c) determining the amount of the levy by reference to a percentage of the annual fee under section 49;
- (d) providing for the determination of the amount of the levy according to a specified formula; or
- (e) providing for the determination of the amount of the levy in some other way.

(4) Any sum due by way of levy by virtue of this section shall be treated for the purposes of this Act as if it were due by way of annual fee under section 49.

(5) The Commission shall, with the consent of the Minister, expend money received by way of levy for purposes related to, or by providing financial assistance for projects related to—

- (a) addiction to cannabis or other drugs;
- (b) other forms of harm or exploitation associated with cannabis or other drugs; or
- (c) any of the regulatory objectives.

(6) In subsection (5) the reference to financial assistance is a reference to grants, loans and any other form of financial assistance, which may be made or given on terms or conditions (which may include terms and conditions as to repayment with or without interest).

(7) The Minister shall consult the Commission before making regulations under this section.

## **PART 8**

### **PERSONAL LICENCES**

#### **Nature of personal licence.**

74.(1) For the purposes of this Act a “personal licence” is a licence which authorises an individual to perform the functions of a specified management office, or to perform a specified operational function, in connection with—

- (a) the undertaking of licensed activities; or
- (b) a person who undertakes licensed activities.

(2) In this section “management office” and “operational function” have the same meaning as in section 41.

#### **Application of provisions of Part 7.**

75.(1) The provisions of Part 7 (other than section 41) shall apply to a personal licence as they apply to an operating licence, with—

- (a) the modifications and exclusions specified in this Part;
- (b) such modifications and exclusions as the Minister may specify by regulations; and
- (c) any other necessary modifications.

(2) Regulations under a provision of Part 7—

- (a) may make different provision for purposes of this Part and for purposes of that Part; and
- (b) in making provision for purposes of this Part, may make different provision in relation to personal licences authorising—
  - (i) the performance of different kinds of function, or
  - (ii) the performance of functions in different circumstances.

**Application.**

76.(1) A direction under section 32 (as applied by section 75) may, in particular, require that an application—

- (a) be signed by the applicant's employer;
- (b) contain or be accompanied by information provided by the applicant's employer or relating to his employment.

(2) The licensing authority may under section 32 (as applied by section 75) require an applicant to obtain information from his employer.

(3) For the purposes of this section a reference to an applicant's employer is a reference to any person for whom the applicant, in the course of a business (but whether or not under a contract of employment)—

- (a) provides services;
- (b) has provided services; or
- (c) intends to provide services.

(4) Neither this section nor any other provision of this Act shall be treated as preventing a person who is not employed from applying for a personal licence.

**Duration.**

77. A personal licence shall continue to have effect unless and until it ceases to have effect in accordance with section 62, 63, 64 or 69 (as applied by section 75).

**Fees.**

78.(1) Section 49 shall not have effect in relation to personal licences.

(2) The Minister may make regulations requiring the holder of a personal licence to pay to the licensing authority specified fees in respect of specified periods during which the licence is held.

(3) Regulations under this section may, in particular, make different provision for—

- (a) different kinds of licence; or
- (b) different circumstances.

(4) In its application to this Part by virtue of section 75, the reference in section 69(3) to failure to pay an annual fee shall be construed as a reference to failure to comply with regulations under this section.

**Multiple licences.**

79.(1) The licensing authority may not issue a personal licence to an individual who already holds one.

(2) But a personal licence may authorise the performance of more than one function.

**Production of licence.**

80.(1) A constable or enforcement officer may under section 57 (as applied by section 75) require the individual who holds a personal licence to produce the licence—

- (a) within a specified period;
- (b) while the individual is carrying on a licensed activity, immediately; or
- (c) while the individual is on premises in respect of which a premises licence has effect, immediately.

(2) It is an offence for a licensee to fail without reasonable excuse to comply with a requirement under subsection (1).

(3) A person guilty of an offence under subsection (2) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Review.**

81. Section 65 shall not apply in relation to personal licences.

**Disqualification.**

82.(1) A court which may order the forfeiture of an individual's personal licence under section 64 (as applied by section 75) may, whether or not it makes an order for forfeiture, make an order disqualifying the individual from holding a personal licence for a specified period, not exceeding ten years, beginning with the date of the order.

(2) The licensing authority shall not issue a personal licence to a person while a disqualification order under this section has effect in respect of the person.

(3) Subsections (2) to (5) of section 64 shall have effect in relation to an order under this section (and in relation to a licence held by the person disqualified) as they have effect in relation to an order under that section (and in relation to the licence forfeited).

**Notification of operating licensee.**

83.(1) This section applies where the licensing authority—

- (a) suspends a personal licence under section 67 (as applied by section 75);
- (b) revokes a personal licence under section 69 (as applied by section 75);
- (c) is informed by a court of the making of a forfeiture order in respect of a personal licence under section 64 (as applied by section 75); or
- (d) is informed by a court of the making of a disqualification order under section 82.

(2) If the licensing authority believes that the holder of the personal licence, or the subject of the disqualification order, is providing services to the holder of an operating licence in connection with the licensed activities, the licensing authority shall as soon as is reasonably practicable notify the holder of the operating licence of the matter specified in subsection (1).

**Conviction.**

84.(1) This section applies if the holder of a personal licence is convicted of a relevant offence by or before a court (whether inside or outside Gibraltar).

(2) The holder of any relevant operating licence shall notify the licensing authority of the conviction, and of any sentence passed in respect of it, as soon as is reasonably practicable after becoming aware of it.

(3) It is an offence for a person to fail without reasonable excuse to comply with subsection (2).

(4) A person guilty of an offence under subsection (3) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) For the purposes of subsection (2) an operating licence is relevant if the holder of the personal licence acts in connection with activities authorised by the operating licence.

(6) The duty under subsection (2) is in addition to any duty of the holder of the personal licence under section 58 (as applied by section 75).

**Breach of personal licence condition.**

85.(1) This section applies where—

- (a) a condition attached to an operating licence includes provision for a personal licence in accordance with section 41;
- (b) an individual who holds a personal licence under this Part acts in the course of or in connection with any of the licensed activities authorised by the operating licence; and
- (c) the individual's action is not in accordance with the terms and conditions of the personal licence.

(2) The individual commits an offence.

(3) The individual may be proceeded against for the offence under subsection (2) whether or not the holder of the operating licence is proceeded against for an offence under section 26 (by reason of a breach of the condition under section 41).

(4) An individual guilty of an offence under this section shall be liable on summary conviction to—

- (a) imprisonment for a term not exceeding 51 weeks;
- (b) a fine not exceeding level 5 on the standard scale; or
- (c) both.

**PART 9**

**OPERATING AND PERSONAL LICENCES: APPEALS**

**Medicinal Cannabis Licensing Appeals Tribunal**

86.(1) There shall be a Medicinal Cannabis Licensing Appeals Tribunal (the “Tribunal”) appointed by the Minister to hear and determine appeals under this Act.

(2) Schedule 3 shall have effect (constitution and proceedings of the Tribunal).

### **Right to appeal against decision or failure to take decision**

87. A person may appeal to the Tribunal against—

- (a) a decision of the licensing authority in respect of an application for an operating licence under section 32;
- (b) a decision of the Commission, the licensing authority or the Minister in respect of conditions of operating licences under section 37, 38 or 39;
- (c) a decision of the licensing authority in connection with a change of circumstance or control under section 50 or 51;
- (d) a decision of the licensing authority in connection with an application to vary a licence under section 53;
- (e) a requirement imposed by the licensing authority in connection with amendment of a licence under section 54;
- (f) a determination of the Commission in connection with limits on duration of licences under section 60;
- (g) a decision of the licensing authority in connection with the renewal of a licence under section 61;
- (h) a decision of the licensing authority in connection with the lapse of a licence under section 63;
- (i) a decision of the Commission under section 65 or 66, or action of the licensing authority under section 66, in relation to a review of an operating licence;
- (j) a decision of the Commission, or action of the licensing authority, under section 67, in relation to suspension of an operating licence;
- (k) a decision of the Commission, or action of the licensing authority, under section 68, in relation to reinstatement of an operating licence;
- (l) a decision of the Commission, or action of the licensing authority, under section 69, in relation to revocation of an operating licence;

- (m) a decision of the Commission under section 71 in connection with the possible or actual imposition of a financial penalty;
- (n) a request of the Commission, or other action, under section 72 in connection with information;
- (o) a decision of the Minister under section 73 in connection with annual levy;
- (p) a decision or action of a kind mentioned in paragraphs (a) to (o) taken in connection with a personal licence in pursuance of section 75 or any other provision of Part 8;
- (q) a decision of the licensing authority under section 76 in connection with an application for a personal licence; or
- (r) a decision, or action, of a constable or enforcement officer under a provision of Part 10.

**Procedure**

88.(1) An appeal under section 87 must be made by notice in writing to the secretary to the Tribunal.

- (2) A notice of appeal must be received by the secretary—
  - (a) before the end of the period of 28 days beginning with the date on which the appellant is notified of the decision or action appealed against; or
  - (b) by such later time as the Tribunal may direct in response to a request in writing from a prospective appellant (which may not be later than the end of the period of 60 days beginning with the date on which the appellant is notified of the decision or action appealed against).
- (3) The notice must contain the grounds of the appeal.
- (4) The secretary to the Tribunal must send the notice without delay to the person whose action or decision is the subject of the appeal.
- (5) The Tribunal may not consider an appeal unless satisfied that the appellant has served a copy of the notice of appeal on any person who made representations in respect of the application or other decision or action to which the appeal relates.
- (6) The Tribunal may adopt rules supplementing the provisions of this section.

**Determination of appeals**

89.(1) On an appeal the Tribunal may—



- (a) confirm or vary the decision or action appealed against; in whole or in part;
- (b) direct the licensing authority or the Commission to take action of a specified kind;
- (c) add, amend or delete conditions in a licence.

(2) Before determining an appeal the Tribunal must give the appellant, and the person whose decision or action is appealed against, an opportunity to make representations to the Tribunal.

(3) The Tribunal must arrange for an oral hearing of an appeal if the appellant, or the person whose decision or action is appealed against, requests a hearing.

(4) A party may be represented at the hearing of an appeal (whether by Counsel, a solicitor or another person of their choice).

(5) The Tribunal may adopt rules supplementing the provisions of this section.

### **Further appeal**

90.(1) A party to a case before the Tribunal may appeal the Tribunal's decision to the Supreme Court.

(2) On an appeal the Supreme Court may make any order it thinks fit (including, but not limited to, any order that the Tribunal could have made).

(3) Rules of court made by the Chief Justice under the Supreme Court Act may make provision in respect of appeals under this section (including provision as to timing).

## **PART 10**

### **INSPECTION**

#### *Enforcement officers*

#### **Enforcement officers.**

91.(1) The Commission—

- (a) may designate employees of the Commission as enforcement officers for the purposes of this Act; and
- (b) may appoint persons other than employees of the Commission as enforcement officers for the purposes of this Act.

(2) The Commission may pay to or in respect of an enforcement officer who is not an employee of the Commission sums by way of or in respect of—

- (a) remuneration;
- (b) allowances;
- (c) expenses;
- (d) pension;
- (e) gratuity.

#### *Inspections*

#### **Compliance.**

92. A police officer or enforcement officer may undertake activities for the purpose of assessing—

- (a) compliance with provision made by or by virtue of this Act;
- (b) whether an offence is being committed under or by virtue of this Act.

#### **Suspected offence.**

93.(1) A police officer or enforcement officer may enter premises if there is reasonable suspicion that an offence under this Act may be—

- (a) being committed on the premises; or
- (b) about to be committed on the premises.

(2) A justice of the peace may on the application of a police officer or enforcement officer issue a warrant authorising a police officer or enforcement officer to enter premises if the justice of the peace is satisfied—

- (a) that there are reasonable grounds for suspecting that an offence under this Act has been committed on the premises;
- (b) that there are reasonable grounds for suspecting that evidence of the commission of the offence may be found on the premises; and
- (c) that at least one of the conditions in subsection (3) is satisfied.

(3) Those conditions are—

- (a) that admission to the premises has been refused;
- (b) that admission to the premises is likely to be refused unless a warrant is produced;
- (c) that the purpose of entry may be frustrated or seriously prejudiced unless a police officer or enforcement officer arriving at the premises can secure immediate entry; and
- (d) that there is likely to be nobody at the premises capable of granting admission.

(4) A warrant may be granted in reliance on subsection (3)(a) or (b) only if the justice of the peace is satisfied—

- (a) that notice has been given to a person occupying the premises, or having responsibility for their management, of intent to apply for a warrant; or
- (b) that the purpose of entry may be frustrated or seriously prejudiced by the giving of notice under paragraph (a).

(5) A warrant under subsection (2) shall cease to have effect at the end of the period of 28 days beginning with the day of issue.

**Inspection of licensable activities.**

94.(1) A police officer or enforcement officer may enter premises to which this section applies for a purpose specified in subsection (3).

(2) This section applies to premises if a police officer or enforcement officer reasonably suspects that licensable activities may be being carried out, may be about to be carried out or have been carried out, on the premises.

(3) The purposes mentioned in subsection (1) are—

- (a) to discover whether licensable activities are being carried out, are about to be carried out or have been carried out on the premises;
- (b) to determine whether an operating licence is held in respect of the carrying out of licensable activities on the premises; and
- (c) to determine whether licensable activities are being, will be or have been provided in accordance with the terms and conditions of an operating licence.

**Operating licence holders.**

95.(1) A police officer or enforcement officer may enter premises to which this section applies for the purpose specified in subsection (3).

(2) This section applies to premises which a police officer or enforcement officer reasonably believes to be used by the holder of an operating licence wholly or partly for purposes connected with the licensed activities.

(3) The purpose mentioned in subsection (1) is to determine whether the licensed activities are being carried on in accordance with the terms and conditions of the operating licence.

### **Powers.**

96.(1) A constable or enforcement officer exercising a power under or by virtue of this Part to enter premises may—

- (a) inspect any part of the premises and any machine or other thing on the premises;
- (b) question any person on the premises;
- (c) require access to any written or electronic record which is kept on the premises;
- (d) require to be supplied with a copy, in any specified form, of an entry in a written or electronic record which is kept on the premises;
- (e) remove and retain anything if there is reason to believe that it constitutes or contains evidence of—
  - (i) the commission of an offence under this Act, or
  - (ii) the breach of a term or condition of a licence issued under this Act;
- (f) remove and retain anything if there is reason to believe that it is being used or has been used in the commission of an offence under this Act.

(2) The Minister may by regulations make provision about the treatment of—

- (a) copies supplied under subsection (1)(d); and
- (b) things removed under subsection (1)(e) or (f).

(3) Regulations under subsection (2) may, in particular, make provision—

- (a) about the retention, use, return, disposal or destruction of anything supplied or removed; and
- (b) conferring a right of appeal.

(4) The Minister may by regulations make provision about the procedure to be followed in the exercise of a power under this section.

(5) Nothing in this Part authorises action to be taken in respect of legally privileged material.

**Dwellings.**

97.(1) A power under this Part to enter premises without a warrant does not apply in relation to a dwelling.

(2) A justice of the peace may on the application of a police officer or enforcement officer issue a warrant authorising a police officer or enforcement officer to enter premises if the justice of the peace is satisfied—

- (a) that, but for subsection (1), a police officer or enforcement officer would be able to enter the premises without a warrant in reliance on a provision of this Part; and
- (b) that at least one of the conditions in subsection (3) is satisfied.

(3) Those conditions are—

- (a) that admission to the premises has been refused;
- (b) that admission to the premises is likely to be refused unless a warrant is produced;
- (c) that the purpose of entry may be frustrated or seriously prejudiced unless a police officer or enforcement officer arriving at the premises can secure immediate entry; and
- (d) that there is likely to be nobody at the premises capable of granting admission.

(4) A warrant may be granted in reliance on subsection (3)(a) or (b) only if the justice of the peace is satisfied—

- (a) that notice has been given to a person occupying the premises, or having responsibility for their management, of intent to apply for a warrant; or
- (b) that the purpose of entry may be frustrated or seriously prejudiced by the giving of notice under paragraph (a).

(5) A warrant under subsection (2) shall cease to have effect at the end of the period of 28 days beginning with the day of issue.

**Records.**

98.(1) A police officer or enforcement officer exercising a power of entry under or by virtue of this Part may exercise a power under section 96(1)(c) to (e) in relation to records (whether

written or electronic) only if the records relate entirely to the matters to which the power of entry relates.

(2) A justice of the peace may on the application of a police officer or enforcement officer issue a warrant disapplying subsection (1) to a specified extent if the justice of the peace is satisfied that the disapplication is necessary.

(3) A warrant may be granted under subsection (2) only if the justice of the peace is satisfied—

- (a) that notice has been given to a person in control of the records of intent to apply for a warrant; or
- (b) that the purpose of exercising the power of entry may be frustrated or seriously prejudiced by the giving of notice under paragraph (a).

(4) A warrant under subsection (2) shall cease to have effect at the end of the period of 28 days beginning with the day of issue.

#### **Timing.**

99. A power under or by virtue of this Part may be exercised only at a reasonable time.

#### **Evidence of authorisation.**

100. An enforcement officer seeking to exercise a power under or by virtue of this Part must produce evidence of identity and authority to a person (if there is one) who appears to the enforcement officer to be occupying the relevant premises or to have responsibility for their management.

#### **Information.**

101.(1) The Minister shall make regulations requiring a person who exercises a power under or by virtue of this Part to provide information about the power and its exercise.

(2) Regulations under subsection (1) shall, in particular, make provision about—

- (a) the information to be provided (which may include ancillary information about a provision of this Act or another enactment or about a rule of law);
- (b) the form and manner in which the information is to be provided;
- (c) the person to whom, or the place at which, the information is to be provided (which may, in particular, include provision for the supply of a copy if requested by a person within a specified class); and
- (d) timing.

(3) A police officer or enforcement officer exercising a power under or by virtue of this Part shall comply with any relevant provision of regulations under this section.

**Use of force.**

102.(1) A police officer may use reasonable force for the purpose of entering premises in pursuance of a power under or by virtue of this Part.

(2) An enforcement officer may use reasonable force for the purpose of entering premises in pursuance of a power under or by virtue of this Part.

**Person accompanying inspector etc.**

103. A police officer or enforcement officer exercising a power under or by virtue of this Part to enter premises may be accompanied by one or more persons.

**Securing premises after entry.**

104. A person who enters premises in reliance on a power under or by virtue of this Part shall take reasonable steps to ensure that when he leaves the premises they are as secure as they were before entry.

**Obstruction.**

105.(1) It is an offence for a person without reasonable excuse to obstruct, or to fail to cooperate with, a police officer or enforcement officer who is exercising or seeking to exercise a power under or by virtue of this Part.

(2) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**PART 11**

**MISCELLANEOUS AND GENERAL**

**Offence committed by body.**

106.(1) Subsection (2) applies where an offence under this Act is committed by a body of persons corporate or unincorporate (other than a partnership) and it is proved that the offence was committed—

- (a) with the consent or connivance of an officer of the body; or
- (b) as a result of the negligence of an officer of the body.

(2) The officer, as well as the body, shall be guilty of the offence.

(3) In subsection (1) a reference to an officer of a body includes a reference to—

- (a) a director, manager or secretary;
- (b) a person purporting to act as a director, manager or secretary; and
- (c) if the affairs of the body are arranged by its members, a member.

(4) Where an offence under this Act is committed by a partnership (other than a limited partnership) each partner shall be guilty of the offence.

(5) Where an offence under this Act is committed by a limited partnership, subsections (1) and (2) shall have effect, but as if a reference to an officer of the body were a reference to a partner.

(6) In relation to the prosecution of a body of persons unincorporate for an offence under this Act, the body shall be treated for all procedural purposes as if it were a body corporate.

(7) The Minister may by regulations make provision for the modification of a provision of this section in its application to a body of persons formed under, or in so far as the body is recognised by, law having effect outside Gibraltar.

#### **False information.**

107.(1) It is an offence for a person without reasonable excuse to give to the Commission or the licensing authority for a purpose connected with a provision of this Act (whether or not in relation to an application under this Act) information which is—

- (a) false; or
- (b) misleading.

(2) A person guilty of an offence under this section shall be liable on summary conviction to—

- (a) imprisonment for a term not exceeding 1 year;
- (b) a fine not exceeding level 5 on the standard scale; or
- (c) both.

(3) Where it appears to the Commission or the licensing authority that a decision under this Act was taken by them in reliance upon false or misleading information, they may do anything that they think expedient for the purpose of cancelling, terminating or varying an effect of the decision (but action under this subsection shall not make unlawful anything done before the action is taken).



**Forfeiture.**

108.(1) Subject to subsection (2) the court by or before which a person is convicted of an offence against this Act may order anything shown to the satisfaction of the court to relate to the offence to be forfeited and either destroyed or dealt with in any other manner the court orders.

(2) The court must not order anything to be forfeited under this section if a person claiming to be the owner of or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to that person to show cause why the order should not be made.

**Excluded premises.**

109.(1) This Act shall have no effect in relation to anything done on, or in relation to any use of, premises of a kind specified for the purposes of this subsection by the Minister by regulations.

(2) This Act shall have no effect in relation to anything done on, or in relation to any use of, premises certified for the purposes of this subsection, on grounds relating to national security, by the Minister or the Attorney-General.

**Exchange of information.**

110.(1) A person or body listed in section 21(2) may provide information to any other person or body so listed for use in the exercise of a function under this Act.

(2) A person or body listed in section 21(2) may provide information obtained in the course of the exercise of a function under this Act to the Collector of Customs for use in the exercise of any function.

(3) Provision of information in reliance on this section may be subject to conditions (whether as to use, storage, disposal or otherwise).

**Data protection.**

111. Nothing in this Act authorises a disclosure which contravenes the Data Protection Act 2004.

**Fees.**

112.(1) Fees paid under this Act shall be set at rates designed to ensure that so far as reasonably possible they cover, but do not exceed, the direct and indirect costs of the performance of functions under this Act by the licensing authority and the Commission.

(2) Subsection (1)—

- (a) does not prevent fees for one year set at a rate designed to recover a deficit in one or more previous years; and
- (b) does not prevent cross-subsidisation between fees for different functions or between different classes of fee charged in respect of a single function.

**Regulations.**

113.(1) The Minister may make regulations dealing with incidental or supplemental matters which in the Minister's opinion are necessary or expedient for giving full effect to the provisions of this Act.

(2) Regulations under this Act—

- (a) may make provision which applies generally or only for specified purposes or in specified cases or circumstances;
- (b) may make different provision for different purposes, cases or circumstances; and
- (c) may include incidental, consequential or transitional provision.

(3) A provision of this Act which permits regulations to make provision of a specified kind is without prejudice to the generality of subsections (1) and (2).

**SCHEDULE 1**

**RELEVANT OFFENCES**

Section 9

1. The following are relevant offences for the purposes of this Act.
2. An offence under Part 2 of the Crimes Act 2011 (inchoate offences) committed by reference to an offence listed below in this Schedule.
3. An offence under Part 10 of the Crimes Act 2011 (offences against the person).
4. An offence under Part 11 of the Crimes Act 2011 (corporate manslaughter).
5. An offence under Part 14 of the Crimes Act 2011 (criminal damage).
6. An offence under Part 16 of the Crimes Act 2011 (theft and fraud).
7. An offence under Part 18 of the Crimes Act 2011 (perjury and false statements).
8. An offence under Part 21 of the Crimes Act 2011 (drugs misuse).
9. An offence under Part 24 of the Crimes Act 2011 (bribery offences).

## SCHEDULE 2

## THE MEDICINAL CANNABIS COMMISSION

Section 14(2)

*Introduction*

1. This Schedule makes provision about the constitution and governance of the Medicinal Cannabis Commission (“the Commission”).

*Members*

2.(1) The Commission shall consist of at least 3, and not more than 6, members.

(2) Members are to be appointed by the Minister by Notice in the Gazette.

(3) In appointing members of the Commission, the Minister shall have regard to the desirability of ensuring that the Commission includes knowledge and experience relevant to—

- (a) matters to which the regulatory objectives relate; and
- (b) licensing and regulation in general.

(4) Members shall hold and vacate office in accordance with their terms and conditions of appointment (subject to paragraph (5)).

(5) The Minister may remove a member from office on the grounds that the member—

- (a) is unable or unwilling to perform the functions of a member; or
- (b) is guilty of serious misconduct.

*Chair*

3. The Minister shall appoint one member as Chair of the Commission.

*Proceedings*

4.(1) The Commission shall determine its own procedure (including quorum).

(2) The proceedings of the Commission shall not be invalidated by any vacancy or irregularity in respect of the appointment of members or Chair.

*Data Protection*

5. In Schedule 7 to the Data Protection Act 2004 (competent authorities) after paragraph 13 insert—

“13A. Medicinal Cannabis Commission.”

## SCHEDULE 3

## MEDICINAL CANNABIS LICENSING APPEALS TRIBUNAL

Section 86

*Members of the Tribunal*

1.(1) The Tribunal shall consist of three persons appointed by the Minister by Notice in the Gazette of whom—

- (a) one is a customs officer designated by the Collector of Customs;
- (b) one is a barrister or solicitor admitted to practice in Gibraltar serving as Crown Counsel and designated by the Director of Public Prosecutions; and
- (c) one is a member of the public with appropriate experience or knowledge in the opinion of the Minister.

(2) The Minister may also appoint by Notice in the Gazette a lists of alternate persons, each of whom—

- (a) satisfies the requirements of subparagraph (1)(a), (b) or (c); and
- (b) may be called upon to substitute for the relevant person appointed under subparagraph (1).

(3) A member of the Tribunal shall hold office for a period of one year or for such other period of time as may be specified in the notice of appointment.

(4) The validity of any proceedings of the Tribunal shall not be affected by a defect in the appointment of any of its members.

*Secretary to the Tribunal*

2.(1) A secretary to the Tribunal shall be appointed by the Minister by notice in the Gazette.

(2) The secretary shall hold office for a period of one year or for such other period of time as may be specified in the notice of appointment.

(3) A person appointed secretary to the Tribunal shall act under the direction of members of the Tribunal.

(4) The members of the Tribunal may, with the consent of the Minister, dismiss the secretary.

*Duties of members of the Tribunal*

3.(1) Members of the Tribunal shall not take part in any proceedings in relation to any matter in which they have a personal interest.

(2) Members of the Tribunal shall not disclose any information received in the course of their duties except in such cases as may be required by law.

*Procedure*

4.(1) The members of the Tribunal shall determine their own procedure, including provision for—

- (a) particulars of claim;
- (b) notice of hearings;
- (c) adjournments;
- (d) hearings;
- (e) evidence;
- (f) taking of decisions.

(2) The secretary to the Tribunal may at the direction of the Tribunal issue guidance as to the procedure to be followed in relation to proceedings before the Tribunal.

5.(1) The document recording the decision of the Tribunal shall state clearly and precisely the full reasons for the decision.

(2) The secretary shall send a notice of a decision to the parties.

6. The Tribunal may summon any person to appear before it and give evidence.

7. An irregularity resulting from any failure to comply with any provision of this Schedule or with any direction given by the Tribunal before the Tribunal has reached its final determination shall not of itself render the proceedings void.

8.(1) Meetings of the Tribunal shall be held in public.

(2) But a meeting of the Tribunal may be held in private if, in the opinion of the Tribunal, it is necessary in the public interest of Gibraltar including—

- (a) the security of Gibraltar or of any premises or property; or

(b) safeguarding confidential information.