

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4564 of 8 April, 2019

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B. 15/19

## BILL

FOR

AN ACT to provide for the application of certain EU-third country agreements and UK-third country agreements after Gibraltar's exit from the European Union or where there is an agreement under Article 50(2) of the Treaty on European Union, at the end of any transitional/implementation period.

**ENACTED** by the Legislature of Gibraltar.

### **Title and commencement.**

1. This Act may be cited as the European Union Withdrawal (Application of International Agreements) Act 2019 and comes into operation on such day as the Chief Minister specifies by Notice in the Gazette.

### **Interpretation.**

2. In this Act-

“EU-third country agreement” means an international agreement between the European Union and a third State or States or other subject of international law;

“successor agreement” means a UK-third country agreement that replaces an EU-third country agreement after the relevant day;

“the relevant day” means the day of commencement of this Act;

“UK-third country agreement” means an international agreement between the United Kingdom and a third State or States or other subject of international law and which has been extended to or otherwise applies to Gibraltar.

### **International agreements to which Act applies.**

3.(1) Except as regards section 5 of this Act, this Act applies to international agreements listed or described in the Schedule that are in force for the United Kingdom, or are being provisionally applied by the United Kingdom, and extend to Gibraltar, to the same extent that

such agreements or (in the case of successor agreements) the EU-third country agreements they replace or may replace, applied to Gibraltar before the relevant day.

(2) International agreements to which this Act applies by virtue of subsection (1) shall constitute part of the law of Gibraltar after the relevant day and shall be applied directly.

(3) The reference in subsection (1) to agreements being applied to the same extent as EU-third country agreements applied to Gibraltar is to be interpreted as meaning that the scope of such international agreements is the same provided for by the EU treaties and EU law as it applied to Gibraltar before the relevant day, but an agreement does not fall outside the scope of subsection (1) if the successor agreement is not identical to the agreement that it replaces or may replace.

(4) For the purposes of subsection (1), the reference to “provisionally applied” includes application of an international agreement by the negotiating States to that agreement by way of a memorandum of understanding or other temporary arrangement or agreement pending the entry into force of that agreement.

(5) The Chief Minister, in consultation with the Governor, may by Order amend the Schedule to add or modify-

- (a) an international agreement which applied to Gibraltar before the relevant day by virtue of EU law; or
- (b) a successor agreement.

(6) An Order made pursuant to subsection (5) must be laid before Parliament at the next meeting thereof after it is made.

#### **Interpretation of and giving effect to international agreements.**

4.(1) In any proceedings before a court or tribunal must so far as it is possible to do so read and give effect to any provision of Gibraltar law in a way that is compatible with the terms of an international agreement listed in the Schedule.

(2) Where a compatible reading under subsection (1) is not possible, the terms of an international agreement listed in the Schedule shall take precedence over anything contained in or done under the authority of any law enacted before the relevant day.

#### **Power to make regulations.**

5.(1) The Chief Minister may by regulations provide for any matter which arises from or under an obligation in an international agreement listed or described in the Schedule, including but not limited to-

- (a) the designation of a competent authority or any other body for the purposes of administering or implementing any obligation;
- (b) the conferral of powers on a competent authority or any other body referred to in paragraph (a);
- (c) the provision of administrative penalties, criminal penalties or both;
- (d) the charging of fees, if applicable.

(2) Regulations under subsection (1) may amend any Act or subsidiary legislation for the purposes of giving effect to or implementing an international agreement listed or described in the Schedule.

**Governor's Constitutional responsibility.**

6. Nothing in this Act or in any order or regulations made under this Act shall derogate from the responsibility of the Governor under the Constitution for defence, internal security, external affairs or any other matter for which the Governor may have responsibility under the Constitution.

**SCHEDULE**

*Section 3*

**INTERNATIONAL AGREEMENTS APPLYING IN GIBRALTAR  
AFTER THE RELEVANT DAY**

Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Direct Insurance other than Life Insurance, signed at Davos on 25 January 2019

Agreement between the United Kingdom and the United States of America on Prudential Measures regarding Insurance and Reinsurance, signed at Washington on 18 December 2018

Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation relating to Scheduled Air Services, signed at Zurich on 17 December 2018

Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on Trade in Wine, signed in Washington on 31 January 2019

Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on the Mutual Recognition of certain distilled Spirits/Spirit Drinks, signed at Washington on 31 January 2019

Agreement on Trade in Wine between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, signed at London on 18 January 2019

Agreement establishing an Association between the United Kingdom of Great Britain and Northern Ireland and the Republic of Chile, signed at Santiago on 30 January 2019

Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Denmark in respect of the Faroe Islands, signed at London on 31 January 2019

Agreement establishing an Economic Partnership Agreement between the Eastern and Southern Africa States and the United Kingdom of Great Britain and Northern Ireland, signed at London on 31 January 2019

Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, signed at Bern on 11 February 2019

Interim Political, Trade and Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Palestine Liberation Organization (PLO) for the benefit of the Palestinian Authority of the West Bank and the Gaza Strip, of the other part, signed at Ramallah on 18 February 2019

Trade and Partnership Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of Israel, signed at Tel Aviv on 18 February 2019

Additional Agreement between the United Kingdom of Great Britain and Northern Ireland, the Swiss Confederation and the Principality of Liechtenstein extending to the Principality of Liechtenstein certain provisions of the Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation, signed at Bern on 11 February 2019

Interim Economic Partnership Agreement between the United Kingdom of Great Britain and Northern Ireland, of the one part, and the Pacific States, of the other part, signed at London on 14 March 2019

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### **EXPLANATORY MEMORANDUM**

This Bill makes provision for the application of certain international agreements that prior to leaving the European Union applied to Gibraltar, and which the United Kingdom has or is in the process of replacing with new agreements.

Clause 2 contains definitions that apply to this Bill.

An “EU-third country agreement” is an international agreement entered into by the EU with one or more non-EU states or bodies subject to international law.

A “UK-third country agreement” is an international agreement entered into by the UK with one or more non-EU states or bodies subject to international law.

“The relevant day” means the day the Act is commenced.

A “successor agreement” means a UK-third country agreement that replaces an EU-third country agreement after the relevant day.

Clause 3(1) and (2) together provide that international agreements that are contained in the Schedule constitute the law of Gibraltar and may be applied directly to the same extent as such agreements applied to Gibraltar before the relevant day. This includes multilateral agreements that remain in force and continue to apply to Gibraltar as a result of the United Kingdom becoming a party in its own right and extending the agreements to Gibraltar.

Subclause (3) provides clarification that the reference in subclause (1) to agreements being applied to the same extent as EU-third country agreements applied to Gibraltar is to be interpreted as meaning that the scope of such international agreements is the same provided for by the EU treaties and EU law as it applied to Gibraltar before the relevant day. Therefore,

an agreement will not fall outside the scope of subclause (1) merely because the successor agreement is not cast in identical terms to the agreement that it replaces or may replace.

Subclause (4) provides clarifies what is meant by “provisionally applied” in subclause (1).

Subclause (5) confers a power on the Chief Minister to amend the Schedule by Order and subclause (6) requires that any such order be laid before the Parliament after it has been made.

Clause 4 requires a court or tribunal to read any provision of Gibraltar law in a manner that is compatible with an international agreement that is listed in the Schedule and where it is not possible to do so requires that the terms of the international agreement take precedence over any law enacted before the relevant day.

Clause 5 confers a regulation making power on the Chief Minister. This power may be exercised in connection with an obligation arising from a Scheduled international agreement.

Clause 6 confirms that nothing in this Act or in any order or regulations made under this Act shall derogate from the responsibility of the Governor under the Constitution for external affairs.