

Register of Property Occupation Act 2021

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Principal Act

Act. No. 2021-26

Commencement

24.2.2022

Assent

24.9.2021

ARRANGEMENT OF SECTIONS

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CONSTITUTION AND ROLE OF PROPERTY OCCUPATION APPEALS BOARD

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A REGISTER OF PROPERTY OCCUPATION, THE APPOINTMENT OF A REGISTRAR RESPONSIBLE FOR MAINTAINING THE REGISTER OF PROPERTY OCCUPATION, THE CREATION AND APPOINTMENT OF AN APPEALS BOARD AND FOR CONNECTED PURPOSES

Short title.

1. This Act may be cited as the Register of Property Occupation Act 2021.

Commencement.

2. This Act shall come into operation on such day as the Minister may appoint by notice in the Gazette.

Interpretation.

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

“applicant” means the person making the application under section 4;

“landlord” means any person who is entitled, as between himself and a person in occupation of relevant property, to the rents and profits of the relevant property;

“Minister” means the Minister with responsibility for Public Utilities or such other person as the Chief Minister may nominate;

“occupation” means “to occupy” pursuant to section 2 to the Interpretation and General Clauses Act;

“occupier” means the persons in occupation of relevant property and for the purposes of this Act includes an applicant;

“person” has the meaning given to it under section 2 to the Interpretation and General Clauses Act;

“prescribed” means, in the absence of regulations made by the Minister, in such manner as determined by the Registrar;

“real property” means residential property and it includes land and any other description of property designated by notice by the Minister;

“Register” means the Register of Property Occupation identifying all relevant property in occupation in Gibraltar;

“Registrar” means the person appointed by the Minister pursuant to section 6 to act as Registrar of Property Occupation in accordance with the provisions of this Act;

“relevant property” means all real property in Gibraltar occupied by a person;

“residential property” means all property rated as “domestic” by the Valuation Officer;

“special housing” means such relevant property designated by notice by the Minister as amended from time to time;

“the Board” means the Property Occupation Appeals Board established under section 13.

Application.

4.(1) Subject to section 16, this Act applies to a person in occupation of relevant property in Gibraltar.

(2) Without prejudice to subsection (3), a person in occupation of relevant property in Gibraltar shall-

- (a) make an application to the Registrar in the prescribed manner and provide such details of occupation as required by the Registrar; and
- (b) include the names of all other persons in occupation of relevant property in common with the applicant.

(3) Where relevant property falls under the definition of special housing the-

- (a) obligation to register falls on the person prescribed in the notice designating special housing; and
- (b) application shall include the names of all persons in occupation of special housing at the time.

(4) Where relevant property is rented privately and an application is made pursuant to subsection 2, the landlord shall be required to provide the Registrar with details of the occupation upon request, within a period of 14 days, commencing on the date the request was made.

(5) All relevant property to which this Act applies, that is in occupation on or before the commencement of this Act, shall be registered by an occupier in the manner prescribed by the Registrar and within 3 months after the commencement of this Act.

(6) All relevant property to which this Act applies, that is in occupation after commencement of this Act, shall be registered by an occupier in the manner prescribed by the Registrar and within 3 months of the commencement of occupation.

Register of Property Occupation.

5.(1) There shall be established a Register, which shall be maintained by the Registrar in such form determined by him to be the most appropriate to show an accurate and detailed record of occupation of relevant property.

(2) The Register will be located at the offices of the Land Registry or such other place as designated by the Minister.

Appointment of a Registrar of Property Occupation.

6.(1) The Minister shall by legal notice in the Gazette appoint a Registrar of Property Occupation responsible for maintaining the Register under the provisions of this Act.

(2) Subject as follows, a Registrar holds and vacates office in accordance with the Registrar's terms and conditions of appointment.

(3) A Registrar may be removed from office by the Minister where he is reasonably satisfied of the inability of the Registrar to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.

Powers and duties of the Registrar of Property Occupation.

7.(1) The Registrar shall consider applications made under section 4 for inclusion in the Register.

(2) The Registrar may -

- (a) approve an application;
- (b) approve an application on a temporary basis;
- (c) approve an application (whether temporary or not) subject to conditions;
- (d) reject an application and set out reasons for refusal;
- (e) require further information from the applicant before approving or rejecting an application;

- (f) request to inspect relevant property before approving or rejecting an application;
 - (g) remove the entry of a person's occupation of relevant property from the Register;
 - (h) amend the Register from time to time as he deems fit.
- (3) If the Registrar refuses an application, he shall give notice of his decision to the applicant in writing and this may be done by electronic means.
- (4) If the Registrar approves an application, he shall enter the details of the occupation of relevant property in the Register together with the names of all occupiers.
- (5) If the Registrar rejects an application, the applicant may appeal under section 14.
- (6) The Registrar may, after consultation with the Minister, delegate his functions in writing to such person as is suitably qualified for a period of time and subject to such conditions as may be specified.
- (7) The delegation under subsection (6) to any extent of functions by the Registrar does not prevent the exercise of the functions to that extent by the Registrar.
- 8.(1) An application is not required under section 4 for the Registrar to exercise all such reasonable steps as are required to satisfy himself that the details of occupation contained in the Register are accurate.
- (2) The Registrar shall, before exercising his obligations pursuant to section 7, take all such reasonable steps as are required to satisfy himself as to whether the relevant property may sufficiently accommodate the applicant and any other persons registered or to be registered at the relevant property.
- (3) For the purposes of this section "reasonable steps" include, but are not limited to, inspecting relevant property and requesting further information from an occupier and landlord.
9. Where the Registrar exercises his powers under section 8, and the relevant entries of occupation contained in the Register are not accurate, he shall amend the Register accordingly.

Change in occupation of relevant property.

- 10.(1) Where during occupation of relevant property registered under this Act, any changes occur in occupation, an occupier shall within one month commencing on the date of the change, notify the Registrar in the prescribed manner.

(2) On notification of the change pursuant to subsection (1), the Registrar may exercise the powers and duties contained in sections 7 to 9 herein.

Failure to register occupation of relevant property in the Register of Property Occupation.

11.(1) An occupier who-

- (a) fails to comply with the requirements of section 4; or
- (b) for the purposes of or in connection with the registration of the details of occupation of relevant property, or having been required under sections 7, 8 or 10 to provide information, knowingly provides false information,

is guilty of an offence and is liable on summary conviction to a fine up to level 4 on the standard scale.

(2) A landlord who -

- (a) fails to comply with the requirements of section 4(4); or
- (b) for the purposes of or in connection with the registration of the details of occupation of relevant property, or having been required under sections 8 to provide information, knowingly provides false information,

is guilty of an offence and is liable on summary conviction to a fine up to level 4 on the standard scale.

(3) Notwithstanding subsection (1), the Registrar may, without notice, remove the occupier from the Register if he has failed to comply with the requirements of section 4 or knowingly provided false information.

Failure to allow inspection of relevant property.

12.(1) An occupier who fails to allow inspection of relevant property for the purposes of this Act is guilty of an offence and is liable on summary conviction to a fine up to level 4 on the standard scale.

(2) Notwithstanding subsection (1), the Registrar may, without notice, remove the occupier from the Register if he has failed to allow an inspection pursuant to subsection (1) above.

Property Occupation Appeals Board.

13.(1) There shall be established a Board, to be known as the Property Occupation Appeals Board to hear and determine appeals under this Act and to exercise such other functions as may be specified in this Act.

(2) The provisions of the Schedule shall have effect with respect to the constitution, composition, powers and proceedings of the Board.

(3) The provisions in the Schedule may be amended by legal notice.

(4) The Minister may make Regulations-

- (a) regulating the proceedings of the Board;
- (b) prescribing the fees to be charged in respect of any proceedings before the Board;
- (c) regulating the powers, practice and procedures of the Board in the consideration of applications and appeals under this Act and such other functions as may be specified in this Act.

Appeals.

14.(1) Any person who is aggrieved by a decision of the Registrar may appeal to the Board within 21 days of the Registrar's decision.

(2) In determining an appeal under subsection (1), the Board may make such decision as it deems fit.

(3) Any person who is aggrieved by the decision of the Board may appeal to the Magistrates' Court against the decision on a point of law and their decision is final.

Power to make regulations.

15. The Minister may make regulations with respect to any matters necessary to give effect to the provisions of this Act and without prejudice to the generality of the foregoing such regulations may provide for-

- (a) the forms of the application for registration;
- (b) any fees payable in connection with application for an entry in the Register of Property Occupation or the inspection of or taking of extracts from that Register;
- (c) the documents to be supplied to the Registrar in support of an application for an entry in the Register;

- (d) the form of the Register;
- (e) the creation of offences in respect of breaches of any provisions of this Act.

Power to exempt.

16.(1) The Minister may if he is of the opinion that it is necessary in the public interest of Gibraltar, exempt in writing any person, category of persons or property from complying with the requirements contained in this Act.

(2) For the purposes of subsection (1), “public interest” includes –

- (a) in the interests of the security of Gibraltar;
- (b) the protection of the security of any premises or property; or
- (c) safeguarding confidential information.

No personal liability.

17. No personal liability shall attach to a Registrar or any member of the Board in respect of anything done or omitted to be done, in good faith, under the provisions of this Act or any Regulations.

Immunity from suit.

18. A Registrar or any one or more members of the Board, and any person to whom the powers of a Registrar or the Board have been delegated, shall be immune from suit in respect of any act or omission in the performance of the functions conferred on a Registrar or the Board by this Act or any Regulations unless the act or omission is shown to have been in bad faith.

SCHEDULE

Section 13

CONSTITUTION AND ROLE OF PROPERTY OCCUPATION APPEALS BOARD

Membership of the Board.

1.(1) The Board shall consist of a chairperson and three members appointed by the Minister, one of whom shall be a barrister or solicitor admitted to practice in Gibraltar.

(2) Members of the Board shall hold office for such period as may be specified in their instrument of appointment.

(3) Notwithstanding anything contained in sub-paragraph (2), the Minister may, at any time, in his discretion terminate the appointment of the chairperson and any member of the Board on the grounds of inability, neglect of duty or misconduct.

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

(5) The Minister shall designate a public officer to be the secretary of the Board and shall hold office for such period of time as may be specified in the instrument of appointment.

(6) The secretary to the Board shall act under the direction of the chairperson of the Board.

(7) The chairperson and members of the Board shall not act as such in relation to any matter in which he has a personal interest.

(8) The chairperson and members of the Board shall not disclose any information received in the course of his duties except in such cases as may be required by law.

(9) The chairperson and two members of the Board shall form a quorum.

Procedure.

2.(1) Proceedings before the Board may be continued by the chairperson and any one or more of the members of the Board if all parties give their consent.

(2) Unless the Board otherwise fixes a date for a hearing, any party to proceedings which are to be heard by the Board shall serve notice on the secretary that he wishes a date for the hearing to be fixed.

(3) On receipt of a notice under paragraph 2(2) the secretary shall send notice to each party to the proceedings of the place, date and time of the hearing.

(4) Unless the parties otherwise agree or the Board otherwise directs, the date of the hearing specified in a notice under paragraph 2(3) shall not be earlier than 28 days after the date on which the notice is sent to the parties.

(5) If it is shown to the satisfaction of the Board that owing to any reasonable cause a person has been prevented from attending the hearing of an appeal or other matter on the day fixed for that purpose, the Board may adjourn the hearing of the appeal or other matter for such reasonable time as it thinks necessary.

(6) Any party to the matter before the Board may represent himself or be represented by a lawyer and the Registrar may be represented by a subordinate officer.

Hearings.

3.(1) Hearings before the Board shall be conducted in such manner as the chairperson and members of the Board consider most suitable for the clarification and determination of the issues before the Board and generally to the just handling of the proceedings.

(2) Evidence before the Board may be given orally or, if the Board so directs, by affidavit or a statement made or recorded in a document, but at any stage of the hearing, the Board may, on the application of any party or of its own motion, require the personal attendance as a witness of—

- (a) the maker of an affidavit;
- (b) the maker of a statement; or
- (c) in the case of an oral statement recorded in a document, the person by whom the statement was so recorded:

Provided that the Board may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Decisions.

4.(1) A decision of the Board shall be made by the votes of the majority of the members comprising that Board and in the event of an equality of votes the chairperson shall be entitled to a second or casting vote.

(2) The decision may be given orally by the chairperson at the end of the hearing or may be reserved and in either event shall be recorded in a document signed and dated by the chairperson.

(3) The secretary shall send to each party a notice setting out the decision recorded under paragraph 4(2).

(4) Except where the decision is given at the end of a hearing, it shall be treated as having been made on the date when the notice is sent to the parties under paragraph 4(3).

Further particulars.

5. The Board may, at any time before the determination of an appeal or other matter, give notice to the appellant, applicant or any other party to the proceedings requiring him within a time specified in the notice to deliver to it such particulars as it may require for the purposes of determining the appeal or other matter.

Summoning of witnesses.

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

Irregularity.

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

Notices.

8.(1) Every notice required by this Schedule shall be in writing unless the members of the Board authorise it to be given orally.

(2) Any notice or document required or authorised by this Schedule to be sent, delivered to or served on any person shall be duly sent, delivered or served by hand, by post or by facsimile transmission.