

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4641 of 5 December, 2019

B. 38/19

BILL

FOR

AN ACT to amend the provisions of the Referendum Act 2015 to provide for proxy voting and connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Referendum (Amendment) Act 2019.

Commencement.

2. This Act comes into operation on the day of publication.

Amendment of the Act.

3.(1) The Referendum Act 2015 is amended in accordance with the provisions of this section.

(2) Section 2 is amended by the insertion of the following definitions in the appropriate alphabetical place-

““Absent Voter” means a person who is entitled to vote by proxy as provided for by section 42A (1);”;

““proxy list” means a list under section 42C;”;

““proxy voter” means a person voting as proxy for an Absent Voter;”.

(3) The second proviso to section 7(1) is deleted in its entirety and the following new proviso shall be inserted in substitution therefor-

“Provided further that a person who has not attained the age of eighteen years and/or not complied with the qualifying period requirements shall, if he will have attained such age and/or qualifying period requirements on or before the date fixed for a referendum, be entitled to be included in the register and to vote at the referendum

which takes place after he has attained the age of eighteen and after he has complied with the qualifying period requirements.”.

(4) Section 7(6) is amended by the insertion of the words “the Registrar of Births and Deaths and any other department of the Government of Gibraltar or agency and the Commissioner of Police” immediately after the words “Civil Status and Registration Office”.

(5) Section 8(1) is amended by the insertion of the words “and/or for a person capable of being appointed as a proxy”.

(6) Paragraph (c) of section 17(1) is deleted in its entirety and the following new paragraph shall be inserted in substitution therefor-

“(c) provide each voting station with ballot papers which shall contain an appropriate secret security marking or secret unique identifying mark;”.

(7) Section 22 is deleted in its entirety and the following new section shall be inserted in substitution therefor-

“22. Every voter who is not registered as an absentee voter or a postal voter and every duly appointed proxy of an Absent Voter shall present himself to a clerk at the voting station, at which he or she is registered as being entitled to vote, or in the case of the proxy, at which the Absent Voter is registered as being entitled to vote, and the clerk if satisfied that such voter or the Absent Voter as the case may be is a person whose name appears on the part of the Register allotted to such voting station and that he or she or the Absent Voter as the case may be has not already voted shall deliver to the voter or to the proxy voter as the case may be a voting paper.”.

(8) Section 23 is deleted in its entirety and the following new section shall be inserted in substitution therefor-

“23. Immediately before the clerk delivers a voting paper with an appropriate secret official mark to a voter or, in the case of an Absent Voter, a proxy voter-

- (a) the number, name and address of the voter, or in the case of a proxy voter, the Absent Voter as stated in the part of the Register allotted to the voting station shall be called out; and
- (b) a mark shall be placed against the number of the voter, or in the case of a proxy voter, the Absent Voter in the part of the Register allotted to the voting station to denote that the voting paper has been received by the voter or Absent Voter as the case may be.”.

(9) Section 24(1) is amended by-

- (a) the deletion of the words “or either of them”, that appear therein and the insertion of the words “or any of them” in substitution therefor;

(b) the insertion of the following new questions as subparagraphs (b) and (d) respectively-

“(b) Are you the person appointed as the proxy for the person registered in the Register as follows? (reading the entry in the register);”;

“(d) Have you already voted on behalf of the person who appointed you his or her proxy at the present referendum at this or any other voting station?”;

(c) the consequential renumbering of the existing subparagraph (b) as subparagraph (c);

(d) the deletion of the word “and” that appears at the end of subparagraph (a).

(10) Section 25 is amended by the insertion of the words-

(a) “or proxy voter” immediately after the words “A voter”; and

(b) “or, in the case of the proxy voter, the Absent Voter’s vote” immediately after the words “conceal his vote”.

(11) Section 26 is deleted in its entirety and substituted with the following new section-

“26. No voter or proxy voter shall place on the voting paper any writing or mark by which he or, in the case of the proxy voter, the Absent Voter may be identified.”.

(12) Section 27 is amended by the insertion of the words “or proxy voter” immediately after the words “A voter”.

(13) Section 28 is amended in subparagraphs (a) and (b) by the insertion of the words “or proxy voter” immediately after the words “a voter” that appear in each of those paragraphs.

(14) Section 33(1) is amended by the insertion of the words “or for” immediately after the words “after another person has voted as”.

(15) Section 34 is amended by the insertion of the words “and proxy voters” immediately after the words “admission of voters”.

(16) Section 38(1) is amended by inserting the words “the proxy list” immediately after the words “the absentee list” in paragraph (e) of said subsection.

(17) The following new Part and sections shall be inserted immediately after section 42-

“PART 6A

PROXY VOTING

Application to Vote by Proxy.

- 42A.(1) Notwithstanding any other provision of this Act, a voter who owing to his or her circumstances on the date of the referendum will be or are likely to be such that he or she cannot reasonably be expected to vote in person at the voting station allotted to him or her on Referendum Day, may apply to the Registration Officer to be allowed to vote by proxy.
- (2) Not later than 28 days before Referendum Day, the Referendum Administrator shall publish a notice in one or more newspapers, and by such other means of publication as he may consider appropriate, inviting applications from voters seeking to be allowed to vote by proxy in the referendum.
 - (3) An application to the Registration Officer to vote by proxy shall be made as in Form L in the Schedule.
 - (4) Subject to the provisions of section 42B the Registration Officer shall reject every application to be allowed to vote by proxy received by him after 12 o'clock midday 6 days before Referendum Day.
 - (5) Where the Registration Officer rejects an application he shall inform the applicant in writing of the fact and his reasons for doing so.
 - (6) If an applicant has dealt with his application form in such a manner that it cannot be considered for a determination, the Registration Officer shall reject the application and mark the form "Rejected". The Registration Officer shall issue another application form to the applicant unless it could not be dealt with by the applicant and returned to him by the deadline specified in subsection (4).
 - (7) An appeal from the decision of the Registration Officer shall lie with the Referendum Administrator who shall consider and decide the question and whose decision shall be final.
 - (8) Where the Registration Officer or the Referendum Administrator grants an application for the appointment of a proxy he shall issue-
 - (a) the voter with a proxy paper in the form set out in Part 1 of Form M of the Schedule ; and
 - (b) the appointed proxy with a Poll Card in the form set out in Part 2 of Form M of the Schedule.

Additional requirements for an application for an emergency proxy vote.

- 42B.(1) Where an application in the form set out in Form N of the Schedule is made by an applicant to vote by way of proxy after noon on the sixth day before the referendum and before 5 pm on the day of the referendum and is made:-

- (a) on grounds relating to the applicants occupation, service or employment;
or
- (b) on medical grounds;

the requirements of subsections (2) or (3) as to matters to be specified and the attestation to be provided shall apply.

(2) Where an application is made under subsection (1) on medical grounds the application shall specify the medical disability which prevents the elector from being unable or unlikely to vote in person and must be supported by an attestation from a person registered under the Medical and Health Act 1997 which must state-

- (a) the name of the person attesting the application;
- (b) his profession and position;
- (c) that he is a person acquainted with the applicant and their medical condition;
- (d) the medical condition suffered by the applicant and why their condition prevents them from voting in person; and
- (e) that he is a person authorised to make the attestation.

(3)(a) Where an application is made under subsection (1) on grounds relating to the applicant's occupation, service or employment the application shall state-

- (i) where the applicant is self-employed, that fact; and in any other case, the name of the applicant's employer;
 - (ii) that the reason why the applicant will be unable or unlikely to be able to vote in person relates to the applicant's occupation, service or employment; and
 - (iii) the date on which the applicant became aware of that reason.
- (b) The application made under paragraph (a) must be attested and signed-
- (i) where the applicant is self-employed, by a person who is aged 18 years or over, knows the applicant and is not related to the applicant;
 - (ii) where the applicant is not self-employed, by the applicant's employer or by another employee to whom this function is delegated by the employer;

- (c) The person attesting the application made under paragraph (a) must certify that the statements and information attested to are true to the best of their knowledge and belief.

Proxy List.

42C.(1) Subject to the provisions of this Part, the Referendum Administrator shall the day before the referendum prepare and publish a list of those whose applications to vote by proxy in that referendum has been granted together with the names and addresses of those appointed as their proxies, which list is in this Act referred to as “the proxy list”.

- (2) An application to be allowed to vote by way of proxy shall be for a particular referendum only.

Proxies.

42D.(1) Subject to the provisions of subsection (3) any person is capable of being appointed to vote as proxy for another (“the Absent Voter”) in the referendum.

- (2) The Absent Voter cannot have more than one person at a time appointed as proxy to vote for him or her at the referendum.

- (3) A person is capable of being appointed to vote as proxy if-

- (a) he or she is or will have attained the age of 18 years as at the date of the referendum;
- (b) he or she is the spouse or civil partner or parent or grandparent or brother or sister or child or grandchild of the Absent Voter or a person appointed by way of a statutory declaration by the Absent Voter;
- (c) he or she is eligible to vote in the referendum in his or her own right; and
- (d) he or she is not subject to any legal incapacity (age apart) to vote in the referendum in his or her own right.

- (4) Where an Absent Voter applies to the registration officer for the appointment of a proxy the registration officer must make the appointment if the application meets the requirements of this Part and that the proxy is capable of being, and willing to be appointed.

- (5) Subject to the provisions of subsection (8), where a proxy appointment is in force, the person appointed is entitled to vote as proxy for the Absent Voter.

- (6) A proxy voter is not entitled to vote as proxy in the referendum on behalf of more than two Absent Voters.

- (7) A person entitled to vote as proxy for an Absent Voter shall do so in person at the voting station allotted to the Absent Voter.
- (8) An appointment made in accordance with subsection (4) may be cancelled by the Absent Voter giving written notice to the Registration Officer and also ceases to be in force on the issue of a proxy paper appointing a different person to vote for the Absent Voter in the referendum. A notice cancelling a proxy's appointment shall be disregarded for the purposes of the referendum if it is received by the Registration Officer after 5 pm on the second day before the referendum.
- (9) Where the appointment of a proxy is cancelled by notice given to the Registration Officer under subsection (8) or ceases to be in force under that provision, the Registration Officer shall-
 - (a) notify the person whose appointment as proxy has been cancelled or expired unless the Registration Officer has previously been notified by that person that he no longer wishes to act as proxy; and
 - (b) remove his name from the proxy list.

Application Form.

42E.(1) An application to be entitled to vote by proxy must state-

- (a) the full name and date of birth of the applicant;
- (b) the address in respect of which the applicant is registered or has applied to be registered in the register;
- (c) the full name and address of the proxy together with his family relationship with or connection the applicant;
- (d) the grounds on which the applicant claims to be unable to vote in person at the polling station allotted to him or her and thereby entitled to an absent vote;
- (e) the signature of the applicant or in the case of a person who is unable to provide a signature, the reasons for his or her request for a waiver of the requirement to provide a signature and the name and address of the person who has assisted him or her to complete his or her application form;
- (f) if it is signed only by the applicant, it must contain a statement by him or her that he or she has consulted the person to be appointed as proxy and that that person is capable and willing to be appointed to vote as his or her proxy or if it is also signed by the person to be appointed it shall contain a statement by that person that he or she is capable of being and is willing to be appointed to vote as the applicant's proxy.

- (2) The application must be in writing and must be dated.
- (3) The names, signatures and dates of birth contained in an application must be set out in a clear and unambiguous manner.
- (4) The Registration Officer may satisfy himself-
 - (a) that an application meets the requirements that it is signed by the applicant and states his or her date of birth by referring to any signature and date of birth previously provided by the applicant to the Government of Gibraltar which the Registration Officer is authorised to inspect for the purposes of his registration duties; and
 - (b) as to whether the applicant is unable to provide a signature or a consistent signature due to any disability or inability to read or write.”.
- (18) Section 65(1)(f) is amended by the insertion of the words “or proxy voter” immediately after the words “any voter”.
- (19) Section 70 is amended by the insertion of the words “or proxy voter” immediately after the words “to a voter”.
- (20) Section 72(1) is amended by the insertion of the words “or proxy voter” immediately after the words “how a voter”.
- (21) Section 74(3) is amended by the insertion of the words “Other than when a proxy voter is exercising the proxy vote” immediately before the words “A person”.
- (22) Section 76(1) is amended by the insertion of the words “or proxy voters” immediately after the words “solicit voters”.
- (23) Section 76(2) is deleted in its entirety and substituted with the following new subsection-

“(2) A person who, during the hours of poll whilst a voter or proxy voter is in an area demarcated in pursuance of subsection (1), solicits the voter or proxy voter or distributes leaflets or other papers to or accosts that voter or proxy voter with a view to such a solicitation or distribution or otherwise molests the voter or proxy voter is guilty of an offence.”.
- (24) Section 78(4)(c) is amended by the insertion of the words “or proxy voter” immediately after the words “a voter”.
- (25) The following three new forms shall be inserted immediately after Form K in the Schedule-

“Form L

REFERENDUM ACT 2015

**APPLICATION TO VOTE BY PROXY AT THE REFERENDUM on
[date]**

To the Registration Officer, Gibraltar.

(Please complete in **BLOCK LETTERS**)

1 About you	
First names (in full):	
Surname:	
Date of birth:	
Electoral Registration No:	

2 My Proxy (Who do you want to vote on your behalf.)	
Proxy's Name:	
Proxy's Address:	
Proxy's Date of Birth:	
Proxy's Passport N° and Place of Issue:	
Address to which the Proxy Poll Card is to be sent:	
Proxy's Telephone No:	
Proxy's Email Address:	
Elector Registration No:	

3 Address where you are registered to vote.

4 Reason for application (Illness, working away, on a course, holiday please give full details.)

5 Your declaration. The details on this form are true and accurate. I have consulted the person named as my proxy and confirm that that person is capable of being and willing to be appointed to vote as my proxy.	
Your signature:	
Date:	Day / Month / Year

6 Your daytime telephone number or email. (You do not have to give these but it may help us resolve any queries quickly.)

If you are unable to provide a signature please state here the reason why you are unable to do so:-

Helpline: [telephone no.] Email: [email address]

⑦ SUPPORTERS DECLARATION	
I am properly qualified to support this application.	
I am not related to the person.	
I am over 18 years old.	
* I am treating the applicant for long-term illness or disability, or the person is receiving care from me	
OR	
* I know the person applying (In the case of self-employed applicants <i>(*Please delete as applicable)</i>)	
The information is true to the best of my knowledge and belief.	
Signature:	
Date:	Day / Month / Year

How do I apply to vote by proxy?

1. Fill in the proxy vote application form.
2. Make sure you complete all sections of the form and supply your date of birth and signature.
3. Return your form as soon as possible to the address shown below.

Registration Officer
Parliament House
156 Main Street
Gibraltar
GX11 1AA

Please note: That your application form must arrive at the electoral registration office by [time] on [date],

If you need more forms or have any questions about voting by post, go to [website] or contact us on [telephone no.].

Notes about this form
<p>Your application DOES NOT have to be supported if;</p> <ul style="list-style-type: none"> • you are applying because you are registered blind • <u>you</u> are applying due to temporary illness, work commitments or away on holiday. <p>Your application DOES have to be supported if;</p> <ul style="list-style-type: none"> • <u>you</u> have a long term illness or disability which makes it difficult for you to vote in person. <i>(Your application must be supported by a registered medical practitioner or registered nurse. If you are in a residential home or sheltered housing, the matron, home care director or warden may support your application.)</i> • your job, or that of your spouse, may take you away from home for long periods at a time (e.g. travelling salesman, long distance lorry driver) <i>(Your application must be supported by your employer or your spouse's employer. If you are self-employed, then the support must be 18 or over, know you and must not be related to you.)</i> <p>Eligible Proxy's</p> <ul style="list-style-type: none"> • a person who has or will have attained the age of 18 years as at the date of the referendum; and • my spouse, civil partner, parent, grandparent, brother, sister, child or grandchild or person appointed by way of a statutory declaration (please delete as appropriate); and • eligible to vote in the referendum in his/her own right and is entered in the register of electors; and • a person willing and capable to act as my proxy.

REFERENDUM ACT 2015

PART 1

FORM OF PROXY PAPER

PROXY PAPER	
REFERENDUM	
DATE OF NOTICE OF REFERENDUM	
VOTING STATION:	
NAME OF PROXY	
ADDRESS OF PROXY	
You have been appointed as proxy for _____ (name of voter) who is registered at _____ to vote for him/her in the above-mentioned referendum	
Signature _____ (Registration Officer)	
Date: _____	

1. This proxy paper gives you the right to vote as proxy for the voter named above.
2. You may not vote as proxy in the referendum for more than two voters.
3. You must vote as proxy at the voting station allotted to the voter on whose behalf you are appointed. Shortly before polling day you will be sent a proxy poll card telling you where the voting station is. Please take the poll card with you to vote as you cannot vote without it.
4. If you cannot vote in person at the voting station, please contact [insert telephone number or e-mail]

PART 2

PROXY POLL CARD

PROXY POLL CARD	
REFERENDUM	
VOTING	
DATE OF REFERENDUM	

YOUR DETAILS
PROXY' S NAME:
PROXY' S ADDRESS:

VOTING INFORMATION	
POLLING DAY	
VOTING HOURS	
YOUR POLLING STATION WILL BE	

YOU WILL RECEIVE A PROXY VOTE

The person named at the back of this card has appointed you as proxy to vote on their behalf at this referendum.

You do need to take this card with you to vote as you cannot vote without it.

PLEASE TURN OVER

Back of Card

FOR THIS REFERENDUM YOU ARE PROXY FOR

VOTER'S NAME:

VOTER'S ADDRESS:

VOTER'S NUMBER ON REGISTER:

The person you are proxy for can vote themselves if they wish
BUT only if you have not already voted on their behalf.

If you need assistance please contact us at.

Telephone N°:

E-mail:

HOW TO VOTE AS PROXY

1. At the voting station, tell the staff that you are the proxy for the person named above. They will give you that person's voting paper.
2. Go to one of the voting booths.
3. Follow the instructions on how to mark the voting paper.
4. Fold the voting paper and put it in the voting box.

IF YOU NEED ANY HELP, JUST ASK THE STAFF.

IT IS AN OFFENCE TO:

- vote more than once at this referendum unless you are voting on your own behalf and as a proxy for another person.
- vote as a proxy at this referendum for more than two people.
- vote as proxy for someone if you know that by law they are not allowed to vote.

The Registration Officer issued this card. If undelivered return this card to: [insert address]

Form N
Emergency application to vote by Proxy on Referendum Day [date]

Please write in BLACK INK and use BLOCK CAPITALS. Please read the notes before completing this form.

1 Your name	
First names in full:	
Surname:	
Date of Birth:	



2 Address where you are registered to vote	3 Your Declaration
	As far as I know, the details on this form are true and accurate. I have asked the person named below who is willing and able to vote for me as proxy
	Signature <div style="border: 1px solid black; width: 200px; height: 50px; margin: 5px auto;"></div>
	Date:

4 Reason for application	
Please give details of your physical incapacity:	
Please give the date and time this happened:	

5 Proxy declaration	
I am capable and willing to be appointed to vote as the applicant's proxy.	
Proxy's signature:	Date:

6 Proxy Details	
Please complete your proxy's details as fully as possible	
Name:	
Address:	
Family Relationship (if any)	

Published by the Referendum Administrator, The Gibraltar Parliament, 158 Main Street, Gibraltar.

● Support for this application	
To be completed by the Supporter as fully as possible	
Name of Supporter:	
Address of Supporter:	
Qualification of supporter:	
Date of voter's Incapacity/circumstance Preventing voting:	
● Supporter's declaration	
<ul style="list-style-type: none"> • I am properly qualified to support this application. • I am treating the applicant for the physical incapacity, or the person is receiving care from me in respect of the physical incapacity. • The person cannot reasonably be expected to go in person to the allotted polling station or to vote unaided there by reason of that incapacity. • The information is true to the best of my knowledge and belief and the person's physical incapacity occurred on the date I entered in section 4. 	
Supporter's Signature:	
Date:	
● Please return this form to:	
Referendum Administrator for Gibraltar, The Gibraltar Parliament, 156 Main Street, Gibraltar Helpline: (+350) 200 78420; Email: parliament@parliament.gi	

Notes

This application must only be used if you became physically incapacitated or will be absent in relation to occupation, employment or service, and are applying not later than 5pm on [date of referendum].

- Section 1 Your first name(s) and surname
 Section 1 Your date of birth – if not completed, a vote by proxy cannot be granted
 Section 2 Your address on the Register of Electors
 Section 3 You must sign and date this section otherwise your application will be rejected
 Section 4 Give the details of your physical incapacity
 Section 5 Your proxy may sign this section but the proxy application can be allowed without their signature
 Section 6 Name and address of your appointed proxy, along with your family relationship to your proxy, if applicable
 Section 7 To be completed by a registered medical practitioner. If you are in a residential home or sheltered housing, the matron, home care director or warden may support your application. For occupation, service or employment reasons by your employer (or delegated employee); if self-employed by someone who knows but is not related to you.
 Section 8 Your supporter must sign and date this section otherwise the application will be rejected

- Your Proxy must be eligible to vote in the General Election.
- A person may not act as proxy for more than two voters.

EXPLANATORY MEMORANDUM

The purposes of this Bill are to insert provisions permitting proxy voting at referendums and for consequential amendments in connection therewith.