

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4775 GIBRALTAR Thursday 29th October 2020

B. 18/20

FAIR TRADING BILL 2020

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Decision Making Committee

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

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BILL

FOR

AN ACT to repeal and re-enact with amendments and modifications the Fair Trading Act 2015; to continue the establishment of the Office of Fair Trading and to make provision for its composition and functions; to make provisions for the protection of consumer interests and for the making and investigation of complaints; to encourage good business practices towards consumers; to make provision for the licensing of businesses; to make provision for information gathering, investigatory and enforcement powers of the Office of Fair Trading; to make provision for the imposition of sanctions and for purposes connected therewith.

ENACTED by the Legislature of Gibraltar.

PART 1 COMMENCEMENT AND INTERPRETATION

Title and commencement.

1.(1) This Act may be cited as the Fair Trading Act 2020.

(2) This Act comes into operation on the day the Minister appoints by notice in the Gazette and the Minister may appoint different days for different provisions and for different purposes of this Act.

Interpretation.

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

“Board” means the governing board of the OFT comprising the persons described in section 3(2);

“business” means a commercial enterprise, undertaking or activity carried on for profit in or from Gibraltar;

“CP Officer” means a Consumer Protection Officer appointed under section 66;

“Chief Executive” means the person appointed under section 4 to be the Chief Executive Officer of the OFT;

“consumer” means any person (“A”) who otherwise than in the course of the conduct of a business by A is supplied with or wishes to be supplied with any goods or services by a business;

“Court” means the Supreme Court unless otherwise specified;

“Designated Consumer Body” means a body designated by the Minister under section 19 and published by notice in the Gazette;

“goods” means any goods, wares, merchandise, commodities or materials;

“individual complaint” means a complaint under section 21;

“licence” means a business licence issued under section 26;

“licence holder” means a person named in a licence as the person to whom it was issued;

“Member State” means a member state of the European Union or the European Economic Area;

“the Minister” means the Minister with responsibility for consumer and commercial affairs and in the case of a re-organisation of ministerial responsibilities, such other minister as the Chief Minister may designate by notice in the Gazette;

“OFT” means the Office of Fair Trading existing under section 3;

“premises” means commercial premises, to include residential premises in which a business is being, or the OFT suspects is being, carried on and includes all premises in respect of which a business holds a licence;

“publish” means to make publicly or generally known and includes a publication in electronic form;

“regulations” means regulations made by the Minister under this Act;

“sanctioning power” means one of the sanctioning powers referred to in section 85;

“sell” includes trade, exchange, barter, offer for sale or expose for sale, and sale, sold and selling shall be construed accordingly; and

“super-complaint” means a complaint under section 20.

(2) For the purposes of this Act a person (whether being a natural person or a body of persons, or corporate) has a controlling interest in a body corporate if (but only if) that person is a duly appointed officer of the body corporate, is authorised to bind the body corporate or can, directly

or indirectly, determine the manner in which 25% plus 1 of the votes which could be cast at a general meeting or meeting of the board of directors of the body corporate are to be cast on matters, and in circumstances, not of such description as to bring into play any special voting rights or restrictions on voting rights.

PART 2 THE OFFICE OF FAIR TRADING

Establishment, Chief Executive and functions

Establishment of the Office of Fair Trading.

3.(1) The Office of Fair Trading (“OFT”), established under the Fair Trading Act 2015, continues to exist in accordance with this Act.

(2) The OFT is a body corporate with perpetual succession which is to comprise—

- (a) four persons appointed by the Minister; and
- (b) the Chief Executive (without further appointment).

(3) Schedule 1 shall apply to the composition and procedures of the OFT.

Appointment of Chief Executive.

4.(1) The Minister shall appoint a person to be the Chief Executive of the OFT.

(2) The Chief Executive shall perform such functions, and exercise such powers as are from time to time conferred upon him by this or any other Act or regulation or are delegated to him by the OFT.

(3) The Chief Executive is additionally responsible for drawing up and implementing procedures for regulating the terms of service and working practices of all persons employed by the OFT, over and above those applicable generally to the public service, in so far as required by the operational requirements of the OFT.

(4) If the Chief Executive is absent from Gibraltar for seven days or more, the Chief Executive must, with the consent of the Minister, appoint another OFT officer to act as Chief Executive during that absence (but for a period of not more than one month).

(5) The Minister may declare the office of Chief Executive to be vacant if the Minister is satisfied that the Chief Executive—

- (a) has been absent from three consecutive meetings of the Board without the permission of the OFT;
- (b) is bankrupt;

- (c) has been convicted of a criminal offence punishable by a term of imprisonment of three months or more;
- (d) is incapacitated by physical or mental illness;
- (e) is in material breach of the terms of the Chief Executive's appointment; or
- (f) is otherwise unable or unfit to discharge the functions of the Chief Executive.

Functions of the OFT.

5.(1) The functions of the OFT are—

- (a) to keep under review the carrying on of conduct relating to business, and to collect information with respect to such conduct, and the persons by whom it is carried on, with a view to it becoming aware of, and ascertaining the circumstances relating to, practices which may harm consumer interests;
- (b) to receive and collate evidence becoming available to the OFT with respect to such conduct as is mentioned in paragraph (a) and which appears to it to be evidence of practices which may harm consumer interests;
- (c) to promote good business practices and prevent detrimental or anti-competitive business practices which may adversely affect consumer interests and to ensure a level playing field between businesses for the benefit of consumers and the economy;
- (d) to carry out its functions under this Act or any regulations;
- (e) to make proposals and give other information or advice to the Minister and, in the OFT's discretion, any public authority on matters relating to any of its functions including as to any aspect of the law or a proposed change in the law;
- (f) to conduct inquiries and investigations, and to prepare reports into such matters relating to its functions under this Act as may be referred for that purpose to the OFT by the Minister or which the OFT may consider appropriate; and
- (g) to discharge such other functions as may be assigned to it by or under this or any other Act, or by the Minister.

Discharge by the OFT of its functions.

6.(1) Save as may be otherwise specifically provided for in this Act—

- (a) the functions of the OFT shall be carried out by the Chief Executive; and

(b) the powers and discretions of the OFT shall be exercised by the Chief Executive.

(2) Where the Chief Executive makes a decision—

- (a) to refuse any application made under Part 4; or
- (b) to exercise any power under Part 6,

he shall provide to the concerned person his decision and reasons for his decision in writing.

Carrying out of its functions.

7.(1) In carrying out its functions the OFT may—

- (a) obtain compile and keep under review information relating to the carrying out of its functions with a view to ensure that the OFT has sufficient information to take informed decisions and to carry out its functions effectively;
- (b) carry out, commission or support research, financially or otherwise;
- (c) provide to the public—
 - (i) information to make them aware of the ways in which consumer protection and business licensing measures may benefit consumers and the economy of Gibraltar; and
 - (ii) information, advice or warnings in respect of matters relating to any of its functions.

(2) For the purposes of subsection (1)(c) the OFT may—

- (a) publish educational materials or carry out other educational activities;
- (b) support (financially or otherwise) the carrying out by others of such activities or the provision by others of information or advice; and
- (c) issue public statements.

Delegation of functions.

8.(1) Subject to any contrary provision in this or any other Act, the OFT may delegate the discharge of any of its functions to—

- (a) the Chief Executive; or
- (b) with the consent of the Minister, any other person that the OFT may propose.

(2) The Chief Executive, with the consent of the Minister, may—

- (a) delegate to an OFT employee or officer any function, power or discretion of the OFT that is exercisable by the Chief Executive under this Act;
- (b) sub-delegate to an OFT employee or officer any function delegated by the Chief Executive under subsection (1)(a); and
- (c) authorise the OFT employee or officer to exercise the Chief Executive’s powers in connection with the exercise of the sub-delegated function.

(3) The delegation by the Chief Executive of any of its functions does not affect the exercise by the Chief Executive of those functions.

(4) A delegation or sub-delegation to which the Minister has consented under this section ceases with immediate effect if the Minister by written notice to the Chief Executive revokes that consent.

Establishment and functions of Decision Making Committee

Establishment of Decision Making Committee.

9. The Decision Making Committee (“the DMC”) is hereby established as a statutory committee of the OFT.

Functions of the Decision Making Committee.

10.(1) The functions of the DMC are—

- (a) to exercise, on behalf of the OFT, the OFT’s powers in respect of a specified decision; and
- (b) to hear and consider appeals from any decision made by the OFT other than decisions made by the DMC on behalf of the OFT.

(2) In this section “specified decision” means a decision of the OFT—

- (a) imposing an administrative penalty or award of compensation in excess of £1000;
- (b) revoking or suspending a licence;
- (c) refusing to renew a licence; or
- (d) exercising a sanctioning power in a manner that prevents a business being carried on in whole or in part.

(3) Schedule 2 makes further provision about the membership, powers and procedures of the DMC.

Minister's directions and default powers.

11.(1) The Minister may give directions to the OFT generally with respect to the exercise of its functions under this Act in relation to matters which affect the public interest and the OFT shall give effect to any such directions.

(2) Without prejudice to the generality of subsection (1) the Minister may give directions in respect of policies to be adopted by the OFT in relation to the exercise of any of its functions under this Act.

(3) If at any time it appears to the Minister that the OFT has failed to comply with any provision made by or under this or any other Act, the Minister may by written notice direct the OFT to make good the default within the time specified in the notice.

(4) If the OFT fails to comply with a direction under subsection (1), for the purpose of giving effect to the direction the Minister may exercise any power of the OFT or do any act or other thing authorised to be done by the OFT.

(5) The Minister's powers under this section may be exercised by a person appointed by the Minister for that purpose.

Guidance.

12.(1) The OFT may issue guidance consisting of such information and advice as it considers appropriate—

- (a) with respect to the operation of this Act;
- (b) with respect to any matters relating to functions of the OFT; and
- (c) with respect to any other matters which it appears to the OFT to be desirable to give information or advice.

(2) The OFT must provide the Minister with written notice of its intention to issue guidance under this section, or to revoke or amend guidance already made.

(3) The period of notice to be provided under subsection (2) is—

- (a) not less than 28 days prior to the date on which the guidance takes effect; or
- (b) such shorter period as the Minister may agree to accept.

(4) the Minister may, during the period specified under subsection (3)(a), require the OFT to do the following—

- (a) not to issue the intended guidance;
- (b) not to revoke or amend the existing guidance in the manner proposed; or
- (c) to issue the intended guidance, revocation or amendment in a manner specified by the Minister.

(5) Guidance made under this section may make different provision for different persons, circumstances or cases.

(6) A breach of any guidance made under this section may be used by the OFT as grounds for such action as is permitted by this Act.

(7) The Minister may require the OFT to revoke or to amend in the manner specified by the Minister any guidance made under this section and if the OFT does not do so within a period of 30 days, the Minister may revoke or amend that guidance.

Disclosure of information

General restriction on disclosure of information.

13.(1) This section applies to specified information which relates to—

- (a) the affairs of a natural person; or
- (b) any business.

(2) Save as permitted by this Act, such information shall not be disclosed—

- (a) during the lifetime of the natural person; or
- (b) while the business continues in existence.

(3) Subsection (2) does not prevent the disclosure of information—

- (a) for the purposes of enforcing this Act;
- (b) to any other public authority for the purpose of assisting them in the carrying out by them of their functions under any other Act; or
- (c) if the information has on an earlier occasion been disclosed to the public in circumstances which do not contravene such subsection or any other enactment or rule of law prohibiting or restricting the disclosure of the information.

(4) Information is specified information if it comes to the OFT in connection with the exercise of any function it has under or by virtue of—

- (a) any part of this Act; or
- (b) such subordinate legislation as the Minister may by order specify for the purposes of this subsection.

(5) It is immaterial whether information comes to the OFT before or after the passing of this Act.

(6) Nothing in this section shall preclude or prevent the exchange of intelligence between the OFT and the Royal Gibraltar Police, Gibraltar Financial Intelligence Unit, HM Customs, or the supervisory bodies listed in Part 1 of Schedule 2 of the Proceeds of Crime Act 2015 or to any other public authority.

(7) Nothing in this section shall preclude or prevent the disclosure of information for the purposes of any legal proceedings relating to or connected with the discharge of its functions or the exercise of its powers by the OFT.

Disclosure of information with consent.

14.(1) Disclosure by the OFT of information held by it is not prohibited if the OFT obtains the consent of the person to whom it relates.

(2) If the information was obtained by the OFT from a person who had the information lawfully and the OFT knows the identity of that person the consent of that person is required.

(3) If the information relates to the affairs of a natural person, the consent of that person is required.

(4) If the information relates to a business the consent of the person for the time being carrying on the business is required.

(5) For the purposes of subsection (4) consent may be given—

- (a) in the case of a company by a director, secretary or other officer of the company;
- (b) in the case of a partnership by a partner; or
- (c) in the case of an unincorporated body or association by a person concerned in the management or control of the relevant body or association.

Offences relating to disclosure of information.

15.(1) A person commits an offence if he discloses information to which section 13 applies.

(2) A person commits an offence if he uses information disclosed to him under this Part for a purpose which is not permitted under this Act.

(3) A person who commits an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding two months or to a fine not exceeding level 5 of the standard scale or to both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.

Defamation.

16. For the purposes of the law relating to defamation, absolute privilege attaches to any advice, guidance, notice, statement or direction given, or decision or report made by the OFT or by the Minister in the exercise of any of their functions under this Act.

Immunity.

17.(1) The OFT is not liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the OFT by this or any other Act.

(2) Any person who is a member, officer, employee or delegate of the OFT or a member of the DMC is not liable in damages for anything done or omitted in the discharge or purported discharge of any powers or functions conferred on the OFT by this or any other Act.

(3) Subsections (1) and (2) do not apply to an act or omission which is shown to have been in bad faith.

(4) The OFT must (unless bad faith is definitively found to have existed) indemnify any of its existing and former members, officers or employees and members of the DMC for the costs of defending any action brought by a third party in respect of anything they are alleged to have done or omitted in the discharge or purported discharge of any powers or functions conferred on the OFT by this or any other Act or regulations.

PART 3
COMPLAINTS TO THE OFT

Interpretation.

18.(1) For the purposes of this Act conduct shall be regarded as harmful to consumer interests if it consists of—

- (a) a contravention of one or more enactments which impose duties, prohibitions or restrictions enforceable by criminal proceedings, whether any such duty, prohibition or restriction is imposed in relation to consumers or not and whether the person carrying on the business has or has not been convicted of any offence in respect of any such contravention;
- (b) a contravention of this Act or any guidance issued under this Act whether the person carrying on the business has or has not been convicted of any offence in respect of such contravention;
- (c) a thing done, or omitted to be done, in the course of that business in breach of contract or in breach of a duty (other than a contractual duty) owed to any person by virtue of any enactment or rule of law and enforceable by civil proceedings, whether (in any such case) civil proceedings in respect of the breach of contract or breach of duty have been brought or not; or
- (d) any other thing done or omitted to be done which, in the reasonable opinion of the OFT, has subjected a consumer to unfair or unconscionable treatment or consequences.

(2) For the purpose of determining whether it appears to the OFT that a person has conducted himself in such a manner as is mentioned in subsection (1), the OFT shall have regard to either or both of the following—

- (a) complaints received by it, whether from consumers or from other persons;
- (b) any other information collected by or furnished to the OFT, whether by virtue of this Act or otherwise.

Designated Consumer Body.

19.(1) There shall be designated bodies each known as a Designated Consumer Body that shall be capable of making a super-complaint to the OFT in accordance with the provisions of section 20.

(2) The Minister—

- (a) may designate a body to be a Designated Consumer Body if it appears to him to represent consumer interests; and
- (b) may publish (and may from time to time vary) other criteria to be applied by him in determining whether to make or revoke a designation.

Super-Complaints to the OFT.

20.(1) A complaint under this section shall be known as a super-complaint.

(2) A super-complaint to the OFT may be made by any of the persons specified in subsection (4) below in accordance with the provisions of this section, if, in the opinion of such person, any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be harming consumer interests.

(3) For the purposes of this section a feature of a market in Gibraltar for goods or services shall be construed in like manner as for the purposes of section 64.

(4) The persons who may make a complaint to the OFT under subsection (1) above are—

- (a) the Minister;
- (b) a Designated Consumer Body; or
- (c) the Chamber of Commerce, the Gibraltar Federation of Small Businesses or any other trade or professional association or representative body that is recognised by the Minister as representing the collective interests of a sector of trade or other commercial activity.

(5) The OFT shall, within 30 days after the day on which it receives the super-complaint, acknowledge receipt of the complaint to the person who made it.

(6) The OFT shall, within 120 days after the day on which it receives all information relating to the super-complaint, produce a response stating how it proposes to deal with the complaint, and in particular—

- (a) whether it has decided to take any action, or to take no action, in response to the complaint; and
- (b) if it has decided to take action, what action it proposed to take.

(7) The OFT's response under subsection (6) shall state the OFT's reasons for its proposals.

(8) The Minister may by order amend subsection (6) by substituting any period for the period being specified in the order, such order to be made by Notice in the Gazette.

(9) The OFT—

- (a) shall publish guidance as to the presentation by complainants of a reasoned case for the complaint; and
- (b) may issue such other guidance as appears to it to be appropriate for the purposes of this section.

Individual Complaints to the OFT.

21.(1) A complaint under this section shall be known as an individual complaint.

(2) An individual complaint to the OFT may be made in accordance with the provisions of this section by—

- (a) a person (“A”) who in their opinion has suffered conduct (by act or omission) by a person (“B”) who has supplied goods or services to A in manner that has harmed A’s consumer interests; or
- (b) a person (“A”) who carries on business in the supply of the goods and services also supplied by way of business by another person (“B”) and who believes that the manner or terms on which B supplies those goods or services to consumers is or appears to be harming consumer interests.

(3) The OFT shall, as soon as practicable in the light of its resources and other priorities, produce a response to an individual complaint made by a consumer stating (with reasons) whether it will—

- (a) take no action in response to the complaint;
- (b) take whatever action it considers appropriate under this Act; or
- (c) if it considers that the appropriate action would constitute a specified decision, refer the complaint to the DMC for decision.

(4) Upon receipt of an individual complaint made by a consumer the OFT shall, if it considers it appropriate to do so, attempt to procure an agreed outcome between the relevant parties which outcome may include (among others that may be agreed) all or any of—

- (a) compensation or other redress for the consumer who made the complaint;
- (b) an undertaking to the OFT containing a satisfactory written assurance given by the person concerned that he will refrain from—
 - (i) conducting himself in the manner described in subsection (2)(a) or (b) as the case may be;

- (ii) conducting himself in any similar manner in the course of any business which may at any time be carried on by him.

(5) If there is an agreed outcome under subsection (4) the OFT shall take no further action in respect of an individual complaint.

(6) Subsection (5) shall not apply if a person does not comply with an agreed outcome within the time period therein specified for compliance or, absent any specified period, within what the OFT considers to be a reasonable period of time.

(7) Nothing in subsection (5) shall prevent the OFT from taking into account the individual complaint which is the subject of an agreed outcome for the purposes of assessing the behaviour of a person in the case of any other later complaint or investigation.

(8) Before referring a complaint to the DMC under subsection (3)(c) for adjudication the OFT shall investigate the complaint and shall collate such evidence as it may obtain.

(9) Upon referral of a complaint to the DMC the OFT shall provide to the DMC and to the parties to the complaint—

- (a) a copy of the complaint;
- (b) any representations made to the OFT by any of the parties in relation to the complaint;
- (c) all the evidence available to the OFT in relation to the complaint; and
- (d) any report of the OFT in relation to the complaint.

(10) The OFT—

- (a) may publish guidance as to the presentation by complainants of a reasoned case for individual complaints; and
- (b) may issue such other guidance as appears to it to be appropriate for the purposes of this section.

(11) In this section “consumer” also includes any person (“A”) who in the course of the conduct of a business by A is supplied or wishes to be supplied with any goods or services by another business for the use, benefit or consumption of A in the conduct of A’s business but not for the conduct of external business by A. “External business” means the buying, selling or other transaction by A of the goods or services for which A would require a licence under this Act.

**PART 4
BUSINESS LICENSING**

Definitions.

22. In this Part, unless the context otherwise requires—

“artisan” means a craft worker who makes or creates material objects partly or entirely by hand.

“application” means an application under section 54(1)

“authorised officer” means a CP Officer or any other person appointed by the Chief Executive of the OFT.

“cottage industry” means a small-scale manufacturing process or other business that takes place in residential premises.

“objection” means an objection under section 55(1)

“phoenixing” means carrying on a business (‘B’) trading successively in the same or similar manner as a business which is insolvent (‘A’) and where business A’s assets and customers, but not its debts, are transferred to business B.

“publish” means to make publicly or generally known and includes a publication in electronic form.

“trade” shall include, but not be limited to, the buying or selling whether by wholesale or retail, of any goods by way of business and also means the importing of any goods into Gibraltar in commercial quantities.

Presumption to carry on business.

23.(1) There is a presumption to be able to carry on business in Gibraltar, subject to obtaining the required licence in accordance with this Act.

(2) Subject to—

- (a) the applicant submitting an application and all the prescribed information and such further information and documents as may reasonably be requested by the OFT in accordance with this Act;
- (b) no valid objection being made to the application which is upheld by the OFT in accordance with this Act; and

- (c) the OFT being satisfied that the application satisfied all the requirements of this Act,

the OFT shall grant the applicant a licence as soon as reasonably practicable and in accordance with the provisions of this Act.

Requirement to obtain a business licence.

24.(1) Subject to section 25, no person shall carry on business without a licence issued for that purpose by the OFT in accordance with this Act.

(2) It is an offence for a person to carry on business—

- (a) without a licence;
- (b) subject to subsection (3) and (4), and to section 27(2), from premises other than those in respect of which he holds a licence;
- (c) in breach of any terms and conditions stipulated in a licence.

(3) A business may deliver goods to customers' premises.

(4) A business may deliver services to customers at premises other than the premises specified in the licence where it is in the nature of the business to do so.

(5) A person who commits an offence under sub-section (2) is liable on summary conviction to a fine at level 4 on the standard scale.

(6) It is not an offence under this section for a licence holder to provide services that are ancillary to or reasonably incidental to the services to which a licence relates or in respect of which he does not require a licence.

Persons who are deemed not to carry on business.

25.(1) No person shall be deemed to carry on business for the purposes of this Act by reason only that—

- (a) the person is employed by a person who carries on business;
- (b) the person is a director or shareholder of a body corporate which carries on business;
- (c) the person is a body corporate providing services to other persons in the same group (as defined in the Companies Act);
- (d) the person is carrying out domestic services to a private household;

- (e) the person is a journalist or is printing and distributing a printed newspaper as defined in the Newspapers Act;
- (f) the person carrying on business as a cottage industry, artisan or as service provider with an annual turnover which does not exceed a sum as may be prescribed by regulation from time to time;
- (g) the person is appointed to conduct a sale of any goods in execution of an order of any court;
- (h) the person sells any goods or provides any services:
 - (i) solely as a necessary incident to the provision of any professional or other personal services; or
 - (ii) in connection with the raising of funds for philanthropic, charitable, cultural, sporting or educational purposes.

(2) A person falling under sub-section (1)(f) shall be required to register in the prescribed manner with the OFT and to renew their registration annually.

(3) A person falling under sub-section (1)(h) shall be required to inform the OFT in writing prior to selling the goods or providing the services.

Issue of licences.

26.(1) The OFT is the body responsible for issuing licences to carry on business in accordance with the Act.

(2) A licence shall—

- (a) authorise the person named therein to carry on—
 - (i) the business;
 - (ii) at the premises; and
 - (iii) subject to such other terms and conditions as may be specified therein;
- (b) be in such form as may be prescribed by the OFT;
- (c) be signed by the Chief Executive or by such other person as the Chief Executive has authorised in writing to sign licences on behalf of the OFT; and
- (d) subject to section 27(6) relate to only one premises.

Premises.

27.(1) An applicant must submit evidence that he will operate the business from premises that are appropriate for the carrying on of the business.

(2) The requirements of section 26 relating to premises may be waived by the OFT in cases where the OFT is satisfied in its absolute discretion that the business to which the licence relates can be properly carried on without premises.

(3) A licence shall only be granted in relation to premises in which commercial activities of the kind comprising the business are permitted to be carried out, and are not designated as residential accommodation.

(4) An application for a waiver under subsection (2) may be granted by the OFT if it is satisfied that—

- (a) the business does not require premises in order to carry on business;
- (b) the business would not enjoy an unfair advantage over similar businesses to the detriment of consumers and the economy. For this purpose, the efficiency, effectiveness, innovativeness or other similar competitive quality of a competitor shall not be considered to be an unfair advantage.

(5) The factors to which the OFT may have regard in considering the appropriateness of premises under subsection (1) or granting a waiver under subsection (2) include but are not limited to—

- (a) whether the business is an online provider of services;
- (b) the type, nature and volume of goods to be sold (if any);
- (c) the degree and type of contact with clients and supplies; and
- (d) the number of employees that the business has or will require (if any) to carry on the business appropriately.

(6) The OFT may in its absolute discretion allow more than one licence over the same premises should it be of the opinion that the businesses to which the licences relate can be carried on compatibly in the same premises.

Grounds on which the OFT may refuse a licence.

28.(1) The OFT may refuse to grant a licence if it is satisfied that—

- (a) the applicant is under the age of eighteen;
- (b) the premises on which the applicant intends to conduct the business would not conform to the laws of Gibraltar;

- (c) the issue of such a licence is likely to cause nuisance or annoyance to persons residing or occupying premises in the neighbourhood of—
 - (i) the premises in respect of which the licence is sought;
 - (ii) places where the business is likely to be carried on in the event of an application for a licence and waiver from the requirement for premises in accordance with sections 26(2)(a)(ii) and 27;
- (d) the applicant’s business would not, in the opinion of the OFT, be compatible with another business which is, or will be, operating from the premises, or any part of the premises, from which the applicant intends to carry on the business;
- (e) the issue of such licence would conflict with any town planning scheme approved by the Development and Planning Commission;
- (f) the premises do not accord with the Official Address Register or equivalent records held by Land Property Services;
- (g) the applicant is a natural person who is not entitled to reside or work in Gibraltar in accordance with the laws of Gibraltar;
- (h) the business is a Specified Business and the OFT is not satisfied that the person has the necessary skill, competence, qualification or resources to carry on that business safely for consumers;
- (i) the issue of such licence would in the opinion of the OFT operate against the public interest for some other reason; or
- (j) the applicant fails to provide to the satisfaction of the OFT any information required by this Act or regulations to be provided with an application.

(2) In this section “Specified Business” means a business or activity which, while not requiring authorisation, licensing or approval under any other enactment, involves one or more of the following—

- (a) the introduction or insertion by injection or by any other means of any substance into the body of a person;
- (b) the tattooing of any part of a person’s body;
- (c) the application or administration to another person of any prescription only medicine;
- (d) the provision of therapy;

- (e) the infliction or carrying out of any process that involves the breaking of another person's skin;
- (f) the provision of counselling, analysis or other therapy or services designed or intended to identify and or to assist a person to understand, accept, overcome or recover or obtain relief from any form of mental condition, mental state, attitude, behaviour or other situation that derives in the mind of that person or any activity that could cause harm to a person's mental state;
- (g) such other business or activity as the Minister may prescribe in regulations.

(3) If a licence is refused on the grounds of public interest the OFT shall state this in its decision and set out the reasons for its refusal.

Grounds on which the OFT shall refuse a licence.

29.(1) The OFT shall refuse to issue a licence—

- (a) to any person who—
 - (i) is an undischarged bankrupt or has entered into a composition or a scheme of arrangement with his creditors which is still binding;
 - (ii) has, within a period of five years immediately preceding the date of the application, been convicted of an offence under the Insolvency Act 2014;
- (b) in respect of premises if the OFT is aware (without the OFT having any obligation to enquire into the matter) that the carrying on of the business in those premises would breach a covenant, condition or restriction contained in the legal instrument or other terms under which the applicant holds or occupies the premises;
- (c) to a partnership if any partner therein is a person referred to in subsection (1)(a)(i) or (ii);
- (d) in respect of premises which the OFT is not satisfied are appropriate for the intended business;
- (e) in respect of business requiring a licence, authorisation, registration or other form of approval or permission under any other enactment which has not been obtained by the person or in respect of the premises (as the case may be); or
- (f) to any person who in the opinion of the OFT is not fit and proper to carry on the business.

(2) A person is not fit and proper for the purposes of subsection (1)(f) if—

- (a) within a period of five years immediately preceding the date of the application, that person has been convicted of an offence which in the opinion of the OFT renders the applicant not fit and proper; or
- (b) being a company has a director, shareholder or ultimate beneficial owner who is a person to whom subsection (2)(a) applies; or
- (c) being a trust or foundation has a beneficiary to whom subsection (2)(a) applies; or
- (d) being a partnership has a partner who is a person to whom subsection (2)(a) applies; or
- (e) having regard to the provisions of the Proceeds of Crime Act 2015 or any other law of Gibraltar concerned with the identification or eradication of money laundering or terrorist financing the OFT is not satisfied that the Relevant Person (as defined in section 30) is a fit and proper person.

Money laundering and financing of terrorism.

30.(1) This section applies to an application for or the transfer of a licence to carry on business as—

- (a) an estate agent or letting agent;
- (b) a dealer in high value goods whenever payment is made or received in cash and in an amount of £8000 or more;
- (c) a high risk dealer;
- (d) a potential high value dealer;
- (e) an art market participant as defined in the Proceeds of Crime Act 2015; or
- (f) such other business as the Minister may prescribe in regulations.

(2) In this section—

- (a) a high risk dealer is a business that is considered by the OFT to have a higher inherent risk and vulnerability to money laundering and terrorist financing due to the nature of the goods purchased or sold;
- (b) a potential high value dealer is a business that the OFT believes may be open to accepting cash payments in any currency above the sum equivalent in value to £8000, but has yet to receive or accept any such payment;
- (c) “Relevant Person” means—
 - (i) an applicant for or transferee of a licence;

- (ii) the beneficial owner of a significant or controlling interest in the business;
- (iii) a person holding or appearing to the OFT to intend to hold a management function in the business;
- (iv) a person in accordance with whose wishes or directions any person involved in the carrying on of the business acts or it appears to the OFT will act.

(3) Every change affecting a Relevant Person shall be notified to the OFT within 7 days in such form and in such manner as the OFT may prescribe.

(4) Upon receipt of a notification under subsection (3), the OFT shall conduct a check to assess that the Relevant Person is fit and proper.

(5) In deciding whether a Relevant person is not fit and proper for the purposes of this section, the OFT—

- (a) shall establish and may publish guidance notes and criteria for the determination of whether a person is fit and proper;
- (b) shall have regard to any guidance notes and criteria established under subsection (5)(a); and
- (c) shall have regard to the requirements and criteria specified in the Proceeds of Crime Act 2015 and any other relevant law.

(6) Without prejudice to the generality of section 29(1)(f), a Relevant Person shall be deemed to be not fit and proper for the purposes of this section if that person has been convicted during the last five years of an offence under the Proceeds of Crime Act 2015 or is an associate of such a person.

(7) The sum of £8000 referred to in this section may be varied from time to time by the Minister by notice in the Gazette.

(8) For the purposes of carrying out its functions under this section the OFT may call upon any Relevant Person to provide to the OFT such information or documents as the OFT may reasonably require (“required information”).

(9) Required information shall be provided in such manner and form and within such time period as the OFT shall reasonably require.

(10) If required information—

- (a) is not provided;
- (b) is not provided in the manner and form required by the OFT; or

(c) is not provided within the time period required by the OFT,

the OFT shall refuse to grant or transfer a licence.

Principles in considering applications.

31.(1) In considering and deciding on an application for a licence, including the terms and conditions of licence, the OFT shall—

- (a) favour, absent any specific consideration to the contrary, the principle of freedom of establishment of business and the freedom of trade in goods and provision of services in Gibraltar; and
- (b) adhere to the principles of non-discrimination and proportionality.

(2) The Minister may give directions to the OFT generally with respect to the exercise of its functions under this Act in relation to matters which affect the public interest and the OFT shall give due consideration to such directions in considering any application.

Conditions applicable to all licences.

32. Every licence issued under this Act shall be subject to the following conditions—

- (a) the licence holder shall comply with all the requirements of this any other laws applicable to the conduct of the business;
- (b) the licence shall not be transferred to any other person without the consent of the OFT in accordance with this Act;
- (c) the licence shall continue in force for one year from the date it is issued, and shall thereupon expire;
- (d) if in the course of carrying on the business a person handles or holds client money or takes or holds deposits from clients such money shall be held in a separate client account and kept separate from money belonging to the business or any relevant person;
- (e) a business to which subsection (d) applies shall be required to demonstrate to the satisfaction of the OFT that it is complying with the requirements of that subsection, failing which the OFT may revoke the licence;
- (f) the grant of a business licence with a waiver from the requirement for premises in accordance with section 27(2) does not grant the licence holder any right to conduct business from premises that are Government residential or other premises, or from non-Governmental premises under which the terms of the title deeds restrict commercial activities. The licence holder is required to obtain separately all necessary approvals and consents from the head lessor or freehold owner of any

premises from which the licence holder is to operate all or any part of their business;

- (g) such conditions as may be prescribed in Regulations and conditions so prescribed may apply to—
 - (i) all licences;
 - (ii) all licences in respect of the class or classes of business specified in the Regulations; or
 - (iii) certain activities, premises (including but not limited to location) or characteristics of licence holders or geographical in respect of a class or classes of business, as may be specified in the Regulations.

Issue of licence subject to conditions and imposition of conditions on an existing licence.

33.(1) The OFT may issue a licence subject to such terms and conditions as it considers necessary or desirable.

(2) Without prejudice to the generality of subsection (1), the OFT may issue a licence subject to the condition that goods may only be sold—

- (a) by wholesale and not by retail; or
- (b) by retail and not by wholesale.

(3) The OFT may at any time impose on an existing licence any term or condition that it may impose upon the issue of a licence under subsections (1) or (2).

(4) If the OFT proposes to impose a condition on an existing licence under subsection (3) it must issue a warning notice to the licence holder in accordance with the terms of section 97.

(5) Sections 98 and 99 shall apply to a warning notice issued or required to be issued by subsection (4).

(6) Nothing in this section shall be construed as limiting the authority of the OFT to revoke or reduce the duration of a condition at any time.

(7) Nothing in this section shall apply to the imposition or variation of a term or condition on a licence with the agreement of the licence holder.

Applications for removal or alteration of licence conditions.

34. A licence holder may make an application in such form as may be prescribed from time to time by the OFT for the alteration or removal of a condition in a licence setting out the reason why such conditions should be altered or removed.

Provisional approval of a new licence.

35.(1) This section applies to a business which is to operate from premises which are being or are to be—

- (a) constructed for the purpose of being used as premises for business in Gibraltar; or
- (b) altered for that purpose (whether or not they are already used for that purpose).

(2) The OFT may, on an application to which this section applies, grant provisional approval for the grant of a licence in relation to those premises on the payment of the requisite fee if the OFT is satisfied that—

- (a) the premises, once completed, would satisfy the requirements of section 27;
- (b) the premises, once completed, would be such that the OFT would grant a licence for those premises;
- (c) such premises are expected to be ready for use by the applicant to carry on the business within 12 months from the date of the provisional approval of the licence by the OFT, following the expiry of which period the provisional approval will expire; and
- (d) the applicant has properly contracted the exclusive possession of the premises for a period in excess of 12 months from the premises being available for occupation.

(3) Applications for provisional approval under this section shall be supported by—

- (a) plans showing the premises as they will appear once the construction or alteration of the premises are completed; and
- (b) all documentation and information required for a licence application as if the premises were ready for use.

(4) The provisional approval of a licence by the OFT shall not entitle the applicant to carry on any business for which it is not otherwise licensed, and the provisional licence shall not be directly or indirectly transferable.

(5) The OFT shall, once satisfied that the premises have been completed in accordance with the plans deposited, proceed to grant a business licence to the applicant subject to—

- (a) a notice of application in accordance with the provisions of section 54(2) being published by the OFT;
- (b) the consideration by the OFT of any objection to the granting of such licence in accordance with the provisions of section 55; and

- (c) payment of the requisite fee.

Persons licensed under separate legislation.

36.(1) This Act shall not apply to a regulated business.

(2) In this section, “regulated business” means a business which under the provisions of any other enactment—

- (a) cannot lawfully be carried out without licensing, approval, authorisation, registration or enrolment under that enactment; and
- (b) is regulated or supervised under that enactment by an authority in Gibraltar or elsewhere.

(3) Without prejudice to the generality of the foregoing, the following shall be a regulated business—

- (a) services to which the Financial Services Act 2019, or regulations made thereunder, apply;
- (b) services to which the Medical & Health Act 1997, or regulations made thereunder, apply;
- (c) services to which the Legal Services Act apply (or will, when that enactment is commenced, apply);
- (d) services to which the Gambling Act 2005 apply;
- (e) the sale of petroleum products authorised to be sold by a licence issued under the Petroleum Act;
- (f) the sale of firearms authorised to be sold by a licence issued under the Firearms Act;
- (g) the sale of goods authorised by any of the following licences under the provisions of the Leisure Areas (Licensing) Act 2001—
 - (i) any bar, restaurant cafeteria or other such establishment situated within a Leisure Area as defined by the Leisure Areas (Licensing) Act 2001 engaged in the sale or provision of food, drink or intoxicating liquor for consumption within the premises or any external area of that establishment; or
 - (ii) any discotheque in Gibraltar, whether or not situated in a Leisure Area.

(4) Subsection (1) shall not apply to a business licensed under—

- (a) the Tobacco Act 1997; or
- (b) Part II of the Licensing and Fees Act.

Renewal of Licences.

37.(1) A licence granted under this Act shall be valid for one year from the date of issue, is subject to annual renewal and such renewal shall be granted by the OFT, except that—

- (a) the OFT may refuse to renew a licence if it is satisfied that—
 - (i) one or more of the grounds or circumstances on which it may refuse to grant a licence under section 28 exists in relation to the licence;
 - (ii) any information provided to the OFT in or with the application for the licence was false or incomplete in a material particular;
 - (iii) the licence holder no longer meets the conditions of the licence; or
 - (iv) the applicant has failed to provide such documentation and information as the OFT may have required from time to time for the purposes of this or such other Act; and
- (b) the OFT shall refuse to renew a licence if—
 - (i) it is satisfied that one or more of the grounds or circumstances on which it must refuse to grant a licence under section 29 exists in relation to the licence;
 - (ii) any fee payable on the renewal has not been paid.

(2) The OFT may in its discretion delegate to the person authorised the power to issue renewals of licences.

(3) Before refusing to renew a licence the OFT shall issue to the licence holder—

- (a) a warning notice; and
- (b) a decision notice.

(4) The OFT may subject to the other provisions of this Part renew a licence notwithstanding that it has expired under section 32(c) provided that an application for renewal is made within six months of the date on which the licence expired.

No term or condition may be imposed on the renewal of a licence.

38. Save on a ground on which the OFT may refuse to renew a licence, no term or condition may be imposed on the renewal of a licence which restricts the type of goods which may be sold or services delivered under the licence.

Revocation of licence.

39.(1) The OFT may revoke a licence if–

- (a) the business to which the licence relates has not been carried on during a period of at least 6 months. If the licence relates to more than one type of business and any have not been carried on for a period of 6 months or more, the OFT may revoke the licence in respect thereof;
- (b) any term or condition to which the licence is subject has not been complied with;
- (c) the licence holder is convicted of an offence under this Act.

(2) The OFT shall revoke a licence if–

- (a) the licence holder has vacated the premises to which the licence relates
- (b) subject to the provisions of section 42 (transfer of licences)–
 - (i) the licence holder, being a natural person, has died;
 - (ii) the licence holder, being a company or other legal entity, has ceased to exist.
- (c) the OFT is satisfied that one or more grounds or circumstances on which it must refuse to grant a licence under section 29 exists in relation to the business or licence at any time;
- (d) the OFT or the Minister consider that the carrying on of the business is against the public interest.

(3) The OFT shall, before revoking any licence, give the licence holder 30 days to show cause why the licence should not be revoked.

Display and production of licences.

40.(1) A licence shall be prominently displayed in the premises to which it relates in a manner visible to and legible by consumers.

(2) A business shall display its licence number on the homepage of any website that it maintains on the world wide web.

(3) A licence may be inspected during business hours by any member of the public and by any CP Officer.

(4) Where a licence has been issued without specifying premises any person carrying on the business will at the request of a CP Officer produce the licence to the CP Officer for inspection.

(5) A licence holder who contravenes the provisions of this section is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

Extension to scope of existing licences.

41.(1) Subject to subsection (2) the OFT may extend a licence by adding one or more businesses to an existing licence.

(2) An application for an extension of a licence under this section shall be subject to all the provisions of the Act applicable to the issue of a licence.

Transfer of licences to another person.

42.(1) A licence shall not be transferred to another person without the consent of the OFT.

(2) An application for the transfer of a licence shall be made in such form and in accordance with such procedure as the OFT may prescribe.

Death of the licence holder.

43.(1) This section applies in the event of the death of a licence holder who is a natural person.

(2) The OFT shall consent to the transfer of the licence to the transferee if all the conditions in subsection (3) are met.

(3) The conditions referred to in subsection (2) are—

- (a) the transfer is requested by the executor of the deceased licence holder;
- (b) the request in sub-paragraph (a) is made within 12 months of the death of the licence holder; and
- (c) there is a testamentary disposition in favour of the transferee.

(4) If there is no testamentary disposition in favour of the transferee or there is more than one potential beneficiary the OFT will not consent to the transfer of the licence without—

- (a) an order of the Court determining which of the potential beneficiaries is entitled to the licence; or

- (b) an agreement in writing signed by all the potential beneficiaries signifying their consent to the transfer of the licence to the proposed transferee.

Bankruptcy of licence holder.

44. In the case of the bankruptcy of the licence holder, the OFT shall consent to the transfer of the licence to the lawfully appointed trustee in bankruptcy of the licence holder upon the request of such trustee.

Licence holder with legal disability.

45. In the case of a licence holder who becomes subject to any legal disability, the OFT shall consent to the transfer of the licence to any person lawfully appointed to administer the affairs of the licence holder upon the request of such person.

Insolvency of licence holder.

46. In the case of a licence holder which, being a company or other legal person, goes into liquidation, administration or administrative receivership, the OFT may transfer the licence to the lawfully appointed liquidator, administrator or receiver (as the case may be) if so requested.

Refusal to transfer.

47. The OFT shall refuse its consent to a transfer if it is satisfied that, were the transferee an applicant for the issue of a new licence in the terms of the licence sought to be transferred, it would refuse to issue such a licence to the transferee on any of the grounds set out in sections 28 or 29.

Transfer of a licence to another premises.

48.(1) No licence shall be transferred to another premises without the consent of the OFT.

(2) An application for the transfer of a licence shall be made in such form and in accordance with such reasonable procedure as the OFT may prescribe.

(3) The OFT may refuse its consent to transfer if it is satisfied that, were the application one for the issue of a new licence in relation to the proposed premises it would refuse to issue such a licence to the transferee on any of the grounds set out in sections 28 or 29.

Re-issue of licence following transfer or extension

49. Upon every—

- (a) extension of a licence;
- (b) transfer of a licence to another person; or

- (c) transfer of a licence to other premises

the licence holder shall surrender the existing licence to the OFT which shall issue a new one in its place.

Duplicate licences.

50. Where any licence is lost, destroyed or defaced, the licence holder shall make an application in the prescribed form to the OFT for a duplicate of such licence, and the OFT shall, upon payment of the prescribed fee, and, if satisfied that such licence is lost, destroyed or defaced and has not expired, issue a duplicate thereof to the licence holder.

Fees.

51.(1) There shall be payable such fees as may be prescribed by regulations made by the Minister in respect of the exercise of functions by the OFT under or as a result of this Act.

(2) A licence (including a renewed licence) is not valid if the corresponding fee in respect of its issuance, re-issuance, extension, transfer or renewal has not been paid.

Register of licences and changes to information provided.

52.(1) The OFT shall cause to be kept a register of licences in such form as the OFT may decide, which shall contain the following particulars in respect of every licence issued—

- (a) the date of issue;
- (b) the name of the licence holder;
- (c) the business name of the licence holder;
- (d) the business authorised to be carried on;
- (e) the premises at which such business is authorised to be carried on;
- (f) any conditions to which the licence is subject;
- (g) every transfer of licence to another person and the date on which such transfer was approved by the OFT;
- (h) every transfer to other premises and the date on which such transfer was approved by the OFT;
- (i) every extension of licence and the date on which such extension was approved by the OFT;
- (j) every renewal of a licence and the date of such renewal; and

(k) such other particulars as may be prescribed by the OFT.

(2) The Minister may by regulations add to, delete from or alter the list of particulars specified in subsection (1).

(3) The register of licences shall be available for inspection on the OFT's website.

(4) Every licence holder shall inform the OFT within seven days of—

(a) all changes to any of the particulars specified in subsection (1);

(b) all information provided under section 53;

Business Licence Applications

Applications.

53.(1) Applications shall be made in such form as may be prescribed from time to time by the OFT and provide all such details and information as may reasonably be required.

(2) An application shall clearly state the full name of the applicant and must specify any business names used by the applicant which does not consist of the applicant's name.

(3) All applicants must submit proof of their identity, or in the case of a company, proof of the identity of the signatory of the company applying on the company's behalf, to the satisfaction of the OFT.

(4) Applications by a partnership shall be made in the names of all partners jointly.

(5)

(a) Applications by a company shall be made by a duly appointed officer of the company; and

(b) A company incorporated outside of Gibraltar shall also submit proof of its re-domiciliation under Part XIII of the Companies Act 2014 or of its registration under Part XIV of that Act, as the case may be.

(6) All applications must stipulate—

(a) the type of the goods to be traded;

(b) a description of the nature of all the services to be provided; and

(c) a description of the goods to be traded and services provided by reference to the list of goods and services in such lists (if any) as may be published by the OFT from time to time.

(7) All applications shall be supported by such documentation and information as the OFT may reasonably require, and the OFT may defer consideration of any application until it has received all the documentation and information that it has reasonably requested.

(8) Without prejudice to subsection (7) the OFT may request—

- (a) for an application for a licence by a company, details of the ultimate beneficial owners of the company;
- (b) for an application for a licence by a trust or foundation, details of the ultimate beneficiaries of the trust or foundation;
- (c) for an application by a partnership of which a company, trust or foundation is a partner of any kind of details required under (a) or (b) above as the case may be in respect of any such company, trust or foundation.

(9) In subsections (8) and (10) “details” means—

- (a) name;
- (b) nationality;
- (c) country of ordinary residence;
- (d) usual residential address.

(10) The OFT may request—

- (a) reasonable documentary evidence of details; and
- (b) such additional information as it considers necessary or desirable about beneficial owners or ultimate beneficiaries.

Notices of applications.

54.(1) Subject to subsection (5) the OFT shall within five working days of receipt of an application in compliance with the provisions of this Act—

- (a) for a new licence;
- (b) to extend an existing licence;
- (c) to transfer a licence to another person; or
- (d) to transfer a licence to another premises,

give notice of the application in accordance with the provisions of subsection (2) based on the information presented to it by the applicant.

(2) A notice under subsection (1) shall be published by the OFT on its website.

(3) No application shall be considered by the OFT unless five working days has expired from the date of publication of the notices specified in subsection (2).

(4) The period of five working days referred to in subsection (1) shall start to run when the OFT has received—

- (a) a full application form, supported by such information as is required by section 53; and
- (b) such other documents and information as the OFT may reasonably request from or is sought to be provided to the OFT in connection with the application, by HM Customs, the Department of Town Planning & Building Control, the Accountant General, Land Property Services Limited or any government or statutory entity, authority or agency.

Objections.

55.(1) Where a notice of application has been published in accordance with the provisions of section 54, any person who wishes to object to the application shall give notice of his objection within five working days from the date the application is published in the prescribed form—

- (a) to the OFT with the appropriate filing fee; and
- (b) to the person named as the applicant of such intention.

(2) No objection under this Act shall be considered by the OFT in respect of an application unless—

- (a) the grounds of such objection are one or more of the grounds set out in sections 28(1)(a) to (h) or section 29(1)(a) to (e);
- (b) particulars of the objection are provided in writing;
- (c) notice thereof is given within the time prescribed under subsection (1); and
- (d) the filing fee mentioned at subsection (1)(a) is received by the OFT with the notice.

(3) The OFT may, having considered the particulars of the objection submitted pursuant to subsection (2)(b), reject an objection where the particulars do not correspond with the grounds of objection specified in section 28(1)(a) to (h) or section 29(1)(a) to (e).

(4) Notwithstanding the provisions of subsection (1) the objection period may be extended by the OFT in respect of any objection made by HM Customs, the Department of Town

Planning & Building Control, the Accountant General, Land Property Services Limited or any Government department, authority or agency until such time as the OFT has fully processed the application.

(5) The filing fee referred to in subsection (1)(a) shall not be required to be paid in respect of any objection lodged by HM Customs, the Department of Town Planning & Building Control, the Accountant General, Land Property Services Limited or any government entity, authority or agency.

(6) Section 55 shall not apply to an application for a temporary licence under section 57(3).

Consideration of Applications

Consideration of applications.

56.(1) The OFT shall consider applications promptly.

(2) All applications shall be considered by the OFT based on the application form submitted to it and any supporting documentation and information provided by the applicant and any third party in an objective and non-arbitrary manner.

Temporary licences.

57.(1) Upon receipt of the prescribed application and the prescribed fee, the OFT may issue a temporary licence to a business to which subsection (2) relates.

(2) Subsection (1) relates to a business that—

- (a) will be carried on for a limited period of time not exceeding 14 days specified in the licence; and
- (b) involves one or a series of events occurring during the limited period to which the licence relates.

(3) An application for a temporary licence under subsection (3)—

- (a) must be in the form prescribed by the OFT;
- (b) must be accompanied and supported by—
 - (i) such information and documents as the OFT may prescribe; and
 - (ii) such additional documents and information as the OFT may require.

Conflicts of interest.

58.(1) It shall be the duty of an officer of the OFT who is in any way, whether directly or indirectly, interested in a licence application which they are considering on behalf of the OFT to declare the nature of their interest and, where the nature of their interest is likely to influence their consideration of the application, excuse themselves from considering the application.

(2) The OFT shall not only be impartial in fact but shall be seen to be impartial and shall at all times be alert to the risk of conflicts of interest.

Powers of the OFT in considering applications.

59. The OFT shall, for the purpose of considering an application, have the power to—

- (a) consult, and receive and consider information provided by HM Customs, the Department of Town Planning & Building Control, the Accountant General, Land Property Services Limited or any government entity, authority or agency;
- (b) make such investigation as may be necessary in order to ascertain any of the matters which it is required to consider, including, but not limited to, the training and/or qualification of the applicant to carry out the business;

provided that the OFT shall not require an applicant to produce any book or account or voucher or receipt directly relating to the applicant's business.

Hearings.

60.(1) The OFT may request a hearing if the OFT—

- (a) in its discretion deems it necessary for the purpose of considering an application;
- (b) has accepted a notice of objection in relation to an application; or
- (c) is proposing to refuse an application.

(2) A notice in writing of not less than five working days shall be given to an applicant and any objector to such application to attend a hearing giving them an opportunity to be heard by the OFT. Such notice shall specify the date and time of the hearing.

(3) A person given notice to attend a hearing may waive the requirement for the notice period set out in subsection (2) in writing to the OFT.

Proceedings at hearings.

61.(1) A hearing under section 60 shall take place before the Chief Executive of the OFT or such other officer or officers of the OFT as he may appoint.

(2) An applicant and any objector to such application and their representatives or advisors shall have the right to attend such hearing, give evidence and call witnesses, cross-examine witnesses for the other party and address the OFT.

(3) The OFT shall have the power to take evidence at a hearing on oath or affirmation.

(4) The objector or his representative or advisor shall have the right to address the OFT first.

(5) No officer of the OFT who has a disqualifying interest in the application to be heard pursuant to section 58, being for reasons of financial interest, having an interest in a competing business, organisational relationships or personal relationships shall participate at a hearing.

Offence.

62. A person who knowingly—

- (a) gives any false information to the OFT in connection with an application or objection; or
- (b) makes any false entry in the prescribed form in respect of an application or objection

is guilty of an offence and liable to a fine of up to level 3 on the standard scale.

**PART 5
INFORMATION GATHERING, INVESTIGATORY
AND SUPERVISORY POWERS OF THE OFT**

Conduct of investigations or inquiries and preparation of reports.

63. The OFT may—

- (a) conduct inquiries and investigations and prepare reports in respect of any—
 - (i) super-complaint;
 - (ii) complaint; or
 - (iii) any matter relating to any of its functions.
- (b) conduct the inquiries and investigations under sub-paragraph (a) itself, or appoint any other person or persons to do so.
- (c) with the prior consent of the Minister, publish any such report or parts thereof.

Powers of the OFT to conduct inquiries and investigations where a feature of a market is harming consumers.

64.(1) Without prejudice to the generality of section 21, the OFT may conduct an inquiry or investigation and prepare a report under that section if it has reasonable grounds for suspecting that any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be harming consumer interests.

(2) For the purposes of this section, a feature of a market in Gibraltar for goods or services shall be construed as a reference to—

- (a) the structure of the market concerned or any aspect of that structure;
- (b) any conduct of one or more than one person who supply or acquire goods or services in the market concerned; or
- (c) any conduct relating to the market concerned which supply or acquire goods or services.

(3) In subsection (2) “conduct” includes any failure to act (whether or not intentional) and any other unintentional conduct.

Ministerial power to refer matters to the OFT.

65.(1) The Minister may request the OFT to make proposals or give other information or advice on any matter relating to any of its functions and the OFT shall comply with the request.

(2) If the Minister has reasonable grounds for suspecting that any feature, or combination of features, of a market in Gibraltar for goods or services is or appears to be harming consumer interests he may refer it to the OFT.

(3) Section 64(2) shall apply *mutatis mutandis* to this section.

(4) Upon receipt of a reference from the Minister under subsection (2) the OFT shall conduct an inquiry or investigation into the matter or matters the subject of the reference and provide a report thereon to the Minister within a period of three months or such other period of time as the Minister may specify in his reference or otherwise agree to accept.

Consumer Protection Officers.

66. The Minister may appoint persons to be Consumer Protection Officers (each a CP Officer) under this Act, who shall have as their main role the protection of consumer interests, and shall—

- (a) visit businesses to review their practices and inspect all weighing and measuring equipment used for business;

- (b) check licences to ensure they are in place and up to date;
- (c) monitor and check advertisements for accuracy;
- (d) inspect and test goods for safety;
- (e) ensure that no person is selling goods or providing services without a licence or without suitable premises as required by the Act; and
- (f) at the request of the Chief Executive, conduct investigations in relation to the practices or conduct of any business or businesses in Gibraltar which could or appear to harm consumer interests or in respect of which a super-complaint or an individual complaint has been made to the OFT.

Power to enter premises without a warrant.

67.(1) A CP Officer may enter the premises of a business without a warrant during business hours when the business is open—

- (a) if he reasonably suspects that there have been, or are likely to be, in respect of that business, a business practice or conduct which harms consumer interests, to investigate whether there is or has been, or there is likely to be in the future, such business practice or conduct; or
- (b) in any case to—
 - (i) inspect the premises;
 - (ii) request information about the person and the business being carried out by that person;
 - (iii) request production of and inspect a licence for the carrying out of that business.

(2) In all cases, the CP Officer entering the premises shall produce to any occupier evidence of—

- (a) their identity; and
- (b) their authorisation.

(3) Nothing in this section authorises a CP Officer to enter residential premises without a warrant.

(4) A CP Officer who enters premises under this section may—

- (a) observe the carrying on of a business on that premises;

- (b) inspect goods or documents on the premises;
- (c) require any person on the premises to produce goods or documents within such period as the CP Officer considers to be reasonable;
- (d) seize goods or documents to carry out tests on them on the premises or seize, remove and retain them to carry out tests on them elsewhere which the CP Officer reasonably suspects breaches a requirement of this or any other Act and represents a danger or threat to public health or safety; or
- (e) seize, remove and retain goods or documents which the CP officer reasonably suspects may be required as evidence of a breach of a requirement of this or any other Act.

(5) A person who exercises a power under sub-section (4) shall at the time of doing so give to the person appearing to be in control of the premises at that time the reasons for doing so.

(6) The power in subsection (4)(c) to require a person to produce goods or documents includes the power to require him—

- (a) to state, to the best of his knowledge and belief, where the goods or documents are;
- (b) to give an explanation or information about goods or documents or business practices or conduct of the business as the CP officer may reasonably request for the purposes of the exercise of the OFT’s powers and functions under this Act; and
- (c) to authenticate or verify the nature, specifications or origin of any goods or documents in such manner as the CP officer considers appropriate.

(7) A CP Officer may take copies of, or extracts from, any documents to which he has access by virtue of subsection (1).

(8) In this section document includes information recorded in any form.

(9) The reference in subsection (4)(c) to the production of documents is, in the case of a document which contains information recorded otherwise than in legible form, a reference to the production of a copy of the information in legible form.

(10) In this section, “premises” includes any vehicle, vessel or container.

Power to enter premises with a warrant.

68.(1) A Magistrate may issue a warrant authorising a CP officer or any other person authorised and appointed by the OFT to enter premises for purposes falling within this Act if the Magistrate considers that there are reasonable grounds for believing that—

- (a) there are, on the premises, goods or documents to which a CP officer would be entitled to have access; and

- (b) (i) a CP Officer has been, or would be likely to be, refused admission to the premises or access to the goods or documents; or
- (ii) there is likely to be nobody at the premises capable of granting admission.

(2) A warrant under this section authorises the CP Officer—

- (a) to enter the premises specified in the warrant (using reasonable force if necessary);
- (b) to search for goods or documents to which a CP Officer would be entitled to have access under this Act;
- (c) to the extent that it is reasonably necessary to do so, to require any person who is responsible for any relevant function in relation to the business to open any container, room or other place or thing and, if that person does not comply with the requirement, or if such a person cannot be identified after all reasonably practicable steps have been taken to identify such a person, to do so himself using such force as may be reasonably required to do so; and
- (d) to take any other steps which the CP Officer considers to be reasonably necessary to preserve, or prevent interference with, goods or documents to which the CP Officer would be entitled to have access under section 67.

(3) A warrant under this section—

- (a) is issued on information given under oath by a CP Officer or other authorised person;
- (b) ceases to have effect at the end of the period of one month beginning with the day of issue; and
- (c) shall, on request, be produced to the occupier of the premises for inspection.

(4) Any reference in this section to goods or documents being interfered with includes a reference to them being destroyed.

(5) In this section, “premises” includes any vehicle, vessel or container.

Obstructing or failing to co-operate with powers of entry.

69.(1) A person commits an offence if, without reasonable excuse, he intentionally obstructs, or fails to co-operate with, a CP Officer who is exercising or seeking to exercise a power of entry under sections 67 or 68 of this Act.

(2) A person guilty of an offence under subsection (1) is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(3) A CP Officer may refer the conduct of any person under this Act to the Royal Gibraltar Police if the CP officer is of the opinion that a criminal offence has occurred or is likely to occur.

Retention of documents and goods.

70.(1) No goods or documents seized in the course of the exercise of a power of entry under sections 67 or 68 may without an order of a Magistrate be retained for a period of more than three months from the date they were seized.

(2) A Magistrate shall not make an order under subsection (1) unless he is satisfied that—

- (a) the goods or documents are reasonably required in connection with the exercise of any function of a CP Officer or the OFT; or
- (b) the possession or sale of the goods is unlawful.

Information Gathering and Investigatory Powers of the OFT

Relevant persons.

71. In this Part, a “relevant person” means—

- (a) a business; or
- (b) an owner, director, shareholder, beneficial owner, manager or employee of a business.

Power to obtain information and documents.

72.(1) The OFT may by written notice require a relevant person—

- (a) to provide the OFT with specified information or information of a specified description;
- (b) to produce to the OFT specified documents or documents of a specified description; or
- (c) to attend before the OFT or a person nominated by the OFT, at a specified time and place, to—
 - (i) answer questions appearing to the OFT to be relevant in connection with the exercise of its functions specified in subsection (2); and
 - (ii) provide any information that the OFT may require.

(2) Subsection (1) only applied to information and documents that the OFT reasonably requires in connection with the exercise of functions conferred on it by or under this Act.

(3) Subsection (1) applies to such estimates, forecasts, returns or other information, and in a form and manner as may be specified or described in the notice.

(4) A notice under subsection (1) shall include information about the possible consequences of not complying with a notice.

(5) The person to whom any document is produced in accordance with a notice under this section may, for the purpose mentioned in subsection (1), copy the document so produced.

(6) No person shall be required under this section to give any evidence or produce any documents which he could not be compelled to give or produce in civil proceedings before the Court or to supply any information which he could not be compelled to supply in evidence in such proceedings.

(7) A notice under subsection (1)(a) or (b) may require—

(a) a relevant person to provide information or produce documents—

(i) before the end of a specified period;

(ii) at specified intervals; or

(iii) at a specified time or place;

(b) any information which a relevant person is required to provide to be verified in a specified manner; or

(c) any document which a relevant person is required to produce to be authenticated in a specified manner.

(8) In this section, “specified” means specified in a notice given under subsection (1).

(9) Where any information or document is not recorded in legible form, a requirement to provide or produce it includes the requirement to supply a copy of it in legible form.

(10) The OFT may—

(a) take copies of or extracts from any document produced;

(b) require the person who has provided information or produced a document to provide an explanation of that information or document; and

(c) require a person to state, to the best of the person’s knowledge and belief, where any information or document might be found.

Extension of powers to obtain information, etc.

73. The OFT's powers under section 72 may also be exercised in respect of any person who appears to the OFT to be carrying on, or holding out as carrying on, in or from Gibraltar, a business which requires a licence under this Act.

Inspectors

Appointment of inspectors.

74.(1) The OFT may appoint a person who it considers to be competent to do so ("an inspector") to investigate, on the OFT's behalf, the affairs of a business in subsection (2) if—

- (a) it has received a super-complaint or an individual complaint in relation to that business;
- (b) it has reasonable grounds to suspect that the business has contravened a requirement imposed by or under this Act; or
- (c) it appears to the OFT that on other grounds there are good reasons for doing so.

(2) Subsection (1) applies to any person in Gibraltar who—

- (a) carries on, or who the OFT reasonably suspects of carrying on, a business in or from Gibraltar; or
- (b) has carried on, or who the OFT reasonably suspects has carried on, a business in or from Gibraltar.

(3) In exercising any functions under this Part, an inspector acts as agent for the OFT, which is responsible for the acts and omissions of the inspector in exercising those functions.

Power of inspectors to examine on oath.

75. An inspector appointed under section 74 may in Gibraltar examine on oath (and has the power to administer oaths for that purpose)—

- (a) a relevant person of the business whose affairs are being investigated;
- (b) any employee of that person or person working in the business;
- (c) where that person is a company, any of its officers, agents or employees.

Duty to provide information and documents to inspector.

76. It is the duty of any relevant person whose affairs are being investigated by an inspector to supply the inspector with any information or document which is in the person's possession or control and which the inspector may reasonably require.

Costs of inspectors' reports.

77. The costs of producing an inspector's report must be borne by the OFT.

Legal safeguards

Self-incrimination.

78. A statement made by a person in compliance with any requirement imposed under this Part may be used in evidence in criminal proceedings against that person only if—

- (a) the person has introduced the statement in evidence; or
- (b) the proceedings concern the prosecution of the person for—
 - (i) failing or refusing to provide information, produce documents or give assistance in accordance with this Part;
 - (ii) omitting to disclose information which should have been disclosed; or
 - (iii) providing an untruthful statement.

Legal privilege.

79. A person is not required to produce a document or disclose information under this Part if the person would be entitled to refuse to produce or disclose it on grounds of legal privilege in proceedings in the Supreme Court.

Lien on documents.

80. The production of a document under this Part does not affect any lien which a person may have in respect of the document and the existence of such a lien is not a valid reason for refusing to produce that document.

Offences under this Part

Offences in relation to this Part.

81.(1) A person ("P") commits an offence if—

- (a) P, without reasonable excuse—

- (i) fails or refuses to comply with a requirement imposed under this Part; or
 - (ii) omits to disclose material which P should have disclosed in accordance with this Part.
- (b) P, in purported compliance with a requirement imposed under this Part—
- (i) gives information or makes a statement which P knows to be false or misleading; or
 - (ii) recklessly gives information or makes a statement which is false or misleading.
- (c) P knows or suspects that an investigation under this Part is being or is likely to be conducted and—
- (i) P falsifies, conceals, destroys or otherwise disposes of a document which P knows or suspects is or would be relevant to such an investigation; or
 - (ii) P causes or permits the falsification, concealment, destruction or disposal of such a document.
- (2) P does not commit an offence under subsection (1)(a) if the reason for P's failure or refusal to comply with a requirement or to disclose material is that—
- (a) P is prevented from doing so by an order of the Court under this Part; or
 - (b) P's obligation to do so is the subject of an appeal or other legal challenge before the Court.
- (3) In any proceedings for an offence under subsection (1)(c), it is a defence for P to prove that P had no intention of concealing from the person conducting the investigation facts disclosed by the documents.
- (4) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction, to a term of imprisonment not exceeding three months or to the statutory maximum fine, or both;
 - (b) on conviction on indictment, to a term of imprisonment not exceeding two years or a fine, or both.

PART 6
ENFORCEMENT AND SANCTIONING POWERS OF THE OFT

Grounds for exercise by OFT of sanctioning powers.

82.(1) The OFT may exercise a sanctioning power against a person if—

- (a) the person contravened a regulatory requirement; or
- (b) the person has carried on the business in a manner that the OFT considers to be harmful to consumer interests in accordance with section 18 or contrary the provisions of any other enactment the purpose of which is to protect the interests of consumers.

Definition of regulatory requirement.

83.(1) In this Part a “regulatory requirement” means an obligation imposed upon a person—

- (a) as a condition of the licence;
- (b) by this Act or any regulations; or
- (c) by the OFT under this Act or any regulations.

(2) This Part does not limit any other power the OFT may have to investigate, supervise or sanction a person under this Act or any other enactment.

When the OFT may exercise a sanctioning power.

84. The OFT may exercise a sanctioning power against a person—

- (a) following a super-complaint;
- (b) following an individual complaint;
- (c) of its own motion.

Sanctioning powers.

85.(1) The sanctioning powers are—

- (a) an undertaking;
- (b) an administrative penalty;
- (c) a cease and desist order;

- (d) a directions order;
- (e) a compensation order;
- (f) a licence intervention order;
- (g) a prohibition order.

(2) More than one sanctioning power may be exercised against a person in respect of the same contravention.

Undertaking.

86.(1) The OFT may seek and obtain an undertaking from a person in accordance with this section.

(2) An undertaking is an assurance in the form of an undertaking as is mentioned in subsection (3).

(3) The undertaking referred to in subsection (2) is a satisfactory written assurance given by the person concerned that he will refrain from—

- (a) conducting himself in a particular manner in the course of any business which may at any time be carried on by him; and
- (b) if he is a natural person, consenting to or conniving at such conduct by any body corporate in relation to which, at any time when it so conducts itself, he fulfils the condition specified in subsection (4)(a) or (b).

(4) The condition referred to in subsection (3)(b) is that the person either—

- (a) is at that time a director, manager, secretary or other similar officer of the body corporate or a person purporting to act in any such capacity; or
- (b) whether being a natural person or a body of persons or corporate, has at that time a controlling interest in that body corporate.

(5) An undertaking under this section—

- (a) shall come into force when accepted;
- (b) may with agreement of the OFT be varied or superseded by another undertaking; and
- (c) may be released by the OFT.

(6) The OFT shall, as soon as reasonably practicable, consider any representations received by it in relation to varying or releasing an undertaking under this section.

(7) If a person gives but does not comply with an undertaking in every respect the OFT may, notwithstanding any other provision of this Act to the contrary, in its absolute discretion—

- (a) re-open the complaint or enforcement procedure which resulted in the undertaking being given; and
- (b) exercise any other sanctioning power.

Administrative penalty.

87.(1) The OFT may impose an administrative penalty upon a person in accordance with this section.

(2) An administrative penalty is an amount of money that the person is liable to pay to the OFT.

(3) The amount is to be determined by the OFT, subject to any limit imposed by or under this Act.

(4) The penalty must be paid within 28 days of the date on which the notice imposing it takes effect.

(5) The OFT may extend the period within which the penalty must be paid.

(6) An administrative penalty may be enforced as if it were a civil debt owed to the OFT.

Cease and desist order.

88.(1) The OFT may issue a cease and desist order against a person in accordance with this section.

(2) A cease and desist order shall—

- (a) name the person to which the order relates;
- (b) identify the conduct which constitutes a contravention; and
- (c) direct the person to comply with subsection (3).

(3) A cease and desist order obliges the person to—

- (a) cease any conduct which constitutes a contravention;
- (b) desist from any repetition of that conduct; and

(c) comply with all other requirements (if any) of the order.

(4) A cease and desist order may require a person against whom the order is made to publish information in such form and manner and to such extent as the OFT thinks appropriate for the purpose of eliminating any continuing effects of such conduct.

(5) The OFT may also—

(a) ask the person against whom the order is made to issue a corrective statement;

(b) ask the person against whom the order is made for proof of compliance with the content of the order within a defined period of time from the date of the order; or

(c) request that the person against whom the order is made take steps which the OFT believes will secure that he complies with the order.

Directions order.

89.(1) The OFT may issue a directions order against a person in accordance with this section.

(2) A directions order obliges the person to do something which in the reasonable opinion of the OFT that person is required to do to comply with this Act, any regulations or any requirement lawfully imposed by the OFT on that person thereunder.

Compensation order.

90.(1) The OFT may issue a compensation order against a person (“P”) in accordance with this section.

(2) A compensation order obliges P to—

(a) pay a monetary sum in the amount determined by the OFT by way of compensation to any person (“C”) adversely affected by a contravention; and/or

(b) refund to C all or such part thereof as the OFT may determine to be fair and reasonable of the sum paid by C to P for the supply of goods or services by P to C in circumstances or manner constituting a contravention.

(3) The sum of a compensation must be paid by P to C within 28 days of the date on which the notice imposing it takes effect.

(4) The sum of a compensation order may be enforced by C as if it were a civil debt owed by P to C.

(5) The OFT may extend the period within which the penalty must be paid.

Licence intervention order.

91.(1) The OFT may issue a licence intervention order against a person in accordance with this section.

(2) A licence intervention order may—

- (a) temporarily suspend a licence;
- (b) revoke a licence.

(3) A licence intervention order that temporarily suspends a licence—

- (a) may suspend the whole or part or parts of a licence to carry on a business;
- (b) may impose a limitation or other restriction in relation to the carrying on of a business, and such a restriction may, in particular, be imposed so as to require the person to take, or refrain from taking, specified action;
- (c) must specify the period during which it has effect which may not exceed 12 months;
- (d) may relate to the carrying on of a business in specified circumstances;
- (e) may be withdrawn or varied, so as to reduce the period for which it has effect or otherwise limit its effect, by the OFT.

(4) A licence intervention order that revokes a licence—

- (a) has the effect of cancelling the person's licence under this Act and prohibits the person from carrying on the business to which the licence relates;
- (b) without prejudice to any other provision of this Act enabling the OFT to do so, may be made if the OFT considers that the licence holder no longer satisfies the criteria for its issue;
- (c) may relate to all or some only of the goods and services to which a licence relates;
- (d) may specify a period during which the person may not apply for a new licence in respect of business to which the order relates;
- (e) an order under sub-paragraph (d) of this subsection must specify—
 - (i) which business classes or activities it applies in respect of; or
 - (ii) that it applies in respect of all business classes and activities covered by the licence.

Prohibition order.

92.(1) The OFT may issue a prohibition order against a business in accordance with this section.

(2) A prohibition order prohibits the business from carrying on the business specified in the order.

(3) The prohibition order must specify the period during which it has effect.

(4) The prohibition order must specify—

(a) which business activities it applies in respect of; or

(b) that it applies respect of all business classes and activities covered by the licence.

(5) A person subject to a prohibition order may apply to the OFT to—

(a) vary the prohibition order; or

(b) revoke the prohibition order.

(6) The OFT must, before the end of the period for consideration of an application under subsection (5)—

(a) grant the application; or

(b) give a written notice stating why it proposes not to grant the application.

(7) The “period for consideration” means the period of 3 months beginning with the date on which the OFT receives the application.

(8) A written notice—

(a) must give the recipient not less than 28 days to make representations; and

(b) must specify a period within which the recipient may decide whether to make oral representations.

(9) The period for making representations may be extended by the OFT.

(10) After considering any representations made the OFT must issue—

(a) a decision notice stating that the OFT will refuse the application; or

(b) an acceptance notice stating that the OFT will accept the application.

(11) An application under subsection (5) made by an individual has no effect if it is made within 1 year of the OFT giving a written notice in respect of a previous application by that individual.

(12) A decision notice under this section takes effect immediately.

Sanctioning actions

Sanctioning actions.

93. Sections 94 to 99 apply where the OFT takes a sanctioning action by exercising a sanctioning power.

Criteria for sanctioning actions.

94. The OFT must ensure that the type and level of any sanctioning action is reasonable, proportionate, effective and dissuasive, taking account of all relevant circumstances, including where appropriate—

- (a) the gravity and the duration of the contravention;
- (b) the financial strength of the person;
- (c) in so far as they can be determined—
 - (i) the importance of the profits gained or losses avoided by virtue of the contravention;
 - (ii) the losses sustained by others as a result of the contravention;
 - (iii) where applicable, the damage to the functioning of markets or the wider economy;
- (d) the level of cooperation with the OFT by the person;
- (e) previous contraventions by the person;
- (f) measures taken after the contravention by the person to prevent its repetition;
- (g) whether the person has complied with guidance relevant to the subject matter of the contravention.

Issue of guidance by the OFT in relation to taking sanctioning action.

95.(1) The OFT may issue, and may from time to time revise, a guide setting out—

- (a) how it will exercise its sanctioning powers;
 - (b) aggravating and mitigating factors it will take into account (which may be in addition to the criteria set out in section 94);
 - (c) how the OFT will determine the level of administrative penalties;
- (2) The guide must not be issued unless it has first been approved by the Minister, and once issued it may not be withdrawn or amended without the Minister's consent.
- (3) The OFT must have regard to the guide before exercising its sanctioning powers.

Procedure for sanctioning action

Requirement for warning notice and decision notice.

96.(1) Where the OFT—

- (a) proposes to take a sanctioning action, it must give the person concerned a warning notice in accordance with section 97; and
- (b) decides to take a sanctioning action, it must give the person concerned a decision notice in accordance with section 98.

(2) Subsection (1) shall not apply to sections 85(1)(a) and 86.

Warning notices.

97.(1) A warning notice must—

- (a) be in writing;
- (b) contain any information that the provision under which it is given requires to be included in a warning notice;
- (c) state the action which the OFT proposes to take; and
- (d) give reasons for proposing to take it.

(2) A warning notice must—

- (a) give the recipient not less than 28 days to make representations to the OFT; and
- (b) specify a period of not less than 14 days within which the recipient may decide whether to make oral representations.

- (3) The OFT must also disclose to the person concerned—
- (a) all the evidence on which the OFT’s decision to give the warning notice was based; and
 - (b) all the evidence upon which the OFT may rely to determine the steps to be taken by it under section 98.
- (4) Subsection (3) does not require the OFT to provide the person concerned with a copy of any application, document or other information which the person concerned submitted to the OFT in relation to the decision in question.
- (5) The OFT may extend the period specified in the notice for making representations.

Decision notices.

- 98.(1) This section applies where the OFT has issued a warning notice.
- (2) After considering any representations made in accordance with section 97, the OFT must within a reasonable period issue—
- (a) a decision notice stating that the OFT will take the proposed action;
 - (b) a discontinuance notice stating that the OFT will not take the proposed action; or
 - (c) a notice comprising a combination of—
 - (i) a decision notice stating that the OFT will take certain proposed action; and
 - (ii) a discontinuance notice in respect of the remaining proposed action.
- (3) A decision notice or discontinuance notice must—
- (a) be in writing;
 - (b) contain any information that the provision under which it is given requires to be included in such a notice;
 - (c) state the proposed action and the reasons for taking or not taking it, as the case may be; and
 - (d) inform the recipient of any right of appeal under section 108.
- (4) A decision notice takes effect—
- (a) immediately or on the date stated in it, if the provision under which it is given specifically so provides or permits; or

- (b) in any other case, at the end of the period specified in section 108 within which an appeal may be made or, if an appeal is made, when the appeal and any further appeal is finally determined or withdrawn.

Dispensing with a warning notice: sanctions in urgent cases.

99.(1) Section 97 does not apply if all of conditions A to D are met in relation to a person (“P”).

(2) Condition A is that the OFT is considering whether to exercise a sanctioning power in relation P.

(3) Condition B is that the OFT, having regard to the ground on which it is considering exercising the sanctioning power in question, reasonably considers that there is an immediate risk of substantial damage to—

- (a) the interests of consumers;
- (b) the public interest; or
- (c) the reputation of Gibraltar.

(4) Condition C is that the OFT reasonably considers that—

- (a) the issuing of a warning notice would, to a material extent, be likely to increase the risk of damage referred to in subsection (3) or the extent of such damage; and
- (b) dispensing with the issue of a warning notice would be proportionate to the achievement of that objective having regard, in particular, to the adverse consequences for P that may result from the proposed sanctioning action.

(5) Condition D is that the OFT gives P a written notice which states that the sanctioning action takes effect on the date of the notice or on such later date as may be specified in the notice.

(6) The sanctioning action takes effect on the date specified in the notice under subsection (5).

(7) A notice under subsection (5) must—

- (a) give details of the sanctioning action;
- (b) identify which of the grounds specified in subsection (3) the OFT is relying on and how that ground is engaged;
- (c) state the OFT’s reasons for taking the sanctioning action;

- (d) specify why the OFT considers that the requirements of each of paragraphs (a) and (b) of subsection (4) is met;
- (e) inform P that P may make representations to the OFT within such period as may be specified in the notice;
- (f) inform P of when the sanctioning action takes effect;
- (g) inform P of the right to make an application under subsection (9);
- (h) indicate the procedure to be followed in making any such application.

(8) The OFT may extend the period allowed under the notice for making representations.

(9) The Magistrate's Court may, on an application made to it by P of which not less than two working days' notice has been given to the OFT—

- (a) direct the OFT to revoke any sanctioning action taken by the OFT without issuing a warning notice; or
- (b) quash or vary any such sanctioning action,

if the court considers that it was not reasonable, proportionate or appropriate for the OFT to have taken the action without issuing a warning notice.

(10) If, having considered any representations made by P, the OFT decides not to revoke the sanctioning action, the OFT must give P another written notice which informs P that the decision to take that action may be appealed under section 108.

(11) If, having considered any representations made by P, the OFT decides—

- (a) to make any changes to the particular sanctioning action taken;
- (b) to substitute a different sanctioning action; or
- (c) to revoke a sanctioning action which has effect,

the OFT must give P another written notice.

(12) A notice under subsection (11)(a) or (b) must—

- (a) give details of the OFT's decision;
- (b) state the OFT's reasons for taking it;
- (c) inform P that P may make representations to the OFT within such period as may be specified in the notice;

- (d) inform P of when the sanctioning action takes effect; and
- (e) inform P that the decision may be appealed under section 108.

(13) A notice informing P that a decision may be appealed must give an indication of the procedure to be followed in making an appeal.

Injunctions.

100.(1) If, on the application of the OFT, the Court is satisfied that—

- (a) there is a reasonable likelihood that any person will contravene a requirement imposed by or under this Act; or
- (b) any person has contravened such a requirement and that there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may make an order restraining the contravention.

(2) If, on the application of the OFT, the Court is satisfied that—

- (a) any person has contravened a requirement imposed by or under this Act; and
- (b) that there are steps which could be taken for remedying the contravention,

the Court may make an order requiring that person, and any other person who appears to have been knowingly concerned in the contravention, to take such steps as the Court may direct to remedy it.

(3) In subsection (2), references to remedying a contravention include references to mitigating its effect.

Register of sanctioning action.

101.(1) The OFT shall compile and maintain a register of all sanctioning action taken under this Part.

(2) The register shall be kept in such form as the OFT considers appropriate.

(3) The OFT shall ensure that the following matters are entered in the register—

- (a) the nature of sanctioning action taken;
- (b) the provisions of such action; and
- (c) the details of any variation, release or revocation of such an action.

Publication of register of sanctioning action.

102.(1) Subject to subsection (3) the OFT may in its discretion enable the contents of the register to be made available to the public—

(a) during (as a minimum) such hours as may be specified in an order made by the Minister; and

(b) subject to such reasonable fees (if any) as the OFT may determine.

(2) If requested by any person to do so and subject to such reasonable fees (if any) as the OFT may determine, the OFT shall supply the person concerned with a copy (certified to be true) of the register or of an extract from it.

(3) A person shall only be entered into the register made available to the public if the sanctioning action referred to in section 101 are final and valid and have not been the subject of a successful appeal.

Right to enforce sanctioning action.

103.(1) This section applies to any sanctioning action taken under this Part.

(2) Any person in relation to whom such an action relates shall have a duty to comply with it.

(3) The duty shall be owed to any person who may be affected by a contravention of the order imposing the sanctioning action.

(4) Any breach of the duty that causes such a person to sustain loss or damage shall be actionable by him.

(5) In any proceedings brought under subsection (4) against a person to whom an duty relates it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(6) Compliance with an order imposing a sanctioning action shall also be enforceable by civil proceedings brought by the OFT for an injunction or for interdict or for any other available relief or remedy.

(7) Subsection (6) shall not prejudice any right that a person may have by virtue of subsection (4) to bring civil proceedings for contravention or apprehended contravention of an enforcement order.

(8) Without prejudice to the provisions of this section 103, if a person fails to comply with an enforcement order the OFT may, without further process or procedure, issue a temporary suspension of licence order or a withdrawal of licence order in relation to any licence held by that person.

Notice of convictions to OFT.

104.(1) This section applies if a licence holder is convicted of an offence by or before any court in Gibraltar or elsewhere.

(2) A licence holder shall within 30 days thereof bring any such conviction to the attention of the OFT.

**PART 7
BUSINESS SUPPORT AND COOPERATION**

Duty to provide assistance to businesses.

105.(1) The OFT shall provide general guidance to any business that seeks to establish itself or is already established in Gibraltar.

(2) The facility referred to in subsection (1) shall include the provision of help and support (electronically or by telephone) for its service users.

(3) The facility referred to in subsection (1) may also be used for the following purposes—

- (a) the provision of information and guidance by governmental and regulatory authorities in Gibraltar in relation to the matters specified in subsection (4);
- (b) communications with those authorities in relation to those matters;
- (c) the completion of procedures and formalities relating to those matters.

(4) The matters referred to in subsection (3) are—

- (a) licensing and regulatory matters relating to governmental and licensing authorities in Gibraltar affecting business; and
- (b) support for businesses.

(5) In this section, references to procedures or formalities do not include procedures or formalities consisting of—

- (a) the inspection of premises or equipment by the OFT; or
- (b) physical examination of the capability or professional integrity of—
 - (i) a provider of the service by the OFT; or
 - (ii) the staff of such provider by the OFT.

(6) Where appropriate, guidance set out by the OFT on its website and/or any other electronic portal shall include simple step-by-step guides and shall be in plain and intelligible language.

Cooperation with other authorities.

106. In carrying out its functions the OFT may carry out research and shall co-operate with HM Customs, the Department of Employment, the Income Tax Office, the Environmental Agency, Land Property Services Limited, the Statistics Office, the Treasury and any government entity.

**PART 8
NOTICES, APPEALS, REGULATIONS AND OFFENCES**

Notices.

107. Any notice which is required to be given by this Act, other than a notice which is required to be published in the Gazette, shall include notice by email and shall be deemed to have been properly given if it has been sent to the person to whom it is directed at his last known address or email address.

Appeals to the DMC and the Court.

108.(1) Any person—

- (a) whose application under Part 4 has been refused; or
- (b) against whom a decision has been made by the OFT under Part 6,

and who is aggrieved by the decision may appeal.

(2) The appeal under subsection (1) shall be—

- (a) if the decision was made by the Chief Executive, to the DMC; and
- (b) if the decision was made by the DMC, to the Court.

(3) An appeal shall lie from a decision of the DMC to the Court on a point of law.

(4) An appeal must be made within 14 days of the date on which the decision notice is served on the recipient by the OFT.

(5) The DMC or the Court (as the case may be) may allow an appeal to be made outside the time set out in subsection (2) in exceptional circumstances, if the court considers that it would be unjust not to do so.

(6) The DMC or the Court (as the case may be) may—

- (a) dismiss the appeal;
- (b) allow the appeal and quash the decision appealed against; or
- (c) remit the matter to the OFT for further consideration, in accordance with any directions of the DMC or the Court (as the case may be).

(7) The DMC may not make an order as to costs, and each party to an appeal to the DMC shall bear its own costs regardless of the outcome of the appeal.

(8) The Court may make any order as to the costs of an appeal as it considers appropriate.

(9) An appeal does not have the effect of staying a decision notice which under the provisions of the Act takes effect immediately, but the Court may in its discretion grant a stay or other relief in respect of such a notice until the appeal has been determined.

(10) The Minister may by regulations make provisions relating to the conduct of and procedure for appeals under this section.

General power to make regulations and codes.

109.(1) The Minister may make regulations prescribing all matters which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) regulations may provide for—

- (a) prescribing forms of applications and the procedure to be followed with respect to any matter under this Act;
- (b) prescribing any additional information to be submitted in support of any application under this Act;
- (c) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act;
- (d) the keeping of books, documents, accounts and records with respect to any matter under this Act;
- (e) regulating and controlling the sale and delivery of goods or provision of services by or to any person or any class or classes of persons required to hold a licence under this Act;
- (f) the manner in which applications for licences may be made and the forms to be used in connection therewith;
- (g) subject to the provisions of this Act, the procedure to be followed in the making of objections;

- (h) the form of licences; and
- (i) particulars to be kept by the OFT in the register of licences.

(3) The Minister may issue codes of conduct or consumer codes for categories of licence holders to follow as guidance in their business practice.

Fees regulations.

110.(1) The Minister may make regulations providing for the payment to the OFT of such fees as may be specified in the regulations in connection with the exercise of any of the OFT's functions under or as a result of this Act.

(2) Regulations under subsection (1) may, in particular—

- (a) provide for the fees to be paid by licence holders and applicants;
- (b) provide for the determination of any fee in accordance with a specified scale or other specified factors;
- (c) make provision as to the persons by whom, and the time or intervals at which any fee is to be payable; or
- (d) provide for the fee not to be charged, or to be waived in whole or in part, in prescribed cases or circumstances.

(3) Anything made or done in respect of which a fee is payable by virtue of this Act or regulations made under subsection (1) is not to be regarded as duly made or done if the fee is not paid as required by the regulations.

(4) Any fee which is owed to the OFT under any provision made payable under this section may be enforced as a civil debt owed to the OFT.

Penalty regulations.

111.(1) The Minister may by regulations provide for penalties of a fixed amount to be payable in respect of contraventions of such provision of or made under this Act as are specified in the regulations.

(2) Regulations under subsection (1)—

- (a) must identify each provision of or made under this Act in relation to a contravention of which a penalty is to be payable;
- (b) must specify the amount of each penalty;

- (c) may specify a fixed amount, an amount calculated by reference to a rate that depends on the period during which the contravention continues or a combination of a fixed amount and an amount calculated by reference to a periodic rate; and
- (d) may specify the maximum amount of any penalty calculated by reference to a periodic rate that may be imposed.

General provisions relating to all offences

Offences by bodies corporate, etc.

112.(1) Where an offence under this Act—

- (a) is committed by or for the benefit of—
 - (i) a body corporate;
 - (ii) a partnership; or
 - (iii) an unincorporated body (other than a partnership); and
- (b) is proved—
 - (i) to have been committed with the consent or connivance of an officer; or
 - (ii) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, partnership or unincorporated body (as the case may be) commits the offence and is liable to be proceeded against and punished accordingly.

(2) In subsection (1) “officer” means—

- (a) in respect of a body corporate—
 - (i) a director, manager, secretary or other officer; or
 - (ii) where the affairs of the body are managed by its members, a member;
- (b) in respect of a partnership, a partner;
- (c) in respect of an unincorporated body—
 - (i) an officer of that body; or
 - (ii) a member of its governing body; or
- (d) any person purporting to act in a capacity within any of paragraphs (a) to (c).

Proceedings against unincorporated bodies.

113.(1) Proceedings against an unincorporated body for an offence under this Act must be brought in the name of the unincorporated body and in any proceedings—

- (a) the following provisions of the Criminal Procedure and Evidence Act 2011 apply as if an unincorporated body was a corporation—
 - (i) section 178 (representatives of corporations);
 - (ii) section 179 (sending for trial of a corporation);
 - (iii) section 197(5)(a) (sending for trial of corporations);
 - (iv) section 217(5) (which concerns the committal for sentence of a corporation convicted of an offence triable either way);
 - (v) section 296 (pleas by corporations);
 - (vi) section 702 (service of documents); and
- (b) any rules of court related to the service of documents apply as if an unincorporated body was a corporation.

(2) A fine imposed on an unincorporated body is to be paid out of the funds of that unincorporated body.

Penalties.

114.(1) A person who is guilty of an offence against this Act for which no punishment is specifically provided, is liable upon summary conviction to a fine on level 3 of the standard scale and in addition, where the offence is a continuing offence, to a fine not exceeding £50 for each day during which the offence continues after such conviction.

(2) Where, in a prosecution for an offence against this Act, it is alleged that a person is the holder of a licence, the burden of proof is on the licence holder to prove that he is not the holder of the licence.

(3) Where any offence against this Act is committed by a body corporate, any person who, at the time of the commission of the offence, was a director, general manager or secretary or other similar officer of such body corporate or who was, at that time, acting or purporting to act in any such capacity, is guilty of such offence unless he proves—

- (a) that the offence was committed without his knowledge or consent; and

- (b) that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity.

Conducting business with an unlicensed business.

115.(1) A person, not being a consumer, that conducts business in Gibraltar with a business requiring a licence under this Act being knowingly aware that the business does not have the required licence is guilty of an offence and is liable to a fine up to level 3 on the standard scale.

**PART 9
CONTINUITY OF LAW, REPEAL, SAVINGS
AND TRANSITIONAL PROVISIONS**

Continuity of the law.

116.(1) The substitution of this Act for a repealed enactment does not affect the continuity of the law.

(2) A reference (whether express or implied) in this Act, another enactment, an instrument or document to a provision of this Act is, subject to its context, to be read as being or including a reference to the corresponding provision of a repealed enactment, in relation to times, circumstances or purposes to which the repealed provision had effect.

(3) A reference (whether express or implied) in any enactment, instrument or document to a provision of a repealed enactment is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act, in relation to times, circumstances or purposes to which that provision has effect.

(4) Anything done, or having effect as if done, under (or for the purposes of or in reliance on) a provision of a repealed enactment, and in operation or effective immediately before the coming into operation of this Act, has effect after that date as if done under (or for the purposes of or in reliance on) the corresponding provision of this Act.

(5) Any reference to a provision of a repealed enactment which is contained in a document made, served or issued after the repeal comes into operation is, subject to its context, to be read as being or including a reference to the corresponding provision of this Act.

(6) This section has effect subject to any express amendment or specific transitional provision or saving made by or under this Act.

Repeal.

117. The Fair Trading Act 2015 and any subsidiary legislation made thereunder is repealed.

Savings and transitional provisions.

118.(1) Notwithstanding the repeal of the Trade Licensing Act 1979 and the Fair Trading Act 2015 (the repealed Acts)–

- (a) a licence issued under the repealed Acts shall be deemed to have been issued under this Act and shall remain valid for the period in respect of which it was issued;
- (b) an application for a transfer of a licence to another person or premises or for an extension of a licence issued under the repealed Acts shall, if permitted under this Act, be determined in accordance with the provisions of this Act;
- (c) an application for a licence made under the Fair Trading Act 2015, which on the date of the commencement of this Act has not been determined, shall be determined in accordance with the provisions of the Fair Trading Act 2015; and
- (d) an appeal filed prior to the commencement of this Act shall proceed and be determined in accordance with the provisions of the Fair Trading Act 2015.

(2) Proceedings for an offence under the repealed Acts that had commenced before the commencement of this Act must continue under that repealed Act as if it had not been repealed.

(3) If proceedings for an offence committed under the repealed Act have not been commenced at the commencement of this Act–

- (a) if there is an equivalent offence under this Act, proceedings must be brought under this Act; or
- (b) if there is no equivalent offence, proceedings cannot be brought.

(4) Upon the renewal of a licence issued under the repealed Act the licence shall be converted to a licence issued under this Act on a like for like basis. The manner in which a licence shall be converted shall be determined by the OFT and such conversions may include changes to the manner in which business classes and activities covered by the licence are stipulated therein.

(5) Every direction given by the Minister to the Business Licensing Authority pursuant to the repealed section 79(3) in relation to matters which affect the public interest shall be taken as having been given to the OFT.

SCHEDULE 1
The Office of Fair Trading

Section 3

Membership.

1.(1) The OFT shall consist of the CEO, and a Chairman and no fewer than three other members, appointed by the Minister.

(2) The Minister shall consult the Chairman before appointing any other member.

Term and determination of office.

2.(1) Subject to this Schedule, the Chairman and other members shall hold and vacate office in accordance with the terms of their respective appointments.

(2) The terms of appointment of the Chairman and other members shall be determined by the Minister.

Term of office of Chairman.

3.(1) An appointment of a person to hold office as Chairman or other member shall be for a term not exceeding five years.

(2) A person holding office as Chairman or other member—

(a) may resign that office by giving notice in writing to the Minister; or

(b) may be removed from office by the Minister on the ground of incapacity or misbehaviour.

(3) A previous appointment as Chairman or other member does not affect a person's eligibility for appointment to either office.

Allowances of Chairman and members.

4. The OFT shall reimburse to the Chairman and other members travel expenses reasonably incurred and incidental to their post, as determined by the Minister.

Staff.

5.(1) The Minister shall determine the terms and conditions of employment of the Chief Executive.

(2) The Chairman and Chief Executive shall not be the same person.

(3) The OFT may, with the approval of the Minister for the Civil Service as to numbers and terms and conditions of service, appoint such other staff as it may determine.

Membership of committees or sub-committees of the OFT.

6. The members of a committee or sub-committee of the OFT may include persons who are not members of the OFT (and a sub-committee may include persons who are not members of the committee which established it).

Proceedings.

7.(1) The OFT may regulate its own procedure (including quorum).

(2) The OFT shall consult the Minister before making or revising its rules and procedures for dealing with conflicts of interest.

Validity of the OFT's actions.

8. The validity of anything done by the OFT is not affected by a vacancy among its members or by a defect in the appointment of a member.

Application of the OFT seal.

9. The application of the seal of the OFT shall be authenticated by the signature of the Chief Executive and—

- (a) any member; or
- (b) some other person who has been authorised for that purpose by the OFT, whether generally or specially.

Performance of functions.

10. A document purporting to be duly executed under the seal of the OFT, or signed on its behalf, shall be received in evidence and, unless the contrary is proved, be taken to be so executed or signed.

Regard to corporate governance principles.

11. The OFT shall have regard to any relevant general guidance as to the governance of public bodies, to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to the OFT.

Supplementary powers.

12.(1) Anything authorised or required to be done by the OFT (including exercising the power under this paragraph) may save where this Act otherwise provides be done by—

- (a) any member or employee of the OFT who is authorised for that purpose by the OFT, whether generally or specially; or
- (b) any committee of the OFT which has been so authorised.

(2) Subparagraph (1)(b) does not apply to a committee whose members include any person who is not a member or employee of the OFT.

(3) The OFT has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of its functions.

SCHEDULE 2
Decision Making Committee

Section 9

Membership.

1.(1) The Decision Making Committee (the “DMC”) is to comprise a panel of not more than eight persons who are appointed by the Minister in accordance with sub-paragraphs (2) to (5), of which four must be lawyers, each of whom has not less than ten years professional standing and is a barrister or solicitor of the Supreme Court of Gibraltar (“the legally qualified members”) and one representative of each the Gibraltar Chamber of Commerce and the Gibraltar Federation of Small Businesses.

(2) The members of the DMC are to be appointed by the Minister after consulting the OFT.

(3) One of the members appointed shall be designated by the Minister to be the chairperson of the DMC.

(4) When there is a vacancy among the members the Minister may appoint any appropriately qualified person whom the Minister believes to be suitable to be a member.

(5) A member holds and vacates office in accordance with terms and conditions determined by the OFT with the approval of the Minister (which may include arrangements for the payment of remuneration, allowances and expenses).

(6) A member may resign by notice to the Minister and the OFT.

(7) The Minister, having consulted the OFT, may re-appoint as a member a person who is (or has been) a member.

(8) An OFT member or employee is not eligible to be appointed as a member of the DMC.

Term of office of members.

2.(1) The members of the DMC are to be appointed for such term as the Minister may specify in the instrument of appointment.

(2) Instruments of appointment may specify different terms for each member of the DMC.

Removal of members.

3. The Minister may, after consultation with the OFT, remove a member of the DMC who in the Minister’s opinion—

(a) is incapacitated;

- (b) is bankrupt or makes an arrangement with creditors;
- (c) has been convicted of an indictable offence; or
- (d) is otherwise unfit or unable to discharge the functions of a member.

Procedure and meetings.

4.(1) The DMC's decision-making powers under the Act are to be exercised by a panel comprising such number of members, and in such number, as:

- (a) In the case of the exercise of a power to which section 10(1) (a) relates, the Chief Executive may decide in respect of each matter, of which at least one is a legally qualified member.
- (b) In the case of the exercise of a power to which section 10(1) (b) relates, the Chairperson of the DMC may decide in respect of each matter, of which at least one is a legally qualified member.

(2) The Chief Executive must appoint one of the legally qualified members present to preside at the meeting.

(3) A decision of the DMC may be made by a majority vote of those present and casting a vote and, in the event of an equality of votes, the member presiding at the meeting has a second and casting vote.

(4) The DMC must record any decision, including the reasons for the decisions, in writing.

(5) If at any time, as a result of members being unable to act due to conflicts of interest or otherwise unavailable, there are insufficient members available to discharge the DMC's functions (whether generally or in relation to a particular matter), the Minister may, after consulting with the OFT, appoint temporary members for a specified period or to make decisions in respect of a particular matter.

(6) If, after the Minister has appointed temporary members under sub-paragraph (5), there are insufficient members available who may decide a matter before the DMC, the Minister may direct that the decision is to be taken by the members of the OFT.

(7) For the purpose of this Schedule, in respect of conflicts of interest, section 58 applies to the DMC (with any necessary modifications) as it applies to the OFT.

(8) The Chief Executive must appoint a member of staff of the OFT to be the Secretary of the DMC.

(9) The DMC may—

- (a) direct any person to provide evidence in writing with respect to any matter it considers to be relevant to the decision before it;
- (b) direct any person to attend at a specified time and place and answer questions appearing to the DMC to be relevant to the decision before it;
- (c) direct any person to produce a specified document, or documents of a specified kind; and
- (d) subject to the preceding provisions of this paragraph, otherwise determine its own procedures.

General powers.

5. The DMC may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the DMC by or under this Act.

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