

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5292 GIBRALTAR Tuesday 24<sup>th</sup> March 2026

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B. 13/26

## TREATY ON GIBRALTAR AND THE EUROPEAN UNION BILL 2026

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# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5292 GIBRALTAR Tuesday 24<sup>th</sup> March 2026

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B. 13/26

## BILL

FOR

AN ACT to make provision for and in connection with the implementation of the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar, of the other part and for connected purposes.

ENACTED by the Legislature of Gibraltar.

### PART 1

#### PRELIMINARY

##### Short title.

1. This Act may be cited as the Treaty on Gibraltar and the European Union Act 2026.

##### Commencement.

2.(1) Subject to subsection (2), this Act comes into operation on the day appointed by the Chief Minister by Notice in the Gazette, and different days may be appointed for different provisions and for different purposes.

(2) Parts 1, 2 and 3 come into operation on the day of publication.

##### Interpretation.

3.(1) In this Act—

“act” includes omission;

“Annex” means a numbered Annex to the TGEU;

“Article” means a numbered Article of the TGEU;

“data subject” is to be construed in accordance with subsection (3);

“day” is to be construed in accordance with subsection (3);

“domestic law” means the law of Gibraltar;

“enactment” means an enactment whenever passed or made and includes—

(a) an enactment contained in any order, rules, regulations, scheme, warrant, byelaw or other instrument made under an Act; and

(b) an enactment contained in an Order in Council made in exercise of His Majesty’s prerogative in so far as it applies to Gibraltar;

“the European Union” or “the EU” (or “the Union”) has the meaning given by subsection (2);

“the European Court” means the Court of Justice of the European Union;

“European Union law” (or “Union law”) includes all law of the European Union including any instrument issued by an EU institution;

“function” includes power and duty;

“the General Implementation Date” has the meaning given by section 6(1)(a);

“immigration officer” has the meaning given in section 2 of the Immigration, Asylum and Refugee Act;

“the Implementation Date” has the meaning given by section 6(2);

“implementation purpose” has the meaning given by section 7;

“Implementation Regulations” has the meaning given by section 13;

“Member State” is to be construed in accordance with subsection (3);

“modify” includes amend, repeal or revoke;

“Part” means a numbered Part of the TGEU;

“Party” and “the Parties” are to be construed in accordance with subsection (3);

“perform” in relation to a function includes a reference to inaction;

“personal data” is to be construed in accordance with subsection (3);

“primary legislation” means an Act of the Gibraltar Parliament;

“Principal Immigration Officer” has the meaning given in section 2 of the Immigration, Asylum and Refugee Act;

“the Provisional Implementation Date” has the meaning given by section 6(1)(b);

“public body” has the meaning given by section 22(4);

“subsidiary legislation” means any proclamation, order, rules, regulations, byelaw or other instrument made under an Act;

“the Treaty on Gibraltar and the European Union” (or “TGEU”) has the meaning given by section 5;

“Title” means a numbered Title of a numbered Part of the TGEU;

“Treaty Implementation Report” has the meaning given by section 21;

“under” includes by virtue of, in connection with, in relation to and for the purposes of.

(2) In this Act a reference to “the EU” (or “the Union”) is a reference to the European Union (being the Union established by the Treaty on European Union signed at Maastricht on 7th February 1992, as amended by any later Treaty), construed in accordance with Article 3(2) (inclusion of Euratom).

(3) Expressions used in this Act have the same meaning as in the TGEU; including, in particular—

(a) the general definitions given by Article 3 (definitions), (including—

“data subject”;

“day”;

“Member State”;

“Party” and “the Parties”; and

“personal data”;

(b) Article 26 (Part Two: Circulation of Persons: definitions), in relation to the provisions of the TGEU to which those definitions apply;

(c) Article 39 (Part Two: Title III: residence: references to Member States), in relation to the provisions of the TGEU to which those definitions apply.

(4) References in this Act to Union acts referred to in Article 27 include those Union acts as amended or replaced in future as well as any Union act implementing or supplementing those Union acts, to the extent required in accordance with that Article.

**Purpose.**

4. The purpose of this Act is to make provision for the efficient and effective implementation of the TGEU in Gibraltar—

(a) in pursuance of the purpose set out in Article 1 (mutually cooperative relationship);  
and

(b) in accordance with the principles set out in—

(i) Article 2 (sovereignty and jurisdiction);

(ii) Article 5 (good faith);

(iii) Article 8 (democracy, rule of law and human rights);

(iv) Article 9 (fight against climate change);

(v) Article 10 (countering proliferation of weapons of mass destruction);

(vi) Article 11 (small arms and light weapons and other conventional weapons);

(vii) Article 12 (most serious crimes of concern to the international community);

(viii) Article 13 (counter-terrorism);

(ix) Article 14 (personal data protection);

(x) Article 15 (global cooperation on issues of shared economic, environmental and social interest).

## **PART 2**

### **CORE CONCEPTS AND MECHANISMS**

#### **The Treaty on Gibraltar and the European Union.**

5.(1) In this Act a reference to “the Treaty on Gibraltar and the European Union” or “the TGEU” (subject to any specific provision of this Act)—

(a) is a reference to the Agreement in respect of Gibraltar between—

- (i) the European Union and the European Atomic Energy Community, and
- (ii) the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar; and

(b) includes—

- (i) a reference to the Protocols, Annexes and footnotes to the TGEU as integral parts in accordance with Article 333;
- (ii) a reference to any supplementing agreements under Article 4(1) (including as extended by Article 4(2));
- (iii) a reference to any amendment to the TGEU (including any Annex and any supplementing agreement) adopted by decision of the Cooperation Council in accordance with Article 22(4);
- (iv) any political declaration, protocol or other document that the Chief Minister designates, by Notice in the Gazette, as to be treated, to the extent specified in the Notice and subject to any conditions or modifications, as forming part of the TGEU; and
- (v) any international obligation or convention referred to in the TGEU, so far as necessary for the purposes of the TGEU.

(2) In the context of any provision of this Act providing for or relating to the implementation or operation of the TGEU, a reference to the TGEU or anything done under it includes a reference to-

- (a) any treaty, protocol or other document having effect in relation to the EU which is required to have effect in relation to Gibraltar under the TGEU; and
- (b) anything done under any document referred to in paragraph (a).

**Implementation dates and duration.**

6.(1) In this Act—

- (a) “the General Implementation Date” means the date on which the TGEU enters into force for general purpose following notification of completion of internal requirements and procedures for establishing consent to be bound in accordance with Article 336(1) of the TGEU; and
- (b) “the Provisional Implementation Date” means any date agreed in accordance with Article 336(2) for the provisional application of the TGEU.

(2) Except where the contrary is expressed or implied, a reference in this Act to “the Implementation Date” includes a reference to any Provisional Implementation Date and to the General Implementation Date.

(3) The provisions of this Act apply in relation to the TGEU while it continues to have effect, and unless and until it is terminated in accordance with Article 334.

**Implementation purpose.**

7.(1) In this Act “implementation purpose” means the purpose of giving effect to-

- (a) any provision of the TGEU (including the matters referred to in section 5(1)(b) and (2)); and
- (b) arrangements entered into between HM Government of Great Britain and Northern Ireland in respect of Gibraltar and the Government of the Kingdom of Spain, setting out practical arrangements for the purposes of the implementation of the TGEU.

(2) In subsection (1) a reference to giving effect to a provision includes a reference to—

- (a) enabling or facilitating the implementation of any obligation under the provision,
- (b) enabling or facilitating the enjoyment of any rights enjoyed under the provision,
- (c) dealing with any matters arising out of or related to the provision or its implementation under domestic law or its operation in relation to Gibraltar.

(3) The Chief Minister may by Notice in the Gazette designate a specified purpose—

- (a) as being conducive to, or necessary or expedient in connection with, the implementation of the TGEU, and
- (b) accordingly, as falling to be treated as falling within the definition of “implementation purpose” for the purposes of subsection (1).

**Information.**

8.(1) The provisions of this Act are subject to the restrictions in respect of confidential and classified information provided by Articles 331 and 332.

(2) The Government shall have the power to do anything necessary in connection with the handling of instructions for the protection of sensitive information and material in accordance with Article 332(2).

**Review.**

9. The Government shall have the power to do anything necessary to participate in the joint reviews of the operation of the TGEU.

**PART 3**

**IMPLEMENTATION**

**Chapter 1**

*General legal effects*

**Treaty on Gibraltar and the European Union to have legal effect.**

10.(1) On and after the Implementation Date, the Treaty on Gibraltar and the European Union shall have force of law in domestic law in accordance with the provisions of this Act.

(2) For the purposes of subsection (1), any enactment or rule of domestic law—

(a) shall have effect subject to any modifications necessary to ensure the implementation or operation of the TGEU, and

(b) shall not have effect to the extent that it is incompatible with the TGEU.

**Applicable EU law to have legal effect.**

11.(1) The following, in so far as not already provided for in implementing legislation shall have force of law in domestic law in accordance with Article 19 (Union law applicable by the United Kingdom, in respect of Gibraltar)—

(a) the Union acts (or provisions) to which Article 19 applies in accordance with the TGEU, or

(b) under the conditions laid down in Article 19(2) to (4), any subsequent Union act—

(i) amending or replacing a Union act (or provision) referred to in paragraph (a);

- (ii) supplementing or implementing a Union act (or provision) referred to in paragraph (a); or
- (iii) another Union act (or provision) on the subject matter of a Union act (or provision) referred to in paragraph (a).

(2) The Chief Minister, by Notice in the Gazette—

- (a) shall identify any subsequent Union act (or provision) in respect of which the United Kingdom, in respect of Gibraltar, has notified the EU of acceptance and implementation in accordance with Article 19(3);
- (b) shall specify any information given to the EU of any constitutional requirements in accordance with Article 19(4); and
- (c) may specify any arrangements for provisional application made in accordance with Article 19(4).

(3) In so far as is necessary for an implementation purpose and in so far as not already provided for by implementing legislation, any EU Regulation, or other provision of EU law, which has legal effect in the law of member states (without requiring further implementation) shall have effect in domestic law.

(4) For the purposes of the application of subsections (1) and (3) in respect of any Union act, any enactment or rule of domestic law—

- (a) shall have effect subject to any modifications necessary to ensure that the Union act shall have effect, and
- (b) shall not have effect to the extent that it is incompatible with the Union act.

(5) In this section “implementing legislation” means-

- (a) any provision which (whether before, on or after the Implementation Date) is made by or under this Act or any other enactment or otherwise forms part of domestic law; and
- (b) which is for the purpose of (or has the effect of) implementing or giving effect to, or making equivalent provision in respect of, an EU instrument.

(6) The Government may by regulations specify certain EU regulations or other instruments, or certain provisions of EU regulations or other instruments, that do not have effect by virtue of subsections (1) and (3).

**Rights, powers, etc to have legal effect.**

12.(1) Any of the following which under the TGEU are without further enactment to be given legal effect or used in Gibraltar shall be recognised and available in domestic law, and be enforced, allowed and followed accordingly—

(a) any rights, powers, liabilities, obligations and restrictions from time to time created or arising under the TGEU; and

(b) any remedies and procedures from time to time provided for under the TGEU.

(2) Any enactment or rule of domestic law—

(a) shall have effect subject to any modifications necessary for the purposes of subsection (1); and

(b) shall not have effect to the extent that it is incompatible with subsection (1).

**Chapter 2**

*Implementation powers*

**Implementation Regulations.**

13.(1) The Government may by regulations (“Implementation Regulations”) make any provision that appears to the Government to be necessary or expedient for an implementation purpose.

(2) Implementation Regulations may, in particular—

(a) make provision of any kind that could be made by Act of Parliament (including modifying this Act);

(b) apply or extend, or make provision similar or equivalent to, any enactment (with or without modifications);

(c) adapt, vary, amend or repeal any enactment;

(d) suspend, or make provision permitting the suspension of, the operation of any enactment;

(e) adapt or supplement subsidiary legislation for an implementation purpose (whether or not it would otherwise be within the relevant enabling power);

- (f) confer a function on any person (including: conferring functions on the Government, a Minister or other public official; conferring functions on an office or body established by the Regulations; and conferring discretionary functions);
  - (g) establish an office, or a body, for the performance of specified functions (and make provision about the constitution, proceedings, funding, powers and duties of the office or body, including by adopting or replicating with or without modifications provisions made by an enactment about any office or body);
  - (h) provide a power to charge fees (which may include: provision about the application of fee income; and discretionary provision about exemption from or waiver of fees);
  - (i) confer, or modify, powers to make subsidiary legislation;
  - (j) create criminal offences (including making provision for criminal offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism, done at Strasbourg on 27 January 1977, or offences referred to in Annex 13, or any other offence that is not provided for under Gibraltar law);
  - (k) confer power to impose civil penalties;
  - (l) impose liability for, and rights in respect of, the payment of compensation in respect of acts of a specified kind;
  - (m) create licensing or other regulatory regimes;
  - (n) confer jurisdiction on any court or tribunal (including rights of appeal);
  - (o) confer powers, or impose duties, to consult;
  - (p) make provision with retrospective effect;
  - (q) make provision for the appointment of any competent authority as may be required
- (3) Section 23(b) of the Interpretation and General Clauses Act shall not apply to any implementation regulations made under this section.
- (4) Implementation Regulations (including any regulations made partly in reliance on this section and partly in reliance on other enabling powers) shall be laid before Parliament as soon as practicable after being made.

(5) Implementation Regulations shall come into effect in accordance with their terms (and may come into effect in accordance with those terms before being laid before Parliament, where necessary by reason of urgency).

**Subordinate legislation, etc.**

14.(1) Where an enactment confers power on a Minister (or the Government) to make subordinate legislation or to do any other thing the Minister (or the Government)—

(a) may, in exercising the power, add or include provision, or take any other action, for an implementation purpose;

(b) may amend existing subsidiary legislation for an implementation purpose.

(2) Provision made by virtue of subsection (1)(a) or (b) may include provision of any kind that may be made by Implementation Regulations.

**Exercise of functions.**

15.(1) In the exercise of any statutory function (including any power to give directions or to legislate by means of orders, rules, regulations or other subsidiary legislation) the person entrusted with the function may—

(a) have regard to the TGEU, and anything done under the TGEU; and

(b) perform the function for or in connection with any implementation purpose.

(2) In the exercise of any statutory function (including any power to give directions or to legislate by means of orders, rules, regulations or other subsidiary legislation) the person entrusted with the power or duty may not perform the function —

(a) having regard to any matter that is incompatible with the TGEU or the domestic law relating to the TGEU, or

(b) in any other manner that is incompatible with the TGEU or the domestic law relating to the TGEU.

**Consequential amendments and modifications.**

16. Without prejudice to the generality of any provision of this Act, Schedule 1 makes amendments and modifications of specified enactments for the purposes of or in connection with the TGEU.

### **Chapter 3**

#### *Implementation mechanisms and processes*

#### **Cooperation Council.**

17.(1) The Cooperation Council established by Article 22 shall be recognised in domestic law.

(2) The Government shall provide such facilities as it considers necessary or expedient in connection with the work of the Cooperation Council.

(3) Decisions of the Cooperation Council adopted in accordance with Article 22(4) or Article 24 shall have effect in domestic law.

(4) The Chief Minister shall publish by Notice in the Gazette any decision adopted by the Cooperation Council (including any decision under Article 19(5) (non-termination of Agreement)).

(5) A reference in this Act to anything done by or in relation to the Cooperation Council includes a reference to anything done by or in relation to a Specialised Committee established by Article 23 in accordance with a delegation under Article 22 or any other provision of the TGEU.

#### **Consistent interpretation.**

18. In accordance with Article 20, the provisions of Union law referred to in Article 19(1)-

(a) shall be interpreted and applied in accordance with the methods and general principles of Union law, and

(b) shall in their implementation and application be interpreted in conformity with the relevant case law of the Court of Justice of the European Union.

#### **Decisions on, and proof of, Treaties and EU instruments, etc.**

19.(1) For the purposes of all legal proceedings any question as to the meaning or effect of any Union act shall be treated as a question of law (and, if not referred to the European Court, be for determination as such in accordance with the principles laid down by, and any relevant decision of the European Court).

(2) On any question arising under subsection (1) or otherwise in connection with the TGEU or anything arising under it judicial notice shall be taken of—

(a) any Union act;

(b) the Official Journal of the EU; and

(c) any decision of, or expression of opinion by, the European Court.

(3) The Official Journal shall be admissible as evidence of any instrument or other act thereby communicated of any of the EU or of any EU institution.

(4) Evidence of any EU instrument, including any judgment or order of the European Court, or of any document in the custody of an EU institution, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of that institution; and any document purporting to be such a copy shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(5) Evidence of any EU instrument may also be given in any legal proceedings—

(a) by production of a copy purporting to be printed by the King's Printer; or

(b) where the instrument is in the custody of a department of the United Kingdom Government or the Government of Gibraltar, by production of a copy certified on behalf of the department to be a true copy by an officer of the department generally or specially authorised so to do,

and any document purporting to be a copy mentioned in paragraph (b) of an instrument in the custody of a department shall be received in evidence without proof of the official position or handwriting of the person signing the certificate, or authority to do so, or of the document being in the custody of the department.

### **Provision of funds for implementation purposes.**

20.(1) The Minister may, in accordance with section 69 of the Constitution—

(a) cause a supplementary estimate showing sums required or spent to be prepared and laid before Parliament in connection with any implementation purpose, and

(b) include heads of expenditure in a supplementary appropriation bill introduced in the Parliament to provide for the appropriation of those sums.

(2) In this section “the Minister” means—

(a) the Chief Minister,

(b) the Minister for Economic Development, Enterprise, Telecommunications and the Gibraltar Savings Bank, or

(c) both acting jointly.

(3) There shall be charged on and issued out of the Consolidated Fund any amount required to meet any implementation purpose, or obligation in respect of Gibraltar arising under the TGEU, identified for the purposes of this section by the Minister by Notice in the Gazette.

### **Annual Report.**

21.(1) The Chief Minister shall publish and lay before Parliament reports (“Treaty Implementation Reports”) on—

- (a) the implementation of the TGEU;
- (b) the exercise of functions under this Act; and
- (c) such other matters as appear to the Chief Minister to be cognate and apposite for inclusion in the report.

(2) A Treaty Implementation Report shall be produced—

- (a) at such times as appear appropriate to the Chief Minister, but
- (b) not less than once in each calendar year after the date on which provisional application of the TGEU shall have commenced.

(3) A Treaty Implementation Report must, in particular—

- (a) specify, and describe the purpose and effect of, any arrangements entered into (or amended) since the previous Treaty Implementation Report; and
- (b) specify, and describe the purpose and effect of, any Implementation Regulations made since the previous Treaty Implementation Report.

### **Guidance and Explanatory Material.**

22.(1) The Government may from time to time publish—

- (a) guidance as to the operation of any provision of this Part;
- (b) explanatory material about the purpose or effect of any provision of this Part.

(2) Guidance and explanatory material may, in particular, include provision or information about—

- (a) the purpose, use or effect of any provision of Chapter 1 of this Part;
- (b) the purpose, use or effect of any provision of Chapter 2 of this Part or anything done under Chapter 2 of this Part;

- (c) the purpose, use or effect of any provision of Chapter 4 of this Part or anything done under Chapter 4 of this Part;
  - (d) the purpose, use or effect of any provision of Parts 4 to 10 of this Act or anything done under any of those Parts.
- (3) A Minister and any public body must have regard to any guidance under subsection (1)(a).
- (4) In this section “public body” means—
- (a) a Department of His Majesty’s Government of Gibraltar; and
  - (b) a body that has functions under an enactment.

## **Chapter 4**

### *Transitional implementation*

#### **Pre-implementation period.**

- 23.(1) This section applies at any time between—
- (a) the commencement of this Act, and
  - (b) the Implementation Date.
- (2) The Government may make any arrangements which in the Government’s opinion are—
- (a) necessary or expedient for the purposes of ensuring that the provisions of this Act will work efficiently and effectively on and after the Implementation Date, or
  - (b) otherwise necessary or expedient by way of preparation for an implementation purpose.
- (3) In particular, for the purpose referred to in subsection (2) the Government may—
- (a) make arrangements for the construction, removal, adaptation or modification of any building or other structure without the need to obtain any permit or permission as may otherwise be required under any law;
  - (b) make, or enter into arrangements for another person to make, administrative arrangements;
  - (c) incur expenditure, or enter into arrangements for another person to incur expenditure;

- (d) enter into contracts or other arrangements;
- (e) make appointments or other arrangements for persons to exercise functions on or after the Implementation Date;
- (f) delegate powers to any person.

(4) A Minister (or the Government) may, in the exercise of a function under any enactment, do anything (whether or not it would otherwise be within the relevant enabling power) for the purpose referred to in subsection (2).

(5) A Minister (or the Government) may by Notice published in the Gazette vary or suspend the operation of any enactment for the purposes of enabling or facilitating arrangements made in accordance with this section.

#### **Post-implementation period.**

24.(1) This section applies on and after the Implementation Date.

(2) The Government may make, or enter into arrangements for another person to make, administrative arrangements where the Government is satisfied that the arrangements are necessary or expedient for an implementation purpose.

(3) In particular, for the purpose referred to in subsection (2) the Government may—

- (a) make arrangements for the construction, removal, adaptation or modification of any building or other structure without the need to obtain any permit or permission as may otherwise be required under any law;
- (b) make, or enter into arrangements for another person to make, administrative arrangements;
- (c) incur expenditure, or enter into arrangements for another person to incur expenditure;
- (d) enter into contracts or other arrangements;
- (e) make appointments or other arrangements for persons to exercise functions;
- (f) delegate powers to any person.

(4) The Government —

- (a) may rely on subsection (2) only where there is no suitable alternative power available under an enactment; and
- (b) must take reasonable steps to secure permanent primary or subsidiary legislation so as to render reliance on subsection (2) unnecessary.

**EU Directives and other Union acts.**

25.(1) This section applies where an EU Directive, or other Union act, has legal effect in domestic law by virtue of Chapter 1 of this Part.

(2) The Government may by Notice in the Gazette make provision for the interim operation of anything required to be done for the purposes of the Directive or other Union act.

(3) In particular, a Notice may—

- (a) make provision applying with or without modifications, or making provision replicating with or without modifications, any enactment;
- (b) make provision for anything which is required or permitted to be done by or in relation to an authority under a provision of the Directive or other Union act to be done by or in relation to another person designated by the Notice, which may be—
  - (i) a Minister (or the Government);
  - (ii) the Gibraltar Regulatory Authority;
  - (iii) the Principal Immigration Officer or immigration officers;
  - (iv) the Collector of Customs or customs officers; or
  - (v) any other person with functions under an enactment.

(4) A Notice may, in particular, make provision for or in connection with—

- (a) the acceptance and determination of applications;
- (b) the issue (and related fees and charges), operation and revocation of licences;
- (c) the imposition of penalties.

(5) Subject to any provision made by Notice under this section, by this Act or by Implementation Regulations, in its application in domestic law by virtue of Chapter 1 of this Part any EU Directive or other Union Act shall have effect as if—

- (a) a requirement to report on any matter to the European Commission were a requirement to report on that matter to Parliament by the laying of a report on the table or otherwise as the Government may from time to time determine;
- (b) a reference to anything else being done by or in relation to the European Commission were a reference to that thing being done by or in relation to the Government.

#### **Transition to domestic law.**

26.(1) The Government shall take reasonable steps to absorb any provision made under this Chapter into an enactment forming part of permanent domestic law (whether in the form of Implementation Regulations or otherwise).

(2) In making arrangements for the purpose of subsection (1) the Government shall have regard to the need to—

- (a) develop domestic legal policy in a considered way, and
- (b) allocate resources in a proportionate and balanced manner.

(3) In this section “permanent domestic law” means domestic law having effect other than under section 11 or made other than under section 25.

## **PART 4**

### **CIRCULATION OF PERSONS**

#### **Chapter 1**

##### *Preliminary*

#### **Purpose of Part 4.**

27. This Part makes provision (supplemental to, and without prejudice to the generality of, the general implementation provisions of Part 3) for the purpose of facilitating and supporting the implementation of the provisions of Part Two of the TGEU on the circulation of persons, in accordance with the principles relating to the protection of human rights and fundamental freedoms set out in Article 25(1) and (2).

**Interpretation.**

28.(1) Expressions used in this Part have the meanings given by—

- (a) Article 26 (Part Two: Circulation of Persons: definitions); and
- (b) Article 39 (Part Two: Title III: residence: references to Member States) (in relation to Chapter 4).

(2) For the purposes of Chapters 2, 3, 4 and 5—

“Authority” means the Director of the Department of Immigration and Home Affairs and includes such persons to whom he delegates his authority;

“Schengen authorities” means the competent authorities of any Member State applying the Schengen Acquis in full in accordance with the relevant provisions of the TGEU.

**Chapter 2**

*Crossing points*

**Removal of physical barriers.**

29.(1) This section applies for the purposes of the implementation of Articles 7 and 28 (removal of barriers).

(2) The Government shall exercise powers under Part 3 of this Act (including pre-implementation powers under section 23) for the purpose of ensuring that all physical barriers related to the circulation of persons between the European Union and Gibraltar are removed in accordance with Articles 7 and 28.

**Border crossing points.**

30.(1) This section applies for the purposes of the implementation of Article 29 (border crossing points).

(2) Subject to the derogation provided for in Article 29(3) in relation to the port, the Government shall enter into arrangements for the establishment of the border crossing points at Gibraltar port and airport in accordance with Article 29.

(3) Automated border control systems may be used at border crossing points in accordance with Article 29(4).

(4) The Principal Immigration Officer, assisted by immigration officers in accordance with section 4 of the Immigration, Asylum and Refugee Act, shall be the competent authority for Gibraltar for the purposes of Article 29(5) and (7).

(5) Border checks on entry into Gibraltar shall be carried out by or on behalf of the Principal Immigration Officer in accordance with subsection (5) and subsequently by the Schengen authorities.

(6) Border checks on exit shall be carried out by the Schengen authorities and subsequently by or on behalf of the Principal Immigration Officer.

(7) Any second line checks must be carried out at the Second Line Checks Area.

(8) Conditions for entry into Gibraltar under domestic law shall be aligned to those applicable under Union law for entry into the territory of the Member States applying the Schengen Acquis in full in accordance with Article 29(4) and accordingly, the Immigration, Asylum and Refugee Act shall have effect-

(a) subject to any modification necessary to ensure compatibility with the TGEU; and

(b) shall have no effect in so far as it is inconsistent with any provision of the TGEU.

(9) In accordance with Article 29(8), entry into Gibraltar from outside the Schengen area shall only take place via the border crossing points referred to in Article 29(1).

(10) The preceding provisions of this section are subject to the arrangements permitted by Article 29(9) for entry into Gibraltar other than via the border crossing points referred to in Article 29(1).

(11) The Government shall take all necessary steps to ensure in accordance with Article 29(10) that the necessary infrastructure is in place and maintained to allow the border crossing points referred to in Article 29(1) to be operated in a manner appropriate to the volume of traffic flows to ensure an efficient, high and uniform level of control in accordance with the Schengen Borders Code; and the infrastructure-

(a) shall comply with the requirements referred to in Annex 7 to the TGEU, and

(b) shall be set out in the arrangements entered into in accordance with Article 33(6).

(12) The information required to be provided in accordance with Article 29(11) shall be provided without delay to the Principal Immigration Officer.

(13) Implementation Regulations may make provision in connection with border crossing points and may, in particular-

- (a) provide for a person not to be permitted to enter or leave Gibraltar unless the person has successfully satisfied both checks under Article 29(5) and subsections (5) and (6);
- (b) provide for permission to be granted at one check conditional on satisfying the other;
- (c) provide for permission to be withdrawn;
- (d) provide for a person to be deemed not to have entered Gibraltar in specified circumstances or subject to specified conditions.

### **Circulation of persons.**

31.(1) This section applies for the purposes of the implementation of Article 30 (circulation of persons between Gibraltar and the Member States applying the Schengen Acquis in full).

(2) Persons have the right to circulate between Gibraltar and the Members States applying the Schengen acquis in full without border checks being carried out, irrespective of their nationality, in accordance with and subject to the provisions of Article 30.

(3) The Government may at any time make arrangements for the reinstatement of border controls between Gibraltar and the territory of the Member States applying the Schengen Acquis in full to address threats to public policy, public health or internal security, for the purposes of, and in accordance with the provisions of, Article 30(2) to (4).

(4) The Government shall make any necessary arrangements to ensure that the public are informed in a coordinated manner of a decision to reinstate or prolong border control between Gibraltar and the territory of the Member States applying the Schengen acquis in full (including the start and end dates and scope of the reinstatement) unless satisfied that there are overriding security reasons for not doing so, in accordance with Article 30(5).

## **Chapter 3**

### *Border control*

### **Checks and surveillance.**

32.(1) This section applies for the purposes of implementation of Article 32 (border control by Gibraltar authorities).

(2) The Principal Immigration Officer, assisted by immigration officers in accordance with section 4 of the Immigration, Asylum and Refugee Act, shall be responsible for the exercise of border control, comprising border checks and border surveillance, in accordance with domestic law for the purposes of Article 32(1).

- (3) The Principal Immigration Officer shall be responsible for—
- (a) informing the Schengen authorities at the border crossing point; and
  - (b) escorting persons to the Second Line Checks Area,

where, following border checks carried out as referred to in Article 29(2), the Principal Immigration Officer intends to refuse entry into Gibraltar to a person and there is no requirement for other coercive action to be taken in accordance with Article 34(3).

(4) That person shall be permitted to enter the territory of the Member State applying the Schengen acquis in full, without prejudice to the possibility of measures being taken in relation to that person under Article 33(4)(c)(ii), where on the basis of a review under Article 32(2) carried out in the Second Line Checks Area it becomes apparent to the Schengen authorities that the person concerned fulfils entry and stay conditions under Union law and is—

- (a) a person having the right of free movement under Union law, including a beneficiary of free movement rights under agreements concluded by the Union, or
- (b) a third country national holding a long-stay visa or a residence permit issued by a Member State applying the Schengen acquis in full.

#### **Schengen controls.**

33.(1) This section applies for the purposes of the implementation of Article 33 (Schengen border control by the Schengen authorities).

(2) The Gibraltar GDPR and the Data Protection Act 2018 shall not have effect in relation to data which is processed at Gibraltar port and airport in connection with the carrying out of Schengen functions in accordance with Article 33.

(3) The Government shall make any necessary arrangements to permit the Schengen authorities to install automated border control systems for border checks to be carried out for entry into the territory of the Member States applying the Schengen Acquis in full.

#### **Follow up actions to border checks: alerts.**

34.(1) This section applies for the purposes of the implementation of Article 34 (follow up actions to border checks: alerts in information systems).

(2) In the performance of tasks in accordance with Articles 32 and 33, the Principal Immigration Officer shall follow up on alerts in the Gibraltar databases and information systems, in accordance with the applicable domestic law.

(3) Where alerts in a database or information system require coercive action to be taken, the person concerned shall be escorted to the Second Line Checks Area, except as provided for in the second paragraph of Article 34(2).

(4) Where coercive action is required on the basis of alerts, appropriate follow up actions in accordance with Article 34(5) to (11) shall be taken.

**Follow up actions to border control – refusal of entry.**

35.(1) This section applies for the purposes of the implementation of Article 35 (follow up actions to border control: refusals of entry).

(2) The Principal Immigration Officer shall take any necessary steps, to enforce a refusal of entry in respect of third country nationals who do not fulfil entry conditions under domestic law, only, in accordance with Article 32.

(3) The Principal Immigration Officer shall take any necessary steps, to effect a joint refusal of entry in respect of third country nationals who do not fulfil entry conditions under both domestic law and Union law, in accordance with Articles 32 and 33(4)(a)(ii).

**Carriers' liability.**

36.(1) This section applies for the purposes of the implementation of Article 36 (carriers' liability).

(2) Article 26 of the Convention Implementing the Schengen Agreement and Council Directive 2001/51/EC of 28 June 2001 shall apply in and in respect of Gibraltar for the transport to Gibraltar by sea or air from a third country of persons other than—

- (a) EU citizens,
- (b) nationals of Iceland, the Kingdom of Norway, the Swiss Confederation, the Principality of Liechtenstein, and
- (c) nationals of the Principality of Andorra and the Republic of San Marino following the entry into force of agreements conferring such nationals with free movement rights, and
- (d) third country nationals who do not possess the necessary travel documents for entry into the Member States except Ireland.

**Advance Passenger Information.**

37.(1) This section applies for the purposes of the implementation of Article 37 (advance passenger information).

(2) The Principal Immigration Officer shall be responsible for making arrangements to ensure that carriers transfer Advance Passenger Information (“API”) concerning flights originating outside the Schengen area and arriving in the airport to the Schengen authorities.

(3) The API data as well as its transfer shall comply with the requirements of Council Directive 2004/82/EC.

### **Entry and exit of armed forces personnel.**

38.(1) This section applies for the purposes of the implementation of Article 38 (entry and exit of non-resident United Kingdom forces, their civilian component, their family members forming part of the household and visiting third-country forces).

(2) The exemptions set out in Article 38 shall apply, subject to the conditions and compliance specified in that Article.

(3) Only the documents specified in Article 38(2) shall be required for the purposes specified in that provision.

(4) Data collected under Article 38(2) shall be used exclusively for border security at the border crossing points established in accordance with Article 29.

(5) The Principal Immigration Officer shall make any necessary arrangements—

(a) to make information available to the Schengen authorities in accordance with Article 38(3),

(b) for the identification of persons upon arrival or departure by Liaison Officers designated in accordance with the administrative arrangement referred to in Article 38(3), and

(c) for the direction of family members forming part of the household to the border crossing points.

(6) Only the documents specified in Article 38(5) shall be required for the purposes specified in that provision.

(7) Data collected under Article 38(5) shall be used exclusively for border security at the border crossing points established in accordance with Article 29.

(8) Members of the civilian component or family members forming part of the household who are not citizens of the United Kingdom or who do not have the right to reside in the United Kingdom or the Common Travel Area—

(a) shall be subject to Schengen border checks in accordance with Articles 33 and 38(6);

(b) shall not undergo additional Schengen border checks to exit or enter a Member State applying the Schengen acquis in accordance with Article 38(7) provided that their entry or exit has been authorised in accordance with Article 38(6).

(9) Those members of non-resident United Kingdom Forces, of visiting third-country forces, of the civilian component and family members forming part of their household, that wish to exit or enter a Member State applying the Schengen acquis in full shall be subject to the Schengen border checks in accordance with Article 33 at the Schengen border crossing points referred to in Article 29(1); and the Principal Immigration Officer shall make any necessary arrangements to inform persons of the obligation to undergo checks and of the possibility that they may be subject to disciplinary action if they fail to do so, without prejudice to the application of Union acts governing the return of illegally staying third-country nationals, in accordance with Article 38(7).

(10) Regularly constituted units or formations shall not be allowed to enter or exit the Schengen area through the border crossing points referred to in Article 29(1).

## **Chapter 4**

### *Residence in Gibraltar*

#### **Interpretation.**

39.(1) For the purpose of this chapter, references to the Member States are references to all Member States except Ireland, in accordance with Article 39 (scope).

(2) For the purposes of sections 47, 48 and 49, the term “public policy” refers to measures taken by a Member State which are proportionate to the public policy aim being pursued and which are based exclusively on the personal conduct of the individual concerned, which must represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society.

#### **Saving for rights and obligations under EU law.**

40. The provisions of the TGEU and this Act are without prejudice to any rights or obligations that persons resident in Gibraltar may have under Union law, in accordance with Article 40 (relation with EU Law).

#### **Visa free travel.**

41.(1) This section applies for the purposes of the implementation of Article 41 (visa free travel).

(2) The following may enter and stay in Gibraltar without a visa for a maximum period of 90 days in any 180-day period—

(a) citizens of the Union;

(b) their third-country family members who hold a residence card under Directive 2004/38/EC; and

(c) third country nationals legally residing in the Member States applying the Schengen acquis in full.

(3) The Government may impose a visa requirement on the persons referred to in subsection (2) who are travelling to Gibraltar for the purposes of carrying out a paid activity, in accordance with Article 41(2).

### **Entry into Gibraltar.**

42.(1) This section applies for the purposes of the implementation of Article 43 (entry into Gibraltar).

(2) Persons resident in Gibraltar shall not be subject to verifications with regard to fulfilment of the conditions laid down in point (c) of Article 6(1) of the Schengen Borders Code at the border crossing points established under Article 29(1), for the purposes of entering Gibraltar.

(3) Persons resident in Gibraltar who do not fulfil the other entry conditions laid down in Article 6(1) of the Schengen Borders Code, shall in any event not be prevented from crossing the border crossing points established under Article 29(1) for the purposes of entering Gibraltar.

### **Right of residence in Gibraltar.**

43.(1) This section applies for the purposes of the implementation of Article 45 (right of residence in Gibraltar).

(2) A legal right to reside in Gibraltar shall be proven on the basis of a person holding a valid identity card or residence permit issued in Gibraltar by the Authority subject to the conditions set out in Article 45.

(3) The Government shall ensure that identity cards and residence permits issued in Gibraltar are issued only to persons who meet the conditions for entitlement to such identity card or residence permit as set out in domestic law in force on the Implementation Date.

(3A) The Government shall ensure that the conditions for entitlement to an identity card are consistent with international law on the granting of nationality.

(4) The Government shall inform the Cooperation Council whenever changes (subject to the limitations set out in Article 45(4)) are proposed to be made to the conditions in that legislation after the Implementation Date, to enable the Cooperation Council to perform its functions under Article 45(4).

- (5) The Government may make arrangements for establishing—
- (a) residence for a continuous period of at least ten years for the purposes of Article 45(4)(a);
  - (b) a genuine connection with Gibraltar for the purposes of Article 45(4)(b) and (5) on the basis of demonstrating actual and regular physical presence in Gibraltar over an appropriate period of time or on the basis of other objective and verifiable criteria.
- (6) The Government shall have the power to do anything necessary to ensure that-
- (a) the conditions for entitlement to an identity card, or for entitlement to a residence permit, comply with Article 45(6);
  - (b) residence permits issued in Gibraltar are issued or renewed only in accordance with the procedure set out in Articles 50 to 52; and
  - (c) residence permits issued to persons who no longer meet the conditions in Article 45(4)(b) are withdrawn in accordance with arrangements made by the Government.

**Enhanced notification for persons resident in Gibraltar.**

44.(1) This section applies for the purposes of the implementation of Article 46 (Enhanced notification for persons resident in Gibraltar).

(2) The Government shall regularly review potential risks resulting from the possibility of persons resident in Gibraltar to travel to the territory of the Member States applying the Schengen acquis in full, and shall at a minimum of every three months provide such a risk assessment to the relevant Schengen authorities.

(3) In carrying out a risk assessment in accordance with subsection (2), the Government shall have regard to all relevant information at its disposal, including in connection with enforcement and counter-terrorist investigations and operations.

(4) Where the Government has grounds to consider that a person resident in Gibraltar could pose a threat to public policy or internal security, public health or the international relations of a Member State, it shall inform the relevant Schengen authorities without delay setting out the grounds upon which that assessment is based.

(5) Where the Government has received a notification from the relevant Schengen authorities, in accordance with Article 46(2), that a person resident in Gibraltar falls within any of the categories referred to in subsection (4), and on these grounds the Government has decided that the person is prohibited from leaving Gibraltar to travel to the territory of the Member States applying the Schengen acquis in full, it shall –

- (a) inform the person concerned of the notification and the content thereof;
- (b) take all necessary steps to prevent prohibited travel to the Schengen area, including through police and judicial cooperation with the relevant Schengen authorities.

(6) The notification referred to in subsection (5) must set out the reasons for the prohibition, as well as the means by which the person concerned may appeal the prohibition.

(7) Article 6(1) shall not apply to the exchange of information under this section.

(8) This section shall not apply to the persons listed in Article 46(4).

### **Short stay visas in respect of Gibraltar.**

45.(1) This section applies for the purposes of the implementation of Article 47 (Short stay visas in respect of Gibraltar).

(2) Nationals of third countries required to be in possession of a short stay visa to enter and stay in the Member States in accordance with Union law shall also be required to be in possession of a visa to enter and stay in Gibraltar.

(3) Nationals of third countries exempt from the requirement to be in possession of a short stay visa to enter and stay in the Member States in accordance with Union law shall not be required to be in possession of a visa to enter and stay in Gibraltar.

(4) Short stay visas issued in accordance with Union law, in particular Regulation (EC) No 810/2009, shall also be valid for entry and stay in Gibraltar for a maximum period of 90 days in any 180-day period.

(5) Where the main purpose of the visit of a person referred to in subsection (2) is to stay in Gibraltar, the Kingdom of Spain, as the neighbouring Member State, shall be the relevant Schengen authority entitled to issue the visa but it must first notify the Government of its intention to do so.

(6) Where the Kingdom of Spain has made such a notification to the Government, the Government may inform the Kingdom of Spain that it considers that a visa should not be issued on account of sufficiently serious reasons pertaining to public policy, internal security or public health, including on the basis of an alert issued in Gibraltar, and that visa shall not be valid for entry and stay in Gibraltar.

(7) Article 6(1) shall not apply to notifications under this section.

(8) Visas other than those issued pursuant to subsection (4) and section 50 shall not be valid for entry and stay in Gibraltar.

### **Exceptional external borders visas in respect of Gibraltar.**

46.(1) This section applies for the purposes of the implementation of Article 48 (Exceptional external borders visas in respect of Gibraltar).

(2) This section applies when, following the completion of border checks, a person who is not in possession of a valid visa required to enter Gibraltar or the Member States, expresses the wish to enter and stay only in Gibraltar.

(3) In the case referred to in subsection (2), the Authority may exceptionally issue a short-stay visa at the border crossing points established pursuant to Article 29(1) when there are compelling grounds to do so on humanitarian grounds, if the conditions of Article 48(2)(a) to (c) are fulfilled.

(4) A visa exceptionally issued in accordance with subsection (3) shall be valid only for Gibraltar, entitling the holder to stay in Gibraltar for a maximum duration of 15 days, depending on the purpose and conditions of the intended stay and such period may subsequently be extended by a maximum of 15 days if the Authority considers that the visa holder has provided proof of force majeure or humanitarian reasons preventing them from leaving.

(5) Where the Government is informed of an objection by the relevant Schengen authorities that a visa should not be issued or extended in accordance with subsections (3) and (4) because there are sufficiently serious reasons pertaining to public policy, internal security or public health of any of the Member States, including on the basis of an alert issued in the Schengen Information System, the Authority shall refrain from issuing a visa at the external borders in accordance with subsection (3).

(6) Where the Authority decides to issue or extend a visa in accordance with subsections (3) or (4), it shall with the assistance of the Principal Immigration Officer make arrangements to allow the Schengen authorities to record the data of the applicant, including biometric identifiers, that is required for visa issuance or extension in accordance with Union law, in particular the measures referred to in Article 48(5).

(7) The number of visas issued pursuant to subsection (3) shall not exceed 15 in each calendar year, unless that number is amended by decision of the Cooperation Council in accordance with Article 48(6).

(8) Visas issued pursuant to subsection (3) shall be issued in the format determined by the Government and in accordance with the procedure set out in Article 48(7).

### **Residence permits in respect of Gibraltar (prior to start of VIS operations).**

47.(1) This section applies for the purposes of the implementation of Article 50 (Residence permits in respect of Gibraltar).

(2) The Authority shall be responsible for issuing or renewing residence permits in respect of Gibraltar, where the relevant conditions under Article 45 are fulfilled.

(3) Before issuing or renewing a residence permit, the Authority shall notify the Schengen authorities.

(4) Where, within 28 calendar days of being so notified, the Schengen authorities inform the Authority of their objection to the issuance or renewal of a residence permit due to the applicant being considered, in accordance with the Schengen acquis, to be a threat to public policy, internal security, public health or the international relations of any of the Member States, including on the basis of an alert issued in the Schengen Information System, the Authority shall not issue or renew the residence permit, and shall inform the applicant of the outcome and provide to the applicant the contact details of the relevant Schengen authorities so that they may request information regarding the decision, the grounds for objecting and the remedies available in accordance with Article 50(3)(a) to (c).

(5) If the Authority is notified by the Schengen authorities that the period of 28 days referred to in subsection (4) is to be extended by a maximum of 14 days, the Authority shall refrain from issuing or renewing a residence permit before the end of that period.

(6) If the Authority receives no response from the Schengen authorities within the 28 days referred to in subsection (4), the Authority may issue or renew the permit in question.

(7) Where the Authority receives a request from the Schengen authorities to withdraw a residence permit where there are grounds to object to a person holding a residence permit, including where the holder is considered to be a threat to public policy, internal security, public health or the international relations of a Member State, including on the basis of an alert issued in the Schengen Information System, the Authority shall withdraw the residence permit without delay and provide to the applicant the contact details of the relevant Schengen authorities so that they may request information regarding the decision, the grounds for objecting and the remedies available.

(8) Where, despite an alert on the Schengen Information System for the purposes of refusing entry or return, the Schengen authorities have not objected to a residence permit issued by the Authority, that residence permit shall not give the holder the right to enter the territory of the Member States.

(9) The Government shall the power to do anything necessary-

- (a) so that residence permits in respect of Gibraltar comply with the uniform format laid down in Union law and bear clear indications that they are valid for Gibraltar; and
- (b) to provide the Schengen authorities with specimens of residence permits in respect of Gibraltar and any subsequent modification thereto for the purposes set out in Article 50(8).

(10) The Government shall notify, in accordance with Article 50(9) and 68, the authority responsible for receiving applications for residence permits, issuing or renewing residence permits in respect of Gibraltar and submitting information to the Schengen authorities under Article 50.

(11) This section shall apply until the date on which the Visa Information System (VIS) operations start pursuant to Regulation EU 2021/1134 and section 48 shall apply from that date.

(12) Subsections (3) to (8) shall not apply to the persons listed in Article 50(12).

(13) In the case of persons and family members forming part of their household posted in service to United Kingdom forces or to Gibraltar, where the Schengen authorities have objected to the issuance of the residence permit in accordance with subsection (4), they shall be issued a residence permit with territorial validity limited to Gibraltar.

(14) Article 6(1) shall not apply to subsections (4), (5) and (7).

#### **Residence permits in respect of Gibraltar (after start of VIS operations).**

48.(1) This section applies for the purposes of the implementation of Article 51 (Residence permits in respect of Gibraltar).

(2) The Authority shall be responsible for issuing or renewing residence permits in respect of Gibraltar, where the relevant conditions under Article 45 are fulfilled.

(3) Before issuing or renewing a residence permit, the Authority shall notify the Schengen authorities.

(4) Without prejudice to subsection (2), the Authority shall ensure that the necessary data for the purposes of Article 51 with regard to applications for residence permits made in Gibraltar is collected and transferred to the Schengen authorities within 2 working days of the application being made.

(5) The Authority, when collecting and transferring data in accordance with the requirement in subsection (4), shall ensure that –

- (a) the data collected is accurate, up to date and of an adequate level of quality and completeness;
- (b) has been collected lawfully, respecting the safeguards referred to in Article 51(3)(b);
- (c) the applicant has been provided with the information referred to in Article 51(3)(c);  
and

(d) the applicant provides at the time of application consent to the processing of their data in line with provisions referred to in Article 51(3)(d).

(6) Where, within 28 calendar days of being notified, the Schengen authorities inform the Authority of their objection to the issuance or renewal of a residence permit due to the applicant being considered, in accordance with the Schengen acquis, to be a threat to public policy, internal security, public health or the international relations of any of the Member States, including on the basis of an alert issued in the Schengen Information System, the Authority shall not issue or renew the residence permit, and shall inform the applicant of the outcome and provide to the applicant the contact details of the relevant Schengen authorities so that they may request information regarding the decision, the grounds for objecting and the remedies available in accordance with Article 51(4)(a) to (c).

(7) If the Authority is notified by the Schengen authorities that the period of 28 days referred to in subsection (6) is to be extended by a maximum of 14 days, the Authority shall refrain from issuing or renewing a residence permit before the end of that period.

(8) If the Authority receives no response from the Schengen authorities within the 28 days referred to in subsection (6), the Authority may issue or renew the permit in question.

(9) Where the Authority receives a request from the Schengen authorities to withdraw a residence permit where there are grounds to object to a person holding a residence permit, including where the holder is considered to be a threat to public policy, internal security, public health or the international relations of a Member State, including on the basis of an alert issued in the Schengen Information System, the Authority shall withdraw the residence permit without delay and provide to the applicant the contact details of the relevant Schengen authorities so that they may request information regarding the decision, the grounds for objecting and the remedies available.

(10) Where, despite an alert on the Schengen Information System for the purposes of refusing entry or return, the Schengen authorities have not objected to a residence permit issued by the Authority, that residence permit shall not give the holder the right to enter the territory of the Member States.

(11) The Government shall have the power to do anything necessary-

- (a) so that residence permits in respect of Gibraltar comply with the uniform format laid down in Union law and bear clear indications that they are valid for Gibraltar; and
- (b) to provide the Schengen authorities with specimens of residence permits in respect of Gibraltar and any subsequent modification thereto for the purposes set out in Article 51(9).

(12) The Government shall notify, in accordance with Article 51(10) and 68, the authority responsible for receiving applications for residence permits, issuing or renewing residence

permits in respect of Gibraltar and submitting information to the Schengen authorities under Article 50.

(13) Subsections (3) to (10) shall not apply to the persons listed in Article 51(11).

(14) In the case of persons and family members forming part of their household posted in service to United Kingdom forces or to Gibraltar, where the Schengen authorities have objected to the issuance of the residence permit in accordance with subsection (6), they shall be issued a residence permit with territorial validity limited to Gibraltar.

(15) Article 6(1) shall not apply to subsections (6), (7) and (9).

### **Transitional rule for residence permits.**

49.(1) This section applies for the purposes of the implementation of Article 52 (Transitional rule for residence permits).

(2) Residence permits issued by the Authority prior to the Implementation Date shall remain valid for a period of two calendar years after that date or until their expiration date, whichever comes first.

(3) The Government shall provide the Schengen authorities with specimens of residence permits in respect of Gibraltar and any subsequent modification thereto for the purposes set out in Article 52(2).

(4) The Authority shall notify the Schengen authorities of the holders of residence permits in force on the Implementation Date.

(5) Where the Authority has received a request from the Schengen authorities to withdraw a residence permit on the basis of checks on that person in the relevant Union, national and international databases, including the Schengen Information System, where the person is considered, in accordance with the Schengen acquis, to be a threat to public policy, internal security, public health or the international relations of any of the Member States, the Authority shall withdraw the relevant residence permit subject to a right of appeal.

(6) Subsection (5) shall not apply to the persons listed in Article 52(4).

(7) Article 6(1) shall not apply to subsection (5).

(8) For the purposes of this section, “residence permit” includes the civilian registration cards described in regulation 5(4) of the Electronic Identity Card Regulations 2015.

## **Chapter 5**

### *Applications for International Protection*

#### **Applications for International Protection.**

50.(1) This section applies for the purposes of the implementation of Article 53 (Applications for International Protection).

(2) Subject to subsections (9) to (15), where a person makes an application for international protection in Gibraltar, the Authority shall be responsible for the examination of that application in accordance with domestic law.

(3) Where an application for international protection is made pursuant to subsection (2), the applicant shall be escorted by the Principal Immigration Officer to the Second Line Checks Area for the purposes of registering the application with the Authority and the Authority shall immediately inform the Schengen authorities, subject to subsection (8).

(4) Without prejudice to subsection (2), where a person is going through the border checks carried out pursuant to Article 29, they may inform the Principal Immigration Officer that they wish to make an application for international protection and the Principal Immigration Officer shall notify the Authority so that the application can be made.

(5) Where a person makes an application for international protection before or during the performance of border checks carried out pursuant to Article 29, the checks shall be completed.

(6) In the event that border checks trigger the need for follow-up action to be taken as referred to in Article 34, such action shall be taken to the extent that it respects and does not undermine the right to international protection and the principle of non-refoulement.

(7) Where an application for international protection is made pursuant to subsection (4), or a person indicates when going through the border checks carried out pursuant to Article 29 that they wish to make an application for international protection before the Schengen authorities, the person shall be escorted by the Principal Immigration Officer to the Second Line Checks Area for the purposes of registering the application with the Authority, or the Schengen authorities, as the case may be, subject to subsection (8).

(8) For the purposes of examining individual applications and after a final decision on the application has been taken, the Authority and the Principal Immigration Officer shall not –

- (a) disclose information regarding individual applications for international protection, or the fact that an application has been made, to the alleged actor(s) of persecution or serious harm;
- (b) obtain any information from the alleged actor of persecution or serious harm in a manner that would result in such actor being directly informed of the fact that an application has been made by the applicant in question, and would jeopardise the

physical integrity of the applicant or their dependents, or the liberty and security of their family members still living in the country of origin.

(9) The Authority shall examine and process an application for international protection in accordance with Article 53(6).

(10) Where the Authority has, in accordance with subsection (3), informed the Schengen authorities of an application for international protection that has been made and within 14 calendar days (or in the case of an extension under Article 53(7), a further 14 calendar days) the Schengen authorities inform the Authority of their objection to the granting of international protection, the Authority shall refrain from granting international protection until it has given full consideration to any information provided by the Schengen authorities.

(11) The absence of a response by the expiry of the 14 calendar days period (or further 14 days period in the case of an extension) from the Schengen authorities shall be considered a positive response but in any case the Authority shall refrain from granting international protection before the end of that period.

(12) The Authority shall notify the Schengen authorities of the final decision and the reasons therefor, subject to subsection (8).

(13) Where, in accordance with Article 53, the Authority is responsible for the examination of an application for international protection, the Authority, with the assistance of the Principal Immigration Officer, shall take all necessary measures to ensure that an applicant, other than a Union citizen, is not permitted to enter, and is prevented from entering, the territory of the Member States for the duration of the procedure for international protection and until a final decision is taken on the application.

(14) Where a person is granted international protection by the Authority, he or she shall be issued with a residence permit, which shall have territorial validity limited to Gibraltar.

(15) Where a final decision is taken by the Authority rejecting an application for international protection, the Authority, with the assistance of the Principal Immigration Officer, shall ensure that all necessary measures are taken to ensure that the person concerned is removed from Gibraltar in accordance with rules and safeguards that ensure standards equivalent to those laid down in Directive 2008/115/EC.

## **CHAPTER 6**

### *Police Cooperation*

#### **Continued surveillance.**

51.(1) This section applies for the purposes of the implementation of Article 55 (continued surveillance).

(2) Subject to, and in accordance with, the conditions set out in Implementation Regulations referred to in section 53, where a police or customs officer, as part of a criminal investigation in Gibraltar, is keeping under surveillance a person who-

- (a) is suspected of having committed an offence listed in Annex 8; or
- (b) who can assist in identifying or tracing such a person,

they may continue their surveillance in Spain, in accordance with Article 55.

(3) Subject to, and in accordance with, the conditions set out in the Implementation Regulations referred to in section 53, where the competent authorities of the Kingdom of Spain, as part of a criminal investigation, are keeping under surveillance a person who-

- (a) is suspected of having committed an offence listed in Annex 8 to the TGEU; or
- (b) who can assist in identifying or tracing such a person,

they shall be permitted to continue their surveillance in Gibraltar, in accordance with Article 55.

### **Uninterrupted pursuit.**

52.(1) This section applies for the purposes of the implementation of Article 56 (uninterrupted pursuit).

(2) Subject to, and in accordance with, the conditions set out in Implementation Regulations referred to in section 53, where a police or customs officer is pursuing an individual in Gibraltar who-

- (a) is caught in the act of committing or participating in one of the offences listed in Annex 8, or
- (b) has escaped from provisional custody or while serving a sentence of imprisonment or detention,

he may continue the pursuit in Spain, in accordance with Article 56.

(3) Subject to, and in accordance with, the conditions set out in Implementation Regulations referred to in section 53, where the competent authorities of the Kingdom of Spain are pursuing an individual who-

- (a) is caught in the act of committing or participating in one of the offences listed in Annex 8, or

- (b) has escaped from provisional custody or while serving a sentence of imprisonment or detention,

it may continue the pursuit in Gibraltar, in accordance with Article 56.

### **Surveillance and pursuit: Implementation Regulations.**

53.(1) The Government may by Implementation Regulations make provision setting out the modalities concerning continued surveillance and uninterrupted pursuit including, in particular-

- (a) the performance of the duties of the Royal Gibraltar Police, HM Customs Gibraltar and the competent authorities of the Kingdom of Spain (“the enforcement authorities”); and
- (b) operational cooperation aspects.

(2) The Implementation Regulations may (in particular) make provision—

- (a) setting out general principles of cooperation on law enforcement, to which the enforcement authorities are to have regard in their exercise of surveillance and pursuit functions in reliance on this Chapter and in accordance with the TGEU and the relevant provisions of the Schengen Acquis applicable between Member States;
- (b) for the establishment of joint Working Groups as forums for—
  - (i) cooperation;
  - (ii) the exchange of information (and Implementation Regulations may make further provision about the sharing of information for the purposes of surveillance and pursuit); and
  - (iii) the coordination of operational collaboration;
- (c) about the membership and procedures of the Working Groups;
- (d) requiring the enforcement authorities, or other specified authorities, to have regard to guidelines proposed by the Working Groups;
- (e) requiring the enforcement authorities, or other specified authorities, to make declarations through the Working Groups of procedures to be adopted in respect of surveillance and pursuit;
- (f) requiring the enforcement authorities to notify each other of specified events;

- (g) for the assumption by one set of enforcement authorities of surveillance or pursuit initiated by the other set of enforcement authorities;
- (h) requiring the enforcement authorities to obey instructions of competent local authorities;
- (i) requiring the enforcement authorities to carry and produce proof of identity and capacity;
- (j) permitting the establishment of specified conditions, restrictions or limitations on the operations of any enforcement authorities;
- (k) prohibiting, restricting or limiting entry into dwellings or other specified classes of place; and
- (l) permitting detention pending the arrival of competent local authorities.

**Communication.**

54.(1) This section applies for the purposes of the implementation of Article 57 (communication).

(2) The Government shall make any necessary arrangements to facilitate police and customs cooperation with the Kingdom of Spain, in particular for the timely transmission of information for the purposes of continued surveillance and uninterrupted pursuit, in accordance with Article 57.

**Joint operations.**

55.(1) This section applies for the purposes of the implementation of Article 58.

(2) The Government may make any necessary arrangements and grant any relevant permits or permissions for the implementation of joint patrols and other joint operations within Gibraltar by designated officers or other officials from a Member State, in accordance with Article 58.

(3) The Government shall submit a declaration laying down the conditions for and practical aspects of the cooperation in accordance with Article 58.

(4) Any joint operation, including where it takes the form of a joint patrol, that takes place in Gibraltar shall require the Government's explicit prior authorisation.

(5) The Royal Gibraltar Police, HM Customs Gibraltar and the Borders & Coastguard Agency may participate in joint patrols and other joint operations in a Member State, in accordance with Article 58.

### **Relevant databases.**

56.(1) This section applies for the purposes of the implementation of Article 59 (relevant databases).

(2) Where a police officer, customs officer or officer of the Borders & Coastguard Agency is participating in a joint operation in a Member State pursuant to Article 58, they may consult their own domestic and international databases, as permitted under domestic law during the joint operation.

(3) Where an officer of a Member State is participating in a joint operation in Gibraltar, the Government shall make arrangements to enable those officers to consult their own relevant national, Union and international databases during the joint operation.

### **Protection and assistance during joint operation.**

57.(1) This section applies for the purposes of the implementation of Article 60 (protection and assistance during joint operation).

Any officer from a Member State participating in a joint operation in Gibraltar in accordance with Article 58 shall have the same protection and assistance in the course of that officer's duties as are afforded to the Royal Gibraltar Police, customs officers or Borders & Coastguard officers under domestic law.

### **Passenger Name Record Data**

58.(1) This section applies for the purposes of the implementation of Article 61 (passenger name record data).

(2) The Principal Immigration Officer shall be responsible for making arrangements to ensure that carriers transfer Passenger Name Record ("PNR") data concerning flights arriving in Gibraltar to the Schengen authorities.

(3) The transfer of PNR data shall comply with the requirements of Directive (EU) 2016/681 of the European Parliament and of the Council.

### **Enhanced police checks.**

59.(1) This section applies for the purposes of the implementation of Article 62 (enhanced police checks).

(2) In order to prevent criminal offences and irregular migration, the Royal Gibraltar Police shall, where necessary, on the basis of a risk assessment, perform enhanced police checks in Gibraltar.

(3) Enhanced police checks taken in accordance with this section may take the form of joint operations in accordance with Article 58.

*Schengen evaluations*

**Schengen Evaluations.**

60.(1) This section applies for the purposes of the implementation of Articles 64 and 65 (Schengen evaluations).

(2) The Government shall have the power to make the necessary arrangements to ensure that Union and Member State representatives may conduct evaluations of the application of the Schengen Acquis, in accordance with Articles 64 and 65.

(3) The Government shall have the power to provide such assistance and facilities to enable the representatives referred to in subsection (1) to exercise their tasks, as set out in Council Regulation (EU) 2022/922 including, but not limited, to visiting and inspecting the infrastructure set up in Gibraltar.

*Security exception*

**Security exception**

61.(1) This section applies for the purposes of Article 69 (security exception).

(2) Nothing in Titles I to IV of Part 2 of the TGEU shall prevent the taking of measures to safeguard national security.

*Notifications and declarations*

**Notifications and declarations.**

62.(1) This section applies for the purposes of Article 68 (notifications, declarations, reservations and designations).

(2) The Government shall make the notifications and designations referred to in Article 68 and, upon doing so, shall publish a Notice in the Gazette setting out the relevant notifications, declarations, reservations and designations so made.

**Chapter 7**

*Surrender*

**Central Authority.**

63.(1) For the purposes of Articles 117 to 151, the Central Authority shall be the Governor.

(2) The Governor shall delegate to the Chief Secretary their powers under subsection (1) in relation to matters not affecting internal security or defence.

**Judicial authority.**

64. (1) The magistrates' court is the competent judicial authority for the purposes of Articles 117 to 151.

(2) The magistrates' court may issue an arrest warrant upon the application of the Attorney General.

**PART 5**

**LEVEL PLAYING FIELD**

**Chapter 1**

*Preliminary*

**Purpose of Part 5.**

65. This Part makes provision (supplemental to, and without prejudice to the generality of, the general implementation provisions of Part 3) for the purposes of facilitating and supporting the implementation of Title I of Part Three of the TGEU (level playing field for open and fair competition and sustainable development).

**Principles and objectives.**

66.(1) In accordance with Article 199 (Part Three: Title I: principles and objectives), the Government and public authorities shall have regard to—

- (a) the principle that trade and investment between the Union and Gibraltar, under the terms set out in the TGEU, require conditions that ensure a level playing field for open and fair competition and that ensure that trade and investment take place in a manner conducive to sustainable development;
- (b) the principle that sustainable development encompasses economic development, social development and environmental protection, all three being interdependent and mutually reinforcing, and the commitment to promoting the development of international trade and investment in a way that contributes to the objective of sustainable development;
- (c) the objective of achieving economy-wide climate neutrality by 2050;
- (d) the common understanding that the economic relationship between the Union and Gibraltar can only deliver benefits in a mutually satisfactory way if the commitments relating to a level playing field for open and fair competition stand the test of time, by

preventing distortions of trade or investment, and by contributing to sustainable development; and

- (e) the objective of maintaining and improving high standards in the areas covered by Title I of Part Three of the TGEU.

(2) The Government, and public authorities, shall have regard to any provision made by the Specialised Committee on Economy and Trade in accordance with Article 199(5) including additional areas or laying down higher standards with a view to ensuring the maintenance of a level playing field between the Parties over time.

(3) In this Part, the term “trade and investment” means trade and investment under the terms set out in the TGEU in accordance with subsection (1) and Article 199(1).

**Right to regulate, precautionary principle and scientific and technical information.**

67.(1) This section applies for the purposes of the implementation of Article 200 (Right to regulate, precautionary principle and scientific and technical information).

(2) The Government, and public authorities, shall have regard to the right of each Party to the TGEU—

- (a) to set its policies and priorities in the areas covered by Title I of Part Three of the TGEU,
- (b) to determine the levels of protection it deems appropriate, and
- (c) to adopt or modify its law and policies in a manner consistent with each Party's international commitments, including its commitments under that Title.

(3) The Government, and public authorities, shall have regard to the principle that, in accordance with the precautionary principle, where there are reasonable grounds for concern that there are potential threats of serious or irreversible damage to the environment or human health, the lack of full scientific certainty shall not be used as a reason for preventing adoption of appropriate measures to prevent such damage.

(4) The Government, and public authorities, shall take into account, when preparing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, relevant and available scientific and technical information, international standards, guidelines and recommendations.

## **Chapter 2**

### *State Aid Control*

#### **Substantive rules.**

68.(1) This section applies for the purposes of the implementation of Article 201 (State aid control: substantive rules).

(2) This Chapter applies to state aid granted to one or more economic actors that—

(a) produce, transform or supply goods, where the aid has, or could have, an effect on trade or investment between the Union and Gibraltar; or

(b) are engaged in the provision of services but only insofar as the aid has, or could have, an effect on trade in goods or investment between the Union and Gibraltar.

(3) The Government shall have regard to the Union's commitment to maintaining its State aid control system in accordance with Articles 93, 106, 107 and 108 of the Treaty on the Functioning of the European Union, applying it, where relevant, to any aid granted by a Member State that has, or could have, an effect on trade in goods or investment between the Union and Gibraltar.

(4) In accordance with Article 19 and section 11, the Union Acts listed in Annex 18 shall have force of law in domestic law, subject to the paragraphs of that Annex.

#### **Exceptions.**

69.(1) This section applies for the purposes of the implementation of Article 202 (Exceptions).

(2) This Chapter does not apply to state aid—

(a) covered by Part IV or Annex 2 of the TGEU on Agriculture, part of Annex 1A to the WTO Agreement;

(b) related to trade in fish and fish products; or

(c) related to the audio-visual sector.

#### **Transparency.**

70.(1) This section applies for the purposes of the implementation of Article 203 (transparency).

(2) With respect to any state aid granted or maintained within its territory, the Government shall within six months from the granting of the state aid make publicly available, on an official website or a public database, the following information:

- (a) the legal basis and policy objective or purpose of the state aid;
- (b) the name of the recipient of the state aid where available;
- (c) the date of the grant of the state aid, the duration of the state aid and any other time limits attached to the state aid; and
- (d) the amount of the state aid or the amount budgeted for the state aid.

(3) For state aid in the form of tax measures, information shall be made public within one year from the date the tax declaration is due; and the transparency obligations for state aid in the form of tax measures concern the same information as listed in subsection (2), except for the information required under paragraph (d) which may be provided as a range.

(4) The obligations under this section and Article 203 are without prejudice to the obligations of the Government under domestic law concerning the freedom of information or access to documents.

#### **Use of state aid.**

71.(1) This section applies for the purposes of the implementation of Article 204 (Use of state aid).

(2) The Government shall have the power to do anything necessary to ensure that economic actors use state aid only for the specific purpose for which it is granted.

#### **Independent authority and cooperation.**

72.(1) This section applies for the purposes of the implementation of Article 205 (Independent authority and cooperation).

(2) The Chief Minister shall by Implementation Regulations-

- (a) establish an authority or body for the purposes of acting as the independent authority or body in Gibraltar in accordance with Article 205(1); or
- (b) designate an existing authority or body for that purpose.

(3) The Government shall have power to do anything necessary to ensure that-

- (a) any intended measure to grant or alter state aid is notified to the independent authority or body, and

(b) the intended measure is not put into effect before the independent authority or body has authorised it.

(4) The Government may provide for exemption of certain categories of state aid from the obligations laid down in the subsection (3); exemptions must—

(a) be transparent and based on objective criteria such as, but not limited to, the size of the beneficiaries and quantitative thresholds;

(b) comply with the provisions of Annex 18 to the TGEU.

(5) The independent authority or body may order recovery of any state aid granted without its prior authorisation.

(6) The independent authority or body shall cooperate with the European Commission on issues of common interest within their respective functions, including the application of Articles 201 to 204 as applicable, within the limits established by their respective legal frameworks.

(7) The Government or the independent authority or body may agree with the Union or the European Commission a framework regarding cooperation in accordance with subsection (6).

(8) Subsection (3) shall not apply to any intended measure to grant or alter state aid referred to in Article 201 by Act of Parliament; and—

(a) the Government shall have the power to ensure that any such intended measure is notified to the independent authority or body;

(b) the independent authority or body may issue an opinion on any such intended measure;

(c) the Government shall have regard to such an opinion and, where applicable, propose amendments to the Act in question for Parliament to consider.

(9) Subsection (5) shall not apply to any measure to grant or alter state aid referred to in Article 201 by Act of Parliament; and

(a) the independent authority or body may issue an opinion on any such measure; and

(b) the Government shall have regard to such an opinion and, where applicable, propose appropriate amendments to the Act in question for Parliament to consider.

### **Courts.**

73.(1) This section applies for the purposes of the implementation of Article 206 (Courts and tribunals).

(2) The Supreme Court may-

- (a) review decisions on state aid taken by a granting authority or, where relevant, the independent authority or body, in accordance with its state aid control system;
- (b) review any other relevant decisions of the independent authority or body and any relevant failure to act;
- (c) impose any remedy that the Court considers effective, including—
  - (i) the suspension, prohibition or requirement of action by the granting authority,
  - (ii) the award of damages, and
  - (iii) the recovery of a state aid from its beneficiary with interest; and
- (d) hear claims from interested parties in respect of state aid where that interested party has standing to bring a claim in respect of a state aid in accordance with rules of court.

(3) For the purposes of this section (and Articles 206 and 207), “interested party” means any natural or legal person, economic actor or association of economic actors whose interest might be affected by the granting of a state aid, in particular—

- (a) the beneficiary,
- (b) economic actors competing with the beneficiary, and
- (c) relevant trade associations.

(4) Subsection (2)(c) shall not apply to any measure to grant or alter state aid referred to in Article 201 on the basis of an Act of Parliament; but if the Supreme Court is satisfied that such aid is incompatible with the TGEU—

- (a) it may make a declaration of that incompatibility; and
- (b) the Government shall have regard to such a declaration and propose appropriate amendments to the Act in question for Parliament to consider or take other appropriate steps, where applicable.

(5) An appeal—

- (a) lies to the Court of Appeal from a decision of the Supreme Court under this section;

(b) may be brought by a party to the proceedings before the Supreme Court or by a person who has a sufficient interest in the matter; and

(c) requires the permission of the Court of Appeal.

### **Recovery.**

74.(1) This section applies for the purposes of the implementation of Article 207 (Recovery).

(2) This section provides for an effective mechanism of recovery in respect of state aid (without prejudice to the power of the independent authority or body and other remedies in domestic law).

(3) Without prejudice to subsection (4), provided that an interested party has challenged a decision to grant state aid before the Supreme Court within the relevant time period provided by rules of court, in accordance with the state aid control system, recovery may be ordered if the Court makes a finding of a material error of law or fact, in that:

(a) a measure constituting state aid was not treated by the granting authority as a state aid;

(b) the granting authority has not complied with the relevant state aid control system that binds it; or

(c) the granting authority has, by deciding to grant that state aid, acted outside the scope of its powers or misused those powers in accordance with this Chapter.

(4) The Government shall have the power to do anything necessary to suspend payment of any new state aid to a beneficiary until the aid granted to that beneficiary, in respect of which an order for recovery has been made, has been fully recovered, including any recovery interests due.

(5) In accordance with Articles 205(6) and (7) and 206(3), recovery of a state aid shall not be required where such aid is granted or altered on the basis of an Act of Parliament.

### **Consultations.**

75.(1) This section applies for the purposes of the implementation of Article 208 (Consultations).

(2) The Government shall have the power to do anything necessary to initiate, or respond to, the process for requesting explanations and information relating to state aid provided by Article 208(1) to (3).

(3) The Government shall have the power to do anything necessary to initiate, or cooperate with, the process for requesting consultations within the Specialised Committee on Economy and Trade provided by Article 208(4).

### **Remedial measures.**

76.(1) This section applies for the purposes of the implementation of Article 209 (Remedial measures).

(2) The Government shall have the power to do anything necessary to initiate, or respond to, the process for requesting information and consultations relating to state aid provided for by Article 209(1).

(3) The Government may unilaterally take appropriate remedial measures in accordance with Article 209(3) to (16), and shall participate in the process set out in those paragraphs (whether as remediating or responding Party and including the arbitral process where relevant).

### **Dispute settlement**

77.(1) This section applies for the purposes of the implementation of Article 210 (Dispute settlement).

(2) Title I of Part Six of the TGEU, and Part 10 of this Act, apply to disputes concerning the interpretation and application of Chapter 2 of Title I of Part Three of the TGEU, and this Chapter, except for Articles 205 and 206 and sections 72 and 73, subject to the following provisions of this section.

(3) An arbitration tribunal shall have no jurisdiction regarding—

(a) an individual state aid measure, including whether such a measure has complied with a Party's state aid control system; and

(b) whether the recovery remedy within the meaning of Article 207 has been correctly applied in any individual case.

(4) Title I of Part Six, and Part 10, shall apply to Article 209 and section 76 in accordance with that Article and Article 327.

## **Chapter 3**

### **Taxation and Labour and Social Standards**

#### *Taxation*

### **Taxation**

78.(1) This section applies for the purposes of the implementation of Article 212 (taxation standards).

(2) The Government shall not weaken or reduce the level of protection provided for in domestic law on 31 December 2020 below the level provided for by the standards and rules which have been agreed in the OECD at the end of the transition period, in relation to-

(a) the exchange of information, whether upon request, spontaneously or automatically, concerning financial accounts, cross-border tax rulings, country-by-country reports between tax administrations, and potential cross-border tax planning arrangements;

(b) rules on interest limitation, controlled foreign companies and hybrid mismatches.

(3) The Government shall not weaken or reduce the level of protection provided for in domestic law on 31 December 2020 in respect of public country-by-country reporting by credit institutions and investment firms, other than small and non-interconnected investment firms.

#### *Labour and social standards*

#### **Labour and social standards.**

79.(1) This section applies for the purposes of the implementation of Article 215 (non-regression from levels of protection).

(2) The Government shall not weaken or reduce, in a manner affecting trade or investment between the Union and Gibraltar, its labour and social levels of protection below the levels in place at the end of the transition period, including by failing to effectively enforce domestic law and standards.

### **PART 6**

#### **ARRANGEMENTS ON CUSTOMS, INDIRECT TAXATION AND TRADE RELATED ISSUES**

#### **Chapter 1**

#### *General provisions*

#### **Purpose of Part 6.**

80.(1) This Part makes provision (supplemental to, and without prejudice to the generality of, the general implementation provisions of Part 3) for the purposes of facilitating and supporting the implementation of Title II of Part Three of the TGEU on arrangements on customs, indirect taxation and trade related issues.

(2) In accordance with Article 238 (principles and objectives), the purpose of this Part in implementing Title II is to set up the necessary arrangements to remove all physical barriers

and related procedures between Gibraltar and the Union for goods moving by land, while protecting the integrity of the Union's Single Market and the Parties' financial interests.

### **Interpretation.**

81.(1). In this Part—

“Collector” means the Collector of Customs appointed under section 3(1) of the Imports and Exports Act, 1986;

“competent authorities”, in relation to Gibraltar means the Collector of Customs, as assisted by customs officers or other relevant authorities in Gibraltar;

“competent authorities within the Union” means customs or other relevant authorities of the Member States or of the Union;

“customs clearance formalities” means all procedures, measures and controls to be carried out for the release for free circulation of goods in accordance with Union law, including—

- (a) customs formalities, conformity with product rules, requirements and standards, prohibitions and restrictions, sanitary and phytosanitary measures as provided for in Union law, and
- (b) any other formalities necessary to release goods for free circulation in the Union;

“customs officer” has the meaning given in section 2(1) of the Imports and Exports Act, 1986;

“the Customs Territories” means the territories referred to section 89 in accordance with Article 241;

“customs union” means the customs union between Gibraltar and the European Union established under Article 240, and that extends to the customs territory of Gibraltar and the customs territory of the European Union, as particularised in Article 241;

“designated customs post” means those customs posts listed in Appendix 1 of Annex 21;

“the Minister” means the Minister with responsibility for Public Finance.

(2) Other expressions used in this Part have the meanings given by Article 1 of Annex 23.

### **Access to IT systems.**

82.(1) This section applies for the purposes of the implementation of Article 251 (Access to IT systems).

(2) For the purposes of the application of Articles 242, 245, 247 and 248 of the TGEU and sections 90, 93, 95, 98 and 103 below, the Government—

- (a) shall make use of the access granted by Article 251 to the European transit and proof of Union status IT system or to the specific transit system of Annexes 19 and 21 through the IT system of the Kingdom of Spain; and
- (b) shall take all necessary steps to ensure that competent authorities within the Union have real time and continuous access to any relevant IT systems used by public authorities for the application of Title II of Part Three of the TGEU.

### **Exceptions and safeguards.**

83.(1) This section (and section 92(3)(prohibition of quantitative restrictions)) apply for the purposes of the implementation of Article 252 (exceptions and safeguards).

(2) Without prejudice to Article 334, the Government may suspend the application of the TGEU in the circumstances set out in Article 252(2).

(3) Where there is an intention to act pursuant to subsection (2) the Government shall have the power in connection with-

- (a) ensuring the notification of the Cooperation Council in accordance with Article 252(4), and
- (b) participating in consultations under Article 252(4),

subject to the right to unilateral action as provided for in that provision.

(4) The Government shall have the power to do anything necessary to participate in the modalities set out in Article 252(5).

### **Ceuta and Melilla.**

84.(1) This section applies for the purposes of the implementation of Article 253 (Ceuta and Melilla).

(2) The import of goods from Ceuta and Melilla into Gibraltar shall be subject to the same treatment as that afforded by Union law to goods imported from Ceuta and Melilla into the Union.

### **Specialised Committee on Economy and Trade.**

85.(1) This section applies for the purposes of the implementation of Article 254 (Specialised Committee on Economy and Trade).

(2) The Government shall have the power to cooperate with and implement any actions of the Specialised Committee on Economy and Trade under Article 254.

**Implementation, application, supervision and enforcement.**

86.(1) This section applies for the purposes of the implementation of Article 265 (Implementation, application, supervision and enforcement).

(2) The Government shall have the power to cooperate with verification activities of the competent authorities within the Union under Article 265(1), in accordance with—

- (a) the provisions of Article 265(2); and
- (b) the practical modalities for the implementation of Article 265 laid down in Annex 22.

**References to certain Union acts.**

87. In accordance with Article 268 (References to certain Union acts), for the purpose of the provisions of this Part implementing Title II of Part Three, references to Union acts in Articles 241, 256, 261, 262, 263 and 266 as well as in paragraph 1(a) of Article 3 of Annex 19 and paragraph 5 of Article 1 of Annex 21 shall be understood to include—

- (a) those Union acts as amended or replaced in future, and
- (b) any Union act implementing or supplementing those Union acts.

**Chapter 2**

**Customs Union**

**Establishment of customs union.**

88.(1) This section applies for the purposes of the implementation of Article 240 (establishment of customs union).

(2) A customs union is hereby established in accordance with the provisions set out in Chapter 2 of Title II of Part Three of the TGEU (Economy and Trade) and the provisions of and made by virtue of this Act.

**Customs territories.**

89.(1) This section applies for the purposes of the implementation of Article 241 (customs territories).

(2) The customs territory of the customs union shall comprise—

- (a) the customs territory of the Union as defined in Article 4 of Regulation (EU) No 952/2013 of the European Parliament and of the Council (the “Union Customs Code”); and
- (b) the customs territory of Gibraltar, which constitutes a customs territory separate from the customs territory of the United Kingdom of Great Britain and Northern Ireland.

**Free movement of goods within the customs union.**

90.(1) This section applies for the purposes of the implementation of Article 242 (free movement of goods within the customs union).

(2) The provisions of this Chapter shall apply to—

- (a) goods produced in the customs territory of the Union or in the customs territory of Gibraltar, including those obtained wholly or in part from goods which come from countries or territories outside the customs union and are in free circulation in the Union or in Gibraltar; and
- (b) goods which come from countries or territories outside the customs union and are in free circulation in the Union or in Gibraltar.

(3) Goods coming from countries or territories outside the customs union shall be considered to be in free circulation in the Union or in Gibraltar if the customs clearance formalities have been fulfilled, and any customs duties or charges having equivalent effect which are payable have been levied, and if there has been no total or partial drawback of such duties or charges in respect of the said goods.

(4) The provisions of this Chapter shall also apply to goods obtained or produced in the Union or in Gibraltar in the manufacture of which products from countries or territories outside the customs union that are not in free circulation either in the Union or in Gibraltar were used, provided the customs clearance formalities have been completed and any customs duties or charges having equivalent effect payable on such products from countries or territories outside the customs union have been levied.

(5) The modalities of the proof that the goods satisfy the conditions of Article 242 are contained in Annex 19 to the TGEU.

**Prohibition of customs duties.**

91.(1) This section applies for the purposes of the implementation of Article 243 (prohibition of customs duties).

(2) No customs duties on imports or exports or charges having equivalent effect shall be applied between the Union and Gibraltar, including customs duties of a fiscal nature.

**Prohibition of quantitative restrictions.**

92.(1) This section applies for the purposes of the implementation of Article 244 (prohibition of quantitative restrictions).

(2) There shall be no quantitative restrictions on imports or exports between the Union and Gibraltar or any measures having equivalent effect.

(3) This section is subject to Article 252(1) (Article 244 not to preclude application of certain prohibitions or restrictions on specified grounds).

**Internal taxation.**

93.(1) This section applies for the purposes of the implementation of Article 245 (internal taxation).

(2) Domestic law shall not impose directly or indirectly on goods of the Union any taxation discriminating directly or indirectly in favour of similar domestic goods.

(3) Goods moved between the Customs Territories shall not be eligible for a refund of domestic charges which is higher than the charges which have been levied directly or indirectly.

**Chapter 3**

*Movement of Goods*

**Removal of physical barriers.**

94.(1) This section applies for the purposes of the implementation of Articles 7 and Article 246 (removal of physical barriers).

(2) Subject to Article 252 (exceptions and safeguards) the Government shall exercise powers under Part 3 of this Act (including pre implementation powers under section 23) for the purpose of ensuring that all physical barriers related to the movement of goods between the European Union and Gibraltar are removed in accordance with Articles 7 and 246.

**Imports and exports: competent authorities.**

95.(1) This section applies for the purposes of the implementation of Article 247 (imports into and exports from Gibraltar).

(2) The Collector and customs officers assisting in accordance with section 3 of the Imports and Exports Act, 1986, are designated as the competent authorities for the purposes of Article 247(3) and (4) and Annexes 19, 21, 22, 23 and 24 to the TGEU.

(3) Until the entry into force of the decision referred to in Article 247(1), and subject to Article 247(4) and subsection (4) below, goods other than those carried by travellers in their personal luggage in accordance with Annex 23 shall be brought into Gibraltar and be exported from Gibraltar only by land and in accordance with the rules laid down in the Annexes referred to in subsection (2).

(4) In accordance with Article 247(4) (by way of derogation)-

- (a) Union goods may also be brought into Gibraltar by sea in accordance with the rules laid down in Article 4 of Annex 19, Article 7 of Annex 21, and in Annexes 22 and 24; and
- (b) goods may also be moved by sea from Gibraltar to third countries in accordance with the rules laid down in Article 5 of Annex 19, Articles 7 and 8 of Annex 21 and in Annexes 22 and 24.

#### **Powers of customs officers.**

96. The powers conferred on customs officers under sections 4 to 10 of the Imports and Exports Act, 1986 are available to the same extent as though the transaction tax and any excise duty were a duty, fee or charged levied under that Act.

#### **Assistance by police.**

97. The duty under section 11 of the Imports and Exports Act, 1986 (assistance to be rendered by police) applies to the same extent to a customs officer enforcing the provisions of this Act and, as the case may be, the TGEU.

### **Chapter 4**

#### *Transaction tax*

#### **Liability to transaction tax and payment into consolidated fund.**

98.(1) Goods that are-

- (a) produced in Gibraltar; or
- (b) imported into Gibraltar,

are, subject to any applicable exemptions or exclusions, liable to the payment of a transaction tax in the circumstances set out in paragraphs 1 and 2 of Schedule 2.

(2) The transaction tax referred to in subsection (1) must be collected by the Collector.

(3) The Collector must ensure that any transaction tax collected under this section is paid into the consolidated fund.

**Transaction tax rates.**

99.(1) The transaction tax may be charged at different rates and in respect of different goods.

(2) Paragraph 3 of Schedule 2, which sets out the transaction tax rates and the goods to which the rates apply, has effect.

(3) Subject to subsection (4), the Minister may make regulations to-

- (a) amend the transaction tax rates; and
- (b) change a good or category of good from one rate to another.

(4) Where the Minister amends the transaction tax rate or changes a good or category from one rate to another-

- (a) (where the change is made at any time after the end of 24 months following the entry into force of the TGEU) the standard rate shall be set at not less than the lowest standard VAT rate applied by a Member State at that time;
- (b) the list of goods to which a reduced or super reduced rate applies shall only include goods to which Member States may, in line with European Union law concerning VAT, apply a reduced or super reduced rate; and
- (c) if the list of goods referred to in paragraph 3 of the Schedule is modified-
  - (i) such amendments must be in line with European Union law concerning VAT, and
  - (ii) the regulations may not come into operation until the European Union has been notified of the changes.

(5) Subsection (4) does not apply where the Minister amends the Schedule following a recommendation from the independent consultative body referred to in Article 248 and Article 2 of Annex 24.

**Persons liable to pay the transaction tax.**

100.(1) The person who declares the goods or on whose behalf they are declared for entry into Gibraltar shall be liable to pay the transaction tax.

(2) In the case of irregular entry into Gibraltar, any other person involved in the irregular entry of such the goods shall be liable to pay the transaction tax.

(3) The person producing the goods in Gibraltar shall be liable to pay the transaction tax.

**Exemptions from transaction tax.**

101.(1) Goods shall be exempt from the transaction tax where, had such goods been imported, supplied or acquired in the European Union, they would have benefited from a mandatory exemption from VAT.

(2) Where the Specialised Committee on Economy and Trade approves the application of a discretionary exemption from VAT as regards particular goods, the Minister may by Notice published in the Gazette declare such goods to be exempt from the transaction tax.

(3) Liquefied Natural Gas imported and used for the production of electricity and electricity produced in Gibraltar are exempted from transaction tax.

**Refund of the transaction tax where goods are exported from Gibraltar in commercial quantities.**

102.(1) The Collector shall refund the transaction tax charged on a good upon its export to the European Union provided the exporter can prove to the Collector's satisfaction that VAT has been paid in the European Union.

(2) The Collector shall refund the transaction tax where goods are exported to a country outside the customs union via a designated customs post and the Collector has been so notified by the designated customs post.

(3) Goods consumed in Gibraltar shall not be eligible for a refund of the transaction tax.

**Chapter 5**

*Excise duty*

**Liability to excise duty and payment into consolidated fund.**

103.(1) Goods that are-

- (a) produced in Gibraltar; or
- (b) imported into Gibraltar,

are, subject to any applicable exemptions or exclusions, liable to the payment of excise duty in the circumstances set out in paragraph 1 of Schedule 2.

(2) The excise duty referred to in subsection (1) must be levied and collected by the Collector.

(3) The Collector must ensure that any excise duty collected under this section is paid into the consolidated fund.

**Excise duty rates.**

104.(1) The excise duty may be charged at different rates and in respect of different goods.

(2) Part 3 of Schedule 2, which sets out the goods that are subject to excise duty, their taxable basis and duty minima, has effect in accordance with Article 6 of Annex 24.

(3) Subject to subsection (4), the Minister may make regulations to amend Part 3 of Schedule 2, but any changes made three years after the entry into force of the TGEU must comply with the provisions of Article 6(2)(b) of Annex 24.

(4) Subsection (3) does not apply where the Minister amends the Schedule following a recommendation from the independent consultative body referred to in Article 248 and Article 6(4) and (6) of Annex 24.

**Person liable to pay excise duty.**

105.(1) The person who declares the goods or on whose behalf they are declared for entry into Gibraltar and, in the case of irregular entry, any other person involved in the irregular entry of the goods is, in addition to any transaction tax due, liable to pay excise duty.

(2) The person producing the goods in Gibraltar is liable, in addition to any transaction tax, to pay excise duty.

(3) In case of an irregular production any person involved in the production shall be liable to pay excise duty.

(4) Where several persons are liable for payment of excise duty they shall be jointly and severally liable for such debt.

**Exemptions from excise duty.**

106.(1) Goods shall be exempt from excise duty in cases where, had such goods been released for consumption in the Union, they would have benefited from a mandatory exemption from harmonised excise duty.

(2) Where the Specialised Committee on Economy and Trade approves the application of a discretionary exemption from excise duty as regards particular goods, the Minister may by Notice published in the Gazette declare such goods to be exempt from the excise duty

(3) In addition, Liquefied Natural Gas imported and used for the production of electricity as well as electricity produced in Gibraltar are exempted from excise duty.

**Refund of excise duty where goods are exported from Gibraltar in commercial quantities.**

107.(1) The Collector shall refund the excise duty charged on a good upon its export to the European Union provided the exporter can prove to the Collector's satisfaction that VAT and excise duty has been paid in the European Union.

(2) The Collector shall refund the excise duty where goods are exported to a country outside the customs union via a designated customs post and the Collector has been so notified by the designated customs post.

(3) Goods consumed in Gibraltar shall not be eligible for a refund of the excise duty.

**Refund of excise duty in case of total destruction or irretrievable loss.**

108. The Collector may refund excise duties of excise goods when the Collector is satisfied that there has been a total destruction or irretrievable loss, total or partial, of these goods as a result of unforeseeable circumstances or force majeure, or as a consequence of an authorisation to destroy the goods by the competent authorities of Gibraltar.

**New Union excise duties.**

109. The Minister may amend Schedule 2 where new Union excise duties are levied, and subject to the procedures set out in Article 6(1) of Annex 24, the Minister may amend Schedule 2 in order to give effect to such excise duties.

**Registration of excise duty operators.**

110.(1) The Collector must maintain a register of persons who are responsible for the entry, production, holding, storage, movement, or exit of excise goods for commercial purposes in Gibraltar.

(2) The Minister may make Rules-

- (a) providing for the manner and form of registration;
- (b) the payment of fees in connection with registration;
- (c) requiring registered persons to keep accounts of stock and movements of excise goods;
- (d) requiring periodical returns to be submitted to the Collector;
- (e) providing for the monitoring and checking of stocks;

- (f) any other matter required in order to implement or otherwise comply with any obligations under the TGEU.

## **Chapter 6**

### *Common provisions*

#### **Exceptional circumstances and statistics.**

111.(1) In response to exceptional circumstances, and subject to the procedures and the conditions set out in Article 9(2) and (3) of Annex 24 being satisfied, the Minister may by Regulations take one of the following measures-

- (a) apply a temporary reduced rate of the transaction tax to specific goods deemed essential for addressing the exceptional circumstances; or
- (b) temporarily exempt from the transaction tax and excise duties, where applicable, specific goods deemed essential for addressing the exceptional circumstances.

(2) The Collector shall compile and provide to the Specialised Committee on Economy and Trade statistics on the transaction tax and excise duty paid in Gibraltar on a quarterly basis.

#### **Safeguard procedure.**

112.(1) This section applies for the purposes of the implementation of Article 249 (safeguard procedure).

(2) If notification is received under Article 249(3), the Government shall have the power to do anything necessary to cooperate with the consultative procedure under that provision.

## **Chapter 7**

### **Cooperation and mutual administrative assistance**

#### **Cooperation and assistance.**

113.(1) This section applies for the purposes of the implementation of Article 250 (cooperation and mutual administrative assistance).

(2) The Government shall have the power to do anything necessary to ensure cooperation in the area of customs and indirect taxation in accordance with Article 250(2).

(3) The Government and any public authority shall have the power to do anything necessary to provide mutual administrative assistance in customs matters in accordance with the Protocol on Mutual Administrative Assistance in Customs Matters in Annex 37.

(4) The Government and any public authority shall the power to do anything necessary in order to cooperate with competent authorities within the Union-

- (a) to ensure compliance with legislation relating to VAT, transaction tax and excise duties; and
- (b) in recovering claims relating to taxes and duties in accordance with the Protocol on Administrative Cooperation and Combating Fraud in the Field of Value Added Tax and Excise Duty and on Mutual Assistance for the Recovery of Claims relating to Taxes and Duties in Annex 38.

(5) Any exchange of information between the competent authorities within the Union and the Government and any public authority in accordance with Chapter II of Title II of Part Three shall be subject to-

- (a) the requirements of confidentiality and protection of information set out in the relevant Article of the Protocol on Mutual Administrative Assistance in Customs Matters (subject to any necessary modifications);
- (b) any confidentiality requirements set out in the law of the Union; and
- (c) any confidentiality requirements of domestic law.

(6) The Government and any public authority shall have the power to do anything necessary in order to cooperate, and exchange information, with competent authorities within the Union in the area of non-food product safety and compliance.

(7) The Government shall have the power to do anything necessary in order to ensure that public authorities are aware of the requirements of this section and Article 250.

(8) The provisions of Article 6 shall only apply to exchanges of periodic complied data and information under this section and Article 250.

### **Goods, cash and pets brought by persons.**

114.(1) This section applies for the purposes of the implementation of Article 267 (Goods, cash and pets brought by persons).

(2) The entry into Gibraltar of goods carried by travellers in their personal luggage, as well as their pets, and the entry and exit of cash shall be subject to the provisions set out in Annexes 22 and 23.

## **Chapter 8**

### *Goods Produced or Placed on the Market in Gibraltar*

#### **Interpretation.**

115.(1) For the purposes of this Chapter, the following definitions apply in accordance with Article 255-

“food”—

- (i) means any substance or product, including drinks, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans;
- (ii) shall not include feed, live animals unless they are prepared for placing on the market for human consumption, plants prior to harvesting, medicinal products, cosmetics, tobacco and tobacco products, narcotic or psychotropic substances, residues, contaminants and medical devices;

“GHA” means the Gibraltar Health Authority;

“label” means any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, the packaging of a food or the box in which it is contained, and which cannot be easily removed or faded;

“prepacked” means prepared for presentation of any single item as such to the final consumer and to catering operators, consisting of the packaging into which the retail goods are put before being offered for sale, whether such packaging encloses the retail goods completely or only partially, but in any event in such a way that the contents cannot be altered without opening or changing the packaging; but “prepacked food” shall not include foods packed on the sales premises at the consumer’s request or prepacked for direct sale; and

“retail” means the handling or processing of food and its storage at the point of sale or delivery to the final consumer, which includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets.

#### **General requirements.**

116.(1) This section applies for the purposes of the implementation of Article 256 (General requirements).

(2) Goods may be produced or placed on the market in Gibraltar only if they comply with the relevant rules of Union law governing the production or placing on the market of those goods (subject to the provisions of this section).

(3) The Government shall have the power to do anything necessary (whether by Implementation Regulations or otherwise) in order to supplement subsection (2).

(4) Without prejudice to subsection (2), goods lawfully placed on the market in any Member State shall be presumed to be compliant with any current or future rules applicable to goods to be placed on the market in Gibraltar.

(5) Subsection (2) does not apply to:

- (a) goods produced in Gibraltar exclusively for export outside Gibraltar or the Union without being first placed on the Gibraltar or Union markets;
- (b) food produced in Gibraltar or prepared, processed or repacked by retail establishments in Gibraltar and placed on the market in Gibraltar for local consumption (and for the avoidance of doubt, spirit drinks produced or placed on the market in Gibraltar are excluded from this provision and must fully comply with the relevant Union rules); and
- (c) food imported into Gibraltar, as regards their transport, storage and distribution after entry into Gibraltar.

(6) Where food referred to in subsection (5)(b), is prepacked, the individual packaging must bear a label which clearly states the words "Not for EU".

(7) In order to ensure that food referred to in subsection (5) (b) and (c) cannot be subsequently moved to a Member State or placed on the market in the Union, the Government-

- (a) shall take all necessary steps to carry out official controls and surveillance measures to ensure compliance with the requirements of subsections (5) and (6); and
- (b) shall ensure that such food is only intended for retail sale and local consumption and that economic operators comply with the labelling requirement provided for in Article 256 and this section.

(8) Notwithstanding subsection (2), the Government may in accordance with Article 256(4) allow medicinal products for human use as defined in subparagraph (2) of Article 1 of Directive 2001/83/EC of the European Parliament and of the Council to be placed on the market in Gibraltar provided that all of the following conditions are fulfilled—

- (a) the competent authorities of the United Kingdom have authorised the placing on the market in the United Kingdom of the medicinal product in accordance with the

law of the United Kingdom and under the terms of the authorisation granted by them;

- (b) the medicinal products concerned do not bear the EU unique identifier; but bear an individual label that shall state the words “UK only” which shall be attached to the packaging of the medicinal product in a conspicuous place in such a way that it is easily visible, clearly legible, and indelible and shall not in any way be hidden, obscured, detracted from, or interrupted by any other written or pictorial matter or any other intervening material; and
- (c) the Government has taken effective monitoring and enforcement measures carried out by means of audits and inspections in order to ensure that medicinal products as referred to in this paragraph (with the exception of licensed prescription medicines accompanied by a prescription by a GHA approved professional in a quantity not exceeding 90-day long treatment) may not be moved from Gibraltar to the Union or be placed on the market in a Member State and that economic operators comply with the labelling requirement provided for in Article 256.

(9) Notwithstanding subsection (2), the Government may in accordance with Article 256(5) allow the import into Gibraltar, as laid down in Article 247(4), of medical devices, accessories for medical devices and in vitro diagnostic medical devices as defined in Article 2(1) and (2) of Regulation (EU) 2017/745 of the European Parliament and of the Council and Article 2(2) and 2(4) of Regulation (EU) 2017/746 of the European Parliament and of the Council (“devices”), provided that the following conditions are fulfilled:

- (a) the devices may be lawfully placed on the market in the United Kingdom;
- (b) the devices are procured and imported by or for entities placed under the direct responsibility of the GHA (for which purpose the Government shall have the power to do anything necessary to ensure that the notification requirements under Footnote 29 to Article 256(5)(b) are satisfied);
- (c) the sole end-users of the devices are entities under the direct responsibility of the GHA and professionals employed by the GHA;
- (d) where the product does not bear a ‘CE’ marking, a clearly visible, legible and indelible marking or sticker shall be applied to each consignment of devices covered by Article 256(5) at the point of first handling in Gibraltar following unloading from the means of transport; and this marking or sticker-
  - (i) should be placed on the outermost packaging of the consignment or shipping box, stating the words “Gibraltar (GHA) only”;
  - (ii) shall be attached to the outermost packaging of the product in a conspicuous place in such a way that it is easily visible, clearly legible, and indelible;

(iii) shall not in any way be hidden, obscured, detracted from, or interrupted by any other written or pictorial matter or any other intervening material; and

for the purposes of this paragraph “outermost packaging” means the first level of packaging visible upon receipt of the consignment after unloading, excluding any inner packs, cartons or individual product units contained therein;

- (e) the Government has taken effective monitoring and enforcement measures carried out by means of audits and inspections in order to ensure that devices as referred to in this subsection (with the exception of devices and accessories for such devices accompanied by a prescription or certificate by a GHA approved professional in quantity not exceeding a 90-day long treatment) may not be moved from Gibraltar to the Union or be placed on the market in a Member State and that economic operators comply with the labelling requirements provided for in this article; and
- (f) any device imported under this subsection, which does not bear a ‘CE’ marking, may only leave the premises of entities under the direct responsibility of the GHA if this is necessary for reasons of patient health, in the opinion of professionals employed by the GHA; for which purposes-
  - (i) for any such devices leaving premises of entities under the direct responsibility of the GHA, a clearly visible, legible and indelible marking or sticker stating the words “Gibraltar (GHA) only” shall be applied to the immediate outer packaging of the device, or to the device itself if it is not packaged when leaving the premises;
  - (ii) the marking or sticker shall be attached to the packaging of the product in a conspicuous place in such a way that it is easily visible, clearly legible, and indelible;
  - (iii) the marking or sticker shall not in any way be hidden, obscured, detracted from, or interrupted by any other written or pictorial matter or any other intervening material; and
  - (iv) this requirement shall not apply to implantable devices or where it is not possible to apply such a marking or sticker without impairing its proper functioning, given the size or nature of the device.

(10) Before issuing any new authorisation licence relating to the production or placing on the market of goods in Gibraltar, Government shall have the power to do anything necessary to ensure that the information requirement under Article 256(7) is satisfied.

### **Monitoring of compliance and cooperation on market surveillance.**

117.(1) This section applies for the purposes of the implementation of Article 257 (Monitoring of compliance and cooperation on market surveillance), having regard to the importance of cooperation on market surveillance, safety and compliance of products for the facilitation of

trade and for the protection of consumers and other users and of building mutual trust based on timely shared information, as set out in Article 257(6).

(2) The Government shall have the power to do anything necessary to-

- (a) to establish and ensure the effective operation of market surveillance authorities which will carry out market surveillance activities to ensure compliance with Article 256(1) and 256(3);
- (b) to ensure the separation of market surveillance functions from conformity assessment functions; and
- (c) to ensure the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.

(3) The Government shall have the power to do anything necessary to take all appropriate and necessary enforcement measures in response to a Member State's market surveillance authority's information under Article 257(2) (for which purpose the provisions of Article 6 of the TGEU relating to the transmission of formal communications and decisions shall not apply).

(4) The Government may initiate the reasoned request process under Article 257(3) where-

- (a) it has been found that goods imported from a Member State and placed on the market in Gibraltar are not in compliance with the legislation referred to in Article 256(1); and
- (b) bringing such non-compliance to an end requires measures to be taken within the jurisdiction of a Member State.

(5) The Government and any relevant public authority shall have the power to do anything necessary in order to make any required arrangements for cooperation with requests under Article 257(4).

(6) The Government and any relevant public authority shall have the power to do anything necessary to provide the competent authorities within the Union with the list of existing producers of goods in Gibraltar required by Article 257(5) (including any amended content in accordance with a decision of the Specialised Committee on Economy and Trade).

## **Chapter 9**

### *Tobacco*

#### **Interpretation.**

118. In this Chapter –

“Protocol” means the Protocol on the traceability, cooperation to fight smuggling of tobacco and additional measures related to tobacco products contained in Annex 39.

### **Specific measures on monitoring and tracking of tobacco.**

119.(1) This Chapter applies for the purposes of the implementation of Article 258 (Specific measures on monitoring and tracking of tobacco) and Annex 39 (Protocol on the traceability, cooperation to fight smuggling of tobacco and additional measures related to tobacco products).

(2) The Government shall have the power to do anything necessary to ensure that, in accordance with the Protocol, the requirements set out in paragraphs (a) to (e) of Article 258 are complied with.

### **Information sharing.**

120.(1) The Government shall have the power to do anything necessary in order to exchange regularly with the Union information concerning the amounts of tobacco products imported, sold or exported, in accordance with the details required under Article PTOB.1(1) of Annex 39.

(2) The Government shall have the power to share with the Union specific information referring to the efforts made to prevent and combat fraud and smuggling in Gibraltar, including in the areas referred to in Article PTOB.1(2) of Annex 39.

(3) The information referred to in this section shall be provided quarterly and will be exchanged within the first two months of the quarter following the quarter being reported.

### **Cooperation and enforcement.**

121.(1) The Collector shall cooperate with the competent authorities within the Union in identifying persons domiciled in their respective territories that, in proceedings undertaken in relation to smuggling of products originating in Gibraltar or destined for Gibraltar, may be found directly or indirectly responsible for such acts, in accordance with Article PTOB.2(1) of Annex 39.

(2) The cooperation referred to in subsection (4) shall be reciprocal and include the actions set out in Article PTOB.2(2) and (3) of Annex 39.

(3) Notwithstanding the implementation of the Protocol, should evidence emerge that tobacco products are being smuggled into Gibraltar or the surrounding area from any part of Spain in significant quantities, the Collector shall take effective action to prevent such illicit activity.

(4) The Government shall have the power to do anything necessary in order to enter into arrangements to set out the practical modalities for the application of the Protocol.

**Tobacco traceability.**

122.(1) The Government shall have the power to do anything necessary in order to apply a tobacco traceability system which is equivalent to the Union system and covers the items listed in Article PTOB.3(1) of Annex 39.

(2) The Collector shall provide the competent authorities of the Union, in respect of the Spanish market, with any information collected by the Gibraltar system and such information shall be provided in near-real time, and in any case no later than 24 hours from the receipt of a request, subject to an extension in accordance with Article PTOB.3(2) of Annex 39.

**Price differential.**

123. The price differential set out in section 3 of Appendix 2 to Annex 24 shall apply.

**Additional measures.**

124.(1) The Government shall have the power to do anything necessary in order to-

- (a) establish the requirements with respect to picture warnings to be used on tobacco products that are equivalent to those applicable in the Union market;
- (b) prohibit the placing on the market of tobacco for oral use;
- (c) prohibit cross-border distance sales of tobacco products to consumers;
- (d) have in place a system that ensures the destruction of tobacco products confiscated in operations against illicit trade and smuggling of tobacco products and of tobacco products that do not comply with the requirements of point (a) of Article 258.

(2) The Government shall have the power to do anything necessary in order to enter into arrangements to set out the practical modalities for cooperation under subsection (1)(d).

## **Chapter 10**

### **Provisions Applicable to Certain Categories of Goods**

**Interpretation.**

125. For the purposes of this Chapter, the following definitions apply in accordance with Article 259—

“civilian component” means civilian persons who are in the employ of, or contracted by, the Government of the United Kingdom and who are not persons resident in Gibraltar or in the Union, with the exception of persons who have the right to reside in the United Kingdom or the Common Travel Area;

“non-resident United Kingdom Forces” means persons serving in the United Kingdom Forces, either as regulars or reserves, who are citizens of the United Kingdom, Commonwealth citizens, citizens of Ireland or have the right to reside in the United Kingdom or the Common Travel Area and who are not persons resident in Gibraltar; and

“visiting third country forces” means persons serving or who are in the employ of, or contracted by, the armed services of a NATO member or of selected partners who are not persons resident in the Union, or in Gibraltar, and who are due to arrive in Gibraltar on the invitation of the United Kingdom.

### **Rules applicable to certain categories of goods.**

126.(1) This section applies for the purposes of the implementation of Article 260 (Rules applicable to certain categories of goods).

(2) The Government and any relevant public authority shall have the power to do anything necessary to comply with the provisions of Article 260(1), and, in particular, to ensure that—

- (a) customs controls take place only at a designated customs post, during the fixed opening hours;
- (b) any transfer shall be carried out in accordance with the relevant provisions for goods of Title II of Part Three with the exception of the collection of customs duties or indirect taxes and the application of Article 265.

(3) The temporary admission and the re-exportation of service vehicles of non-resident United Kingdom Forces or the civilian component under their own power or private motor vehicles for their personal use shall be allowed free of customs duties and indirect taxation on presentation of a triptyque in the form included in the administrative arrangements referred to in subsection (8).

(4) Official documents under official seal shall be exempt from the application of this Title. Couriers, whatever their status, carrying these documents must be in possession of an individual movement order as referred to in the second indent of Article 38(2); and the movement order shall show the number of dispatches carried and certify that they contain only official documents.

(5) Special arrangements shall be made so that fuel, oil and lubricant for use in service vehicles, aircraft and vessels of non-resident United Kingdom Forces or the civilian component, may be delivered free of all duties and taxes.

(6) Goods covered by Article 260 are not considered to be in free circulation in Gibraltar but in a form of temporary admission under the control of the relevant authorities.

(7) Goods covered by this Article may not be released for free circulation in the customs territory of the Union; and where these goods are placed on the market in Gibraltar, Title II of Part Three shall apply.

(8) An administrative arrangement for the purposes of setting out the practical modalities for the application of this Chapter shall be entered into in accordance Article 260(7).

### **Military technology and equipment.**

127.(1) This section applies for the purposes of the implementation of Article 261 (Military technology and equipment).

(2) Transfers of items included in the Common Military List of the European Union as well as Category A, B and C firearms within the meaning of Regulation (EU) 2012/258 of the European Parliament and of the Council, and Regulation (EU) 2025/41 of the European Parliament and of the Council, when destined for the armed forces, the police, or the public authorities of Gibraltar or of the United Kingdom in Gibraltar shall be subject to the provisions of Title II of Part Three as well as to the rules on export controls of defence and dual use material in accordance with Article 261(1).

### **Dual use goods and technologies.**

128.(1) This section applies for the purposes of the implementation of Article 262 (Dual use goods and technologies).

(2) Transfers of items included in Annex I of Regulation (EU) 2021/821 of the European Parliament and of the Council shall be subject to the provisions of Title II of Part Three as well as to relevant rules on export controls of defence and dual use material in accordance with Article 262(1).

### **Special procedure.**

129.(1) This section applies for the purposes of the implementation of Article 264 (Special procedure).

(2) The transfer of the items referred to in Articles 260, 261 and 262 (and sections 126, 127 and 128), with the exception of goods transferred for commercial purposes and sanitary and phytosanitary goods shall be regulated exclusively by the special procedure of Article 264, provided that such items:

- (a) arrive at or depart from Gibraltar airport or port aboard State aircraft or State vessels or in State consignments as defined in the administrative arrangements referred to in Article 260(7);
- (b) are destined in Gibraltar exclusively for the official use of the Ministry of Defence of the United Kingdom or of visiting third country forces.

(3) Goods covered by Article 264—

(a) shall not be considered to be in free circulation in Gibraltar but in a form of temporary admission under the control of the relevant authorities; and

(b) may not be released for free circulation in the customs territory of the Union.

(4) In the event of such goods being placed on the market in Gibraltar, Title II of Part Three shall apply.

(5) Union law shall apply to the transfer of such goods from Gibraltar to the customs territory of the Union.

(6) Where the conditions under Article 264(1) are met, the Government shall have the power to do anything necessary to ensure compliance with the requirements under Article 264(2) for the provision of a list of items and a certificate.

## **Chapter 11**

### *Transitional Arrangements*

#### **Goods placed on the market in Gibraltar.**

130.(1) This section applies for the purposes of the implementation of Article 269 (Goods placed on the market in Gibraltar).

(2) Title II of Part Three of the TGEU, and this Part of this Act, shall not apply to goods the movement of which—

(a) started before the Implementation Date, and

(b) ended thereafter.

(3) The provisions of the TGEU and this Act relating to indirect tax shall not apply to goods which are covered by a certificate of exemption from import duty issued by the Chief Minister under Regulation 8, Part 3 of the Gibraltar Integrated Tariff Regulations 2017 before the Implementation Date, to the extent set out in Article 269(4), provided that the Government has provided to the competent authorities within the Union copies of all such extant certificates together with relevant information on the respective quantity of goods imported over the last three years where applicable; and the quantities of goods to be imported shall be commensurate to the relevant projects covered by the certificate.

(4) Where an economic operator relies on Article 269(1) or (2) or subsections (2) or (3) with respect to a specific good or goods, that operator shall bear the burden of demonstrating, on the basis of any relevant document, that the movement started before the Implementation Date or that the certificate was issued before the Implementation Date.

(5) Article 269(1) and subsection (2) shall cease to apply 2 months after the Implementation Date.

(6) Article 269(2) and subsection (3) shall apply for a period of no longer than the duration of the relevant certificate or a period of 3 months from the Implementation Date, whichever is shorter.

(7) Any good that was lawfully placed on the market in Gibraltar before Implementation Date shall, for a period of 3 months from the Implementation Date, not be subject to the requirements of Article 256.

(8) Where an economic operator relies on Article 269(5) and subsection (7) with respect to a specific good, that operator shall bear the burden of demonstrating, on the basis of any relevant document, that the good was placed on the market in Gibraltar before the Implementation Date, together with providing details of the quantities of goods concerned.

### **Ending of temporary storage or special customs procedures.**

131.(1) This section applies for the purposes of the implementation of Article 270 (Ending of temporary storage or special customs procedures).

(2) Goods that were in temporary storage in Gibraltar or any special customs procedure in respect of Gibraltar commenced before the Implementation Date shall remain subject to that legislation as it was on that date as long as—

- (a) the goods are not discharged from the special procedures, and no longer than two months from the Implementation Date; or
- (b) the temporary storage has not ended, and no later than the end of the legal time limit for temporary storage.

(3) Title II of Part Three shall apply to the release for free circulation, discharge of the special procedure and any re-export from Gibraltar of goods referred to in subsection (2).

## **PART 7**

### **Aviation**

#### **Interpretation.**

132. In accordance with Article 271 (definitions), in this Chapter –

“air carrier” means an air transport undertaking holding a valid operating license or equivalent;

“air transport” means the carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, held out to the public for remuneration or hire, including both scheduled and non-scheduled air services;

“competent authority” means the Gibraltar Civil Aviation Authority;

“Gibraltar airport” means the airport located in the isthmus of Gibraltar in respect of the services which are the subject of the Joint Venture referred to in Article 274.

### **Flights to and from Gibraltar.**

133.(1) This section applies for the purposes of the implementation of Article 272 (Flights to and from Gibraltar).

(2) For the conduct of air transport, the air carriers of the Union and the United Kingdom shall have on a non-discriminatory basis –

(a) the right to fly across the territory of Gibraltar without landing; and

(b) the right to make stops for non-traffic purposes at Gibraltar airport.

(3) Air transport services between Gibraltar airport and points in the Union territory may be provided only by air carriers of the Union or by air carriers authorised under Union law and these services shall be provided in accordance with Union law.

(4) Air transport services between Gibraltar airport and points in the United Kingdom may be provided only by carriers of the United Kingdom or by air carriers authorised by the United Kingdom and these services shall be provided in accordance with the law of the United Kingdom.

### **Rules applicable to Gibraltar airport.**

134.(1) This section applies for the purposes of the implementation of Article 273 (Rules applicable to Gibraltar airport).

(2) The Government shall have the power to do anything necessary to ensure that the air traffic management and air navigation services provided to civil air traffic at Gibraltar airport offers a level of safety and interoperability with civil operations and systems that is equivalent to the services provided in civil airports where International Civil Aviation Organisation (ICAO) provisions apply.

(3) The Government shall have the power to do anything necessary to ensure that safety and security provided to civil air traffic at Gibraltar airport shall be provided, at a minimum, at the level of equivalent services provided in civil airports where ICAO provisions apply.

(4) The following, in so far as not already provided for in implementing legislation, shall have force of law in domestic law in accordance with Article 273(3)–

- (a) the provisions contained in the Union acts listed in Annex 25; and
  - (b) where the United Kingdom, in respect of Gibraltar, has notified the Union of its acceptance and implementation in accordance with Article 273(5), the provisions contained in any subsequent act—
    - (i) amending or replacing an act listed in Annex 25;
    - (ii) supplementing or implementing an act listed in Annex 25; or
    - (iii) on the subject matter of an act listed in Annex 25.
- (5) For the purposes of the application of subsection (4) in respect of any Union act, any enactment or rule of domestic law –
- (a) shall have effect subject to any modifications necessary to ensure that the Union act shall have effect; and
  - (b) shall not have effect to the extent that it is incompatible with the Union act.
- (6) The competent authority shall, in accordance with Article 273,—
- (a) exchange regular information on safety and security matters with the competent authorities of the Union; and
  - (b) conduct joint inspection visits to Gibraltar airport for the purposes of monitoring compliance with the provisions of Annex 25 and security at Gibraltar airport.
- (7) The visits referred to in subsection (6)(b) shall be carried out in accordance with Article 273(7) and the practical modalities agreed by the Specialised Committee on Aviation.
- (8) The Government shall have the power to do anything necessary to report back on the implementation of Article 273(7) to the Specialised Committee on Aviation.
- (9) An air carrier that is subject of an operating ban in the Union under Regulation (EC) No.2111/2005 (as amended or replaced in future as well as any Union act implementing or supplementing it) shall not be permitted to operate to and from Gibraltar airport.
- (10) An air carrier that is subject to the restrictive measures of the Union or the United Kingdom shall not be permitted to operate to and from Gibraltar airport.
- (11) In this section “implementing legislation” means—
- (a) any provision which (whether before, on or after the Implementation Date) is made by or under this Act or any other enactment or otherwise forms part of domestic law; and

- (b) which is for the purpose of (or has the effect of) making equivalent provision in respect of an EU instrument.

**Joint Venture.**

135.(1) This section applies for the purposes of the implementation of Article 274 (Joint Venture).

(2) The Government shall have the power by notice in the Gazette to grant to a joint venture company constituted in accordance with Article 274 the right to select, through regular public tender, the commercial company that should be in charge of the day-to-day management of Gibraltar airport and to supervise the provision of the services provided by the company in accordance with Annex 25.

**Specialised Committee on Aviation.**

136.(1) This section applies for the purposes of the implementation of Article 275 (Specialised Committee on Aviation).

(2) The Government shall have the power to do anything necessary to cooperate with and implement any actions of the Specialised Committee on Aviation under Article 275.

**PART 8**

**Frontier Workers**

**Frontier Workers.**

137.(1) This section applies for the purposes of the implementation of Title I and II of Part Four of the TGEU in so far as they apply to-

- (a) the persons defined in Article 291(1)(a) and their family members as defined in Article 291(1)(c);
- (b) frontier workers as defined in Article 291(2), within the scope of persons referred to in Article 291(1)(a); and
- (c) self-employed frontier workers as defined in Article 291(3), within the scope of persons referred to in Article 291(1)(a).

(2) The following provisions of the TGEU form part of domestic law on and after the Implementation Date-

- (a) Article 292;

(b) Article 293; and

(c) Article 295 and Annex 28.

(3) The Government shall have the power to make Implementation Regulations in accordance with section 13 to implement the following provisions of the TGEU-

(a) Article 294;

(b) Article 296; and

(c) Article 297.

(4) Any enactment has effect on and after the Implementation Date with such modifications as—

(a) are required in consequence of subsection (2) or otherwise for the purposes of implementing the provisions mentioned in that subsection; and

(b) are capable of being ascertained from those provisions or otherwise from the TGEU.

(5) Subsections (2) and (4)—

(a) are subject to any equivalent or other provision—

(i) which (whether before, on or after the Implementation Date) is made by or under this Act or any other enactment or otherwise forms part of domestic law; and

(ii) which is for the purposes of (or has the effect of) implementing to any extent the TGEU; and

(b) do not limit the scope of any power which is capable of being exercised to make such provision.

(6) The references to the TGEU in subsections (2) and (4) are references to the TGEU as it has effect on the Implementation Date.

(7) In this section, references to the purposes of (or having the effect of) implementing an agreement (or any provision of the TGEU) include references to the purposes of (or having the effect of) making provision consequential on any such implementation.

**Social security co-ordination.**

138.(1) This section applies for the purposes of the implementation of Article 298 (Social Security Coordination) and Annexes 31 to 36.

(2) The following provisions of the TGEU form part of domestic law on and after the Implementation Date-

- (a) the SSC Protocol;
- (b) Article 298;
- (c) Articles 3 and 329, so far as applying to the SSC Protocol.

(3) Any enactment has effect on and after the Implementation Date with such modifications as-

- (a) are required in consequence of subsection (2) or otherwise for the purposes of implementing the provisions mentioned in that subsection; and
- (b) are capable of being ascertained from those provisions or otherwise from the TGEU.

(4) Subsections (2) and (3)-

- (a) are subject to any equivalent or other provision-
  - (i) which (whether before, on or after the Implementation Date) is made by or under this Act or any other enactment or otherwise forms part of domestic law; and
  - (ii) which is for the purposes of (or has the effect of) implementing to any extent the TGEU; and
- (b) do not limit the scope of any power which is capable of being exercised to make such provision.

(5) The references to the TGEU in-

- (a) subsections (2) and (3); and
- (b) the definition of “the SSC Protocol” in subsection (6),

are (except as provided in that definition) references to the TGEU as it has effect on the Implementation Date.

(6) In this section -

“the SSC Protocol” means the Protocol on Social Security Coordination and its annexes contained in Annexes 31 to 36 of the TGEU, as that protocol is amended from time to time in accordance with Article SSC.72 of that protocol,

and references to the purposes of (or having the effect of) implementing an agreement (or any provision of the TGEU) include references to the purposes of (or having the effect of) making provision consequential on any such implementation.

## **Part 9**

### **Civil Nuclear Cooperation**

#### **Introductory and general principles.**

139.(1) This Chapter applies for the purposes of the implementation of Article 17 (Civil nuclear cooperation).

(2) The Government shall-

- (a) have regard to the importance of international cooperation for effective nuclear safety arrangements;
- (b) work with the Union on the continuous improvement of international nuclear safety standards and Conventions, and of their implementation;
- (c) have regard to the importance of international cooperation for effective nuclear security arrangements; and
- (d) work with the Union on the continuous improvement of international nuclear security standards and conventions.

#### **Protections**

140.(1) Insofar as it does not conflict with developments in legally binding international nuclear safety standards, the Government shall have to power to do anything necessary not to weaken or reduce the levels of protection below those provided for by the standards of protection, and by the enforcement thereof, shared by Gibraltar and the Union and applied in respect of Gibraltar until 31 December 2020 in relation to—

- (a) nuclear safety,
- (b) radiation protection,
- (c) safe management of radioactive waste and spent fuel,
- (d) decommissioning,

- (e) safe shipment of nuclear material,
- (f) emergency preparedness and response, and
- (g) effective control of radioactive material and radioactive sources.

(2) The Government shall have the power to do anything necessary to implement a robust and effective system of nuclear material accountancy and control aiming to ensure that nuclear material (as defined in Article XII of the Statute of the International Atomic Energy Agency) is exclusively used for peaceful purposes at such time as these arrangements are required.

(3) The Government shall have the power to do anything necessary to implement safety and security arrangements, in accordance with relevant international agreements, in relation to any relevant civil nuclear facilities and radioactive sources in Gibraltar, at such time as these arrangements are required.

(4) The Government shall have the power to do anything necessary to-

- (a) implement, at such time as these arrangements are required, an agreement negotiated with the IAEA for the application of safeguards in Gibraltar; and
- (b) sign, ratify or accede to, as appropriate, and fully implement the international instruments listed in Part 1 of Annex 4 to the TGEU as well as, where relevant, their future amendments to the extent they are ratified by the United Kingdom;
- (c) follow, as appropriate, the guidance documents listed in Part 2 of Annex 4 to the TGEU as well as their future amendments to the extent they are used by the United Kingdom.

(5) The Government shall have the power to do anything necessary not to weaken or reduce the levels of protection below those provided for by the standards of protection, and by the enforcement thereof, applied by Gibraltar and the Union in respect of Gibraltar, until 31 December 2020 in relation to physical protection.

### **Third party liability.**

141. The Government shall have the power to do anything necessary in order to cooperate with the activities referred to in Article 17(6) in respect of the Convention on Third Party Liability in the Field of Nuclear Energy concluded at Paris on 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and the Protocol of 6 November 1982 (and any further amendments).

### **Accidents.**

142.(1) The Government shall have the power to do anything necessary to maintain and periodically review operational arrangements in relation to—

- (a) events in, or affecting, Gibraltar;
- (b) the Convention on the Early Notification of a Nuclear Accident adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986; and
- (c) the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency adopted by the General Conference of the International Atomic Energy Agency meeting in special session at Vienna on 26 September 1986, should such an event occur.

(2) For that purpose the Government shall have regard to the operational arrangements that are detailed in Annex 5 to the TGEU (in accordance with the arrangements for updates specified in Article 17(7)).

#### **Radioactive material and sources.**

143. With respect to the effective control of radioactive material and radioactive sources, the Government shall have the power to do anything necessary (which may, in particular, include the making of Implementation Regulations) to ensure at least equivalent effectiveness and coverage to that provided under—

- (a) Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, and
- (b) Council Directive 2013/59/Euratom of 5 December 2013, laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation,

including as amended or replaced in future.

### **Part 10**

#### **FINAL PROVISIONS**

##### **Dispute Resolution**

##### **Chapter 1**

##### *Preliminary*

#### **Purpose of Part 10.**

144. This Part makes provision (supplemental to, and without prejudice to the generality of, the general implementation provisions of Part 3) for the purpose of facilitating and supporting the implementation of the provisions of Part Six of the TGEU on dispute resolution—

(a) in accordance with the principles set out in Article 300 (objectives of Part Six); and

(b) in relation to matters to which Part Six applies in accordance with Article 301 (scope).

**Interpretation.**

145. In this Part, “covered provisions” has the meaning given by Article 301(1).

**Choice of forum.**

146.(1) This section applies for the purposes of the implementation of Article 303 (choice of forum).

(2) In the circumstances to which Article 303(1) and (2) refer the Government shall have the power to do anything necessary in connection with the selection of the forum in which to settle the dispute.

**Chapter 2**

*Consultations*

**Consultations.**

147.(1) This section applies for the purposes of the implementation of Article 304 (consultations).

(2) In the circumstances referred to in Article 304(1) the Government shall have the power to do anything necessary to participate in consultations under that provision, in accordance with the procedures set out in Article 304.

**Chapter 3**

*Arbitrations*

**Arbitrations.**

148.(1) This section applies for the purposes of the implementation of Articles 305 to 326 (arbitration) (including Annexes 29 on Rules of Procedure and 30 on Code of Conduct).

(2) The Government shall have the power to do anything necessary to participate in the arbitration process set out in those Articles (including as to compliance and costs), in accordance with the procedures so set out.

(3) The provisions of this Part shall apply with any necessary modifications for the purposes of Article 209 in accordance with the provisions of Article 327 (special procedures for remedial measures).

## SCHEDULE 1

Section 16

### CONSEQUENTIAL AMENDMENTS AND MODIFICATIONS

#### *Introduction*

1. This Schedule makes amendments and modifications of certain enactments for the purposes of or in connection with the TGEU, without prejudice to the generality of any other provision of this Act.

#### *Interpretation and General Clauses Act*

2. In the Interpretation and General Clauses Act, at the end of section 2 (Interpretation of specific words and phrases) insert—

**“Definitions relating to the Treaty on Gibraltar and the European Union.**

“the Treaty on Gibraltar and the European Union” has the meaning given by section 5 of the Treaty on Gibraltar and the European Union Act 2026;

“TGEU Implementation Date” has the meaning given to “the Implementation Date” by section 3(1) of the Treaty on Gibraltar and the European Union Act 2026;

“TGEU Implementation Purpose” has the meaning given to “implementation purpose” by section 3(1) of the Treaty on Gibraltar and the European Union Act 2026; and

“TGEU Implementation Regulations” has the meaning given to “Implementation Regulations” by section 3(1) of the Treaty on Gibraltar and the European Union Act 2026.”.

#### *Carriers’ Liability Act 2002*

3. The Carriers’ Liability Act 2002—
  - (a) shall have effect subject to any modification necessary to ensure compatibility with the TGEU (and with section 36 above); and
  - (b) shall have no effect if and in so far as it is inconsistent with any provision of the TGEU (and with section 36 above).

4. After section 2 of that Act (*Interpretation*) insert—

**“Primacy of the Treaty on Gibraltar and the European Union.**

2A.(1) The provisions of this Act have effect subject to—

- (a) the Treaty on Gibraltar and the European Union; and
- (b) paragraph 3 of Schedule 1 to the Treaty on Gibraltar and the European Union Act 2026.”.

*Immigration, Asylum and Refugee Act*

- 5. Any function under a provision of the Immigration, Asylum and Refugee Act may be exercised for an implementation purpose.
- 6. The provisions of sections 6, 7(2), 12(1), 14(1) and (2), 15 to 38, 52, 53 and 64 of the Immigration, Asylum and Refugee Act shall not apply to persons having rights under the TGEU in so far as incompatible with those rights.
- 7. Section 11 of that Act (entry into and exit from Gibraltar) shall have no effect in so far as it is incompatible with Articles 7, 28 and 29 (or any other provision) of the TGEU.
- 8. Without prejudice to the generality of paragraphs 5 to 7, any provision of that Act—
  - (a) shall have effect subject to any modification necessary to ensure compatibility with the TGEU; and
  - (b) shall have no effect if and in so far as it is inconsistent with any provision of the TGEU.

9. After section 2 of that Act (*Interpretation*) insert—

**“Primacy of the Treaty on Gibraltar and the European Union.**

2A.(1) The provisions of this Act have effect subject to—

- (a) the Treaty on Gibraltar and the European Union; and
- (b) paragraphs 5 to 8 of Schedule 1 to the Treaty on Gibraltar and the European Union Act 2026.”.

*Port Act*

10. Any provision of the Port Act—

- (a) shall have effect subject to any modification necessary to ensure compatibility with the TGEU; and
- (b) shall have no effect if and in so far as it is inconsistent with any provision of the TGEU.

11. After section 2 of that Act (*Interpretation*) insert—

**“Primacy of the Treaty on Gibraltar and the European Union.**

2A.(1) The provisions of this Act have effect subject to—

- (a) the Treaty on Gibraltar and the European Union; and
- (b) paragraph 10 of Schedule 1 to the Treaty on Gibraltar and the European Union Act 2026.”.

*Imports and Exports Act, 1986*

12. The Imports and Exports Act, 1986—

- (a) shall have effect subject to any modification necessary to ensure compatibility with the TGEU; and
- (b) shall have no effect if and in so far as it is inconsistent with any provision of the TGEU.

13. Without prejudice to the generality of paragraph 12, import duty under the Imports and Exports Act, 1986 and any accompanying subsidiary legislation shall not be charged, levied and collected upon.

14.(1) In the Imports and Exports Act, 1986 –

- (a) after section 2 (*Interpretation*) insert—

**“Primacy of the Treaty on Gibraltar and the European Union.**

2A.(1) The provisions of this Act have effect subject to—

- (a) the Treaty on Gibraltar and the European Union; and
  - (b) paragraphs 12 and 13 of Schedule 1 to the Treaty on Gibraltar and the European Union Act 2026.”; and
- (b) after section 20(1)(c) insert “or such other place as the Collector may determine after the words “Four Corners”.

*Proceeds of Crime Act 2015*

15. In the Proceeds of Crime Act 2015, after section 184ZA, insert the following-

**“Power to amend or modify the Act, and to make subordinate legislation, to implement the Treaty on Gibraltar and the European Union and other instruments.**

184ZB.(1) For the purposes of this section, the “Treaty on Gibraltar and the European Union” has the meaning given in section 5 of the Treaty on Gibraltar and the European Union Act 2026.

- (2) The Government may by regulations, rules or orders make any provision it considers appropriate to implement—
  - (a) the Treaty on Gibraltar and the European Union or any international agreement or convention referred to in the Treaty on Gibraltar and the European Union;
  - (b) any international obligation or standard mentioned in the Treaty on Gibraltar and the European Union or in the international agreement or convention; or
  - (c) the recommendations (in any form and however described) of an international body or other body established for the purposes of, or concerned with, the promotion, adoption, supervision or enforcement of the obligations or standards described in paragraph (b).
- (3) The Government may, by regulations, amend or modify this Act for any of the purposes referred to in subsection (2).
- (4) Regulations, rules or orders under subsection (2), or regulations under subsection (2) may (among other things) be exercised by amending or modifying any provision made by or under an enactment, including this Act.
- (5) Regulations, rules or orders under subsection (2), or regulations under subsection (3) may contain any consequential, supplementary, incidental, saving and transitional provisions as the Government considers necessary, appropriate or expedient.

- (6) The limitation in section 23(b) of the Interpretation and General Clauses Act shall not apply to any regulations, rules or orders made under this section.”.

*Transport Act 1998*

16.(1) In the Transport Act 1998, after section 77 insert-

**“Power to make regulations: conventions, treaties and international agreements.**

78.(1) The Government may, by regulations, make any provision as it considers appropriate-

- (a) in respect of any matter that arises from or is incidental to this Act;
  - (b) for the implementation of-
    - (i) an international agreement, convention or treaty, or any protocol, annex or amendment in relation to any of these instruments;
    - (ii) any international obligation or standards concerned with any of the instruments referred to in subparagraph (i); or
    - (iii) recommendations (however described) of international bodies that are involved in the adoption, monitoring or promotion of these obligations and standards.
- (2) The Government may, by regulations, amend this Act for any of the purposes referred to in subsection (1)(a) or (b)(i) to (iii).
- (3) Regulations under subsections (1) and (2) may (among other things) be exercised by modifying any provision made by or under an enactment, including this Act.
- (4) Regulations made under subsections (1) or (2) may contain any consequential, supplementary, incidental, saving and transitional provisions as the Government considers necessary, appropriate or expedient.
- (5) Section 23(b) of the Interpretation and General Clauses Act does not apply to any regulations made under this section.”.

*Fair Trading Act 2023*

17. After section 32 of the Fair Trading Act 2023 (*Conditions applicable to all licences*) insert-

**“EU compliance conditions applicable to all licences.**

32A. For the purposes of implementing sections 116 and 117 of the Treaty on Gibraltar and the European Union Act 2026 and Articles 256 and 257 of the Treaty on Gibraltar and the European Union, the following TGEU Implementation Regulations shall apply to licences issued under this Act to trade in goods -

TGEU Implementation (Goods produced or placed on the market: General requirements) Regulations 2026.”.

*Mutual Legal Assistance (International) Act 2005*

18.(1) The Mutual Legal Assistance (International) Act 2005 is amended in accordance with the provisions of this paragraph.

(2) In the long title, after “JURISDICTIONS” insert-

“ , AND TO MAKE PROVISION FOR MUTUAL ASSISTANCE UNDER AN INTERNATIONAL AGREEMENT OR INTERNATIONAL CONVENTION OR TREATY, AND FOR CONNECTED PURPOSES”.

(3) In section 2-

(a) before “Central Authority” insert-

““administrative authorities” means those competent authorities in a State that have the power to commence and conduct proceedings referred to in section 3(1)(b) of this Act, in that State;”;

(b) substitute the definition of “process” with the following definition-

““process” means any summons or order issued or made by a court and includes-

(a) any other document issued or made by a court for service on parties or witnesses;

(b) any document issued by a prosecuting authority outside Gibraltar for the purposes of criminal proceedings;

(c) any document issued or made by an administrative authority in that State for proceedings in section 3(1)(b);

(d) any process issued or made for the purposes of any proceedings on an appeal before a court in that State against a decision in proceedings;”;

(c) in the definition of “State”, substitute paragraph (a) with-

“(a) that is-

- (i) party to an agreement with the Government on mutual legal assistance in criminal matters based on the principle of reciprocity, and included in Schedule 1; or
- (ii) party to, or has extension of, an international convention or international agreement or treaty, and where the context so requires, Gibraltar is deemed to be a State; or”.

(4) Substitute section 3(1)(b) for-

“(b) criminal proceedings in a State brought by administrative authorities in respect of acts that are punishable under the law of the requesting State or Gibraltar, by virtue of being administrative offences, where a decision in the proceedings may be the subject of an appeal before a court, or an investigation by administrative authorities into an act punishable under those proceedings;”;

(5) In section 5-

(a) substitute the full stop in subsection (1)(d) with a semi-colon;

(b) insert after subsection (1)(d)-

- “(e) any document issued or made by an administrative authority in that State;
- (f) any process issued or made for the purposes of any proceedings on an appeal before a court in that State against a decision by an administrative authority.”.

(6) In section 12(4)(e) insert after “alleged offence”-

“, or acts that are punishable under the law of the requesting State and requested State.”.

*Traffic Act 2005*

19.(1) The Traffic Act 2005 is amended in accordance with subsection (2).

(2) In section 61-

(a) insert “(1)” after “61.”;

(b) substitute paragraph (e) for-

“(e) for the purpose of implementing in Gibraltar –

- (i) any international agreements, conventions, treaties, protocols, annex or amendment in relation to any of these instruments concerned with road transport;
  - (ii) any international obligation or standard concerned with any of the instruments referred to in subparagraph (i);
  - (iii) recommendations (however described) of international bodies that are involved in the adoption, monitoring or promotion of these obligations and standards.”.
- (c) after subsection (1)(f) insert-
- “(2) The Government may, by regulations, amend this Act for any of the purposes referred to in subsection (1)(e) (i) to (iii).
  - (3) Regulations under subsections (1)(e) and (2) may (among other things) be exercised by amending or modifying any provision made by or under an enactment, including this Act.
  - (4) Regulations made under subsections (1) or (2) may contain any consequential, supplementary, incidental, saving and transitional provisions as the Government considers necessary, appropriate or expedient.
  - (5) Section 23(b) of the Interpretation and General Clauses Act does not apply to any regulations made under this section.”.

*Mutual Legal Assistance (Council of Europe) Act 2018*

20. In the Mutual Legal Assistance (Council of Europe) Act 2018 for “Judicial Authority” substitute “Central Authority”, wherever it appears.

## **SCHEDULE 2**

Sections 98, 99, 103, 104

### **TRANSACTION TAX AND EXCISE DUTY**

#### **PART 1**

#### **GENERAL PROVISIONS**

##### **Chargeability of transaction tax and excise duty.**

1. (1) The transaction tax, and excise duty, where applicable, shall be charged and collected-
  - (a) where goods which were in free circulation in the Union and which are moved to Gibraltar having been transported under the special transit system for Gibraltar (in accordance with the procedure provided for in Annex 19), upon presentation of the goods to customs;
  - (b) where the goods are imported from countries and territories outside the customs union into Gibraltar having been transported under the special transit system for Gibraltar (in accordance with the procedure provided for in Annex 21), upon presentation of the goods to customs;
  - (c) where, within the special procedures established in Annexes 19 and 21 (fiscal or customs procedures), Union goods are put on the market in Gibraltar or a customs debt has arisen for non-Union goods;
  - (d) when goods produced in Gibraltar leave the production site;
  - (e) when goods are found to have irregularly entered Gibraltar; or
  - (f) when goods are brought into Gibraltar by travellers in excess of the quantitative thresholds provided for in Annex 23 but are still not considered as of commercial nature upon declaration or completion of checks.
- (2) For the purposes of subparagraph (1)(d), goods are considered to have left the production site-
  - (a) when the goods are physically dispatched or transported out of the production facility by or on behalf of the producer, irrespective of the destination or purpose of such movement;
  - (b) the moment when the right to dispose of goods as owner is transferred to another party, whether by sale, exchange or any other legal means, even if the goods remain at the production facility.

## **PART 2**

### **TRANSACTION TAX**

#### **Taxable amount.**

2. (1) The taxable amount for goods imported into Gibraltar shall be determined with reference to the value for customs purposes. It shall include, insofar as these elements were not already included in the customs value—
  - (a) taxes, duties, levies and other charges (including excise duties) due by reason of importation, excluding the transaction tax to be levied; and
  - (b) incidental expenses, such as commission, packing, transport and insurance costs.
- (2) The taxable amount for goods produced in Gibraltar shall be the open market value at the time the goods leave the production site.
- (3) For the purposes of subparagraph (2), “open market value” means the full amount that, in order to obtain the goods in question at that time, a customer at the same marketing stage would have to pay, under conditions of fair competition, to a supplier at arm’s length in Gibraltar.
- (4) Where no comparable supply of goods can be ascertained, “open market value” for the purposes of subparagraph (2) means an amount that is not less than the purchase price of the goods or of similar goods or, in the absence of a purchase price, the cost price, determined at the time the goods leave the production site.

#### **Transaction tax rates.**

3. (1) The “standard rate” of the transaction tax shall be set as follows—
  - (a) in the period ending 12 months following the entry into force of the TGEU (year 1): 15%.
  - (b) in the period commencing after 12 months following the entry into force of the TGEU and ending 24 months following the entry into force of the TGEU (year 2): 16%.
  - (c) after 24 months following the entry into force of the TGEU: 17% or such rate as may be the lowest applied by any Member State at that time.
- (2) The “reduced rate” specified in column 3 applies to the goods described in column 2—

	<b>DESCRIPTION OF GOODS</b>	<b>RATE</b>
1	Goods of a kind normally intended for use in agricultural production but excluding capital goods such as machinery or buildings; and, until 1 January 2032, supply of chemical pesticides and chemical fertilisers (11).	5%
2	Live equines (11a).	5%
3	Live plants and other floricultural products, including bulbs, cotton, roots and the like, cut flowers and ornamental foliage (23).	5%
4	Children’s clothing and footwear; children’s car seats (24).	5%
5	Bicycles, including electric bicycles (25);	5%
6	Works of art, collectors’ items and antiques listed in Annex IX, Parts A, B and C of the EU VAT Directive (26).	5%
7	Tools and other equipment of a kind normally intended for use in rescue or first aid services when supplied to public bodies or non-profit-making organisations active in civil or community protection (28).	5%

(3) The “super reduced rate” specified in column 3 applies to the goods described in column 2-

	<b>DESCRIPTION OF GOODS</b>	<b>RATE</b>
1	Foodstuffs (including beverages but excluding alcoholic beverages) for human and animal consumption; live animals, seeds, plants and ingredients normally intended for use in the preparation of foodstuffs; products normally used to supplement foodstuffs or as a substitute for foodstuffs (1).	0%
2	Supply of water (2).	0%
3	Pharmaceutical products used for medical and veterinary purposes, including products used for contraception and female sanitary protection, and absorbent hygiene products (3).	0%
4	Medical equipment, appliances, devices, items, aids and protective gear, including health protection masks, normally intended for use in health care or for the use of the disabled, goods essential to compensate and overcome disability (4).	0%

5	Supply, including on loan by libraries, of books, newspapers and periodicals either on physical means of support or supplied electronically, or both, (including brochures, leaflets and similar printed matter, children's picture, drawing or colouring books, music printed or in manuscript form, maps and hydrographic or similar charts), other than publications wholly or predominantly devoted to advertising and other than publications wholly or predominantly consisting of video content or audible music; production of publications of non-profit-making organisations (6).	0%
6	Supply of solar panels to be installed on and adjacent to private dwellings, housing and public and other buildings used for activities in the public interest (10c).	0%

### **PART 3**

#### **EXCISE DUTY**

##### **Excise duty.**

#### 4. Excise duty applies as follows-

##### Section 1: ethyl alcohol and alcoholic beverages

Ethyl alcohol and alcoholic beverages shall be subject to excise duty. Ethyl alcohol and alcoholic beverages are-

- (a) Beer, which covers any product falling within CN code 2203 or any product containing a mixture of beer with non-alcoholic drinks falling within CN code 2206, in either case with an actual alcoholic strength by volume exceeding 0.5 % vol.
- (b) Still wine, which covers all products falling within CN codes 2204 and 2205, except sparkling wine as defined in No. 3, having an actual alcoholic strength by volume exceeding 1.2 % vol. but not exceeding 15 % vol., provided that the alcohol contained in the finished product is entirely of fermented origin, or having an actual alcoholic strength by volume exceeding 15 % vol and not exceeding 18 % vol provided they have been produced without any enrichment and that the alcohol contained in the finished product is entirely of fermented origin.
- (c) Sparkling wine, which covers all products falling within CN codes 2204 10, 2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09, 2204 29 10 and 2205 which are contained in bottles with "mushroom stoppers" held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more, and have an actual alcoholic strength by volume exceeding 1.2 % vol but not exceeding 15 % vol, provided that the alcohol contained in the finished product is entirely of fermented origin.

- (d) Other still fermented beverages, without prejudice to No. 6, which covers all products falling within CN codes 2204 and 2205, but not mentioned in No. 2 and No. 3, and products falling within CN code 2206, except other sparkling fermented beverages as defined in No. 5 and any product covered by No. 1-
    - (i) having an actual alcoholic strength by volume exceeding 1.2 % vol but not exceeding 10 % vol;
    - (ii) having an actual alcoholic strength by volume exceeding 10 % vol but not exceeding 15 % vol, provided that the alcohol contained in the product is entirely of fermented origin.
  - (e) Other sparkling fermented beverages, without prejudice to No. 6, which covers all products falling within CN codes 2206 00 31 and 2206 00 39 as well as products falling within CN codes 2204 10, 2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09, 2204 29 10 and 2205 not mentioned in No. 2 and No. 3, which-
    - (i) are contained in bottles with “mushroom stoppers” held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more;
    - (ii) have an actual alcoholic strength by volume exceeding 1.2 % vol, but not exceeding 13 % vol;
    - (iii) have an actual alcoholic strength by volume exceeding 13 %, but not exceeding 15 % vol, provided that the alcohol contained in the product is entirely of fermented origin.
  - (f) Intermediate products, which covers all products of an actual alcoholic strength by volume exceeding 1.2 % vol, but not exceeding 22 % vol and falling within CN codes 2204, 2205 and 2206 but not covered in preceding numbers.
  - (g) Ethyl alcohol, which covers-
    - (i) all products with an actual alcoholic strength by volume exceeding 1.2 % vol which fall within CN code 2207 and 2208, even when those products form part of a product which falls within another chapter of the CN;
    - (ii) products of CN codes 2204, 2205 and 2206 which have an actual alcoholic strength by volume exceeding 22 % vol;
    - (iii) potable spirits containing products, whether in solution or not.
5. The minimum excise duty rates for ethyl alcohol and alcoholic beverages are-

- (a) For beer 1.87 Euro per hectolitre/degree of alcohol of finished product; in assessing the charge to duty on beer, the United Kingdom, in respect of Gibraltar, may ignore fractions of a degree of actual alcoholic strength by volume,
- (b) For wine 0 Euro per hectolitre of finished product,
- (c) For fermented beverages other than wine and beer 0 Euro per hectolitre of finished product,
- (d) For intermediate products 45 Euro per hectolitre of finished product,
- (e) For ethyl alcohol 1 000 Euro per hectolitre of pure alcohol at 20°C, calculated by reference to the number of hectolitres of pure alcohol.

Section 2: electricity and energy products

- 6. Energy products and electricity shall be subject to excise duty. Energy products and electricity are those-
  - (a) falling within CN codes 1507 to 1518, if these are intended for use as heating fuel or motor fuel;
  - (b) falling within CN codes 2701 , 2702 and 2704 to 2715;
  - (c) falling within CN codes 2901 and 2902;
  - (d) falling within CN code 2905 11 00 , which are not of synthetic origin, if these are intended for use as heating fuel or motor fuel;
  - (e) falling within CN code 3403;
  - (f) falling within CN code 3811;
  - (g) falling within CN code 3817;
  - (h) falling within CN codes 3824 99 86 , 3824 99 92 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3824 99 93 , 3824 99 96 (excluding anti-rust preparations containing amines as active constituents and inorganic composite solvents and thinners for varnishes and similar products), 3826 00 10 and 3826 00 90 if these are intended for use as heating fuel or motor fuel;
  - (i) falling within CN code 2716.
- 7. When intended for use, offered for sale or used as motor fuel or heating fuel, energy products other than those for which a level of taxation is specified in this Annex shall be taxed according to use, at the rate for the equivalent heating fuel or motor fuel.

8. In addition to the taxable products listed in paragraph 1, any product intended for use, offered for sale or used as motor fuel, or as an additive or extender in motor fuels, shall be taxed at the rate for the equivalent motor fuel.
9. In addition to the taxable products listed in paragraph 1, any other hydrocarbon, except for peat, intended for use, offered for sale or used for heating purposes shall be taxed at the rate for the equivalent energy product.
10. Minimum levels of taxation are as follows-

Table A - Minimum levels of taxation applicable to motor fuels

Excise goods	Quantity
Leaded petrol CN codes 2710 12 31, 2710 12 51 and 2710 12 59	in euro per 1 000 l
Unleaded petrol CN codes 2710 12 31, 2710 12 41, 2710 12 45 and 2710 12 49	in euro per 1 000 l
Gas oil CN codes 2710 19 43 to 2710 19 48 and 2710 20 11 to 2710 20 19	in euro per 1 000 l
Kerosene CN codes 2710 19 21 and 2710 19 25	in euro per 1 000 l
LPG CN codes 2711 12 11 to 2711 19 00	in euro per 1 000 kg
Natural gas CN codes 2711 11 00 and 2711 21 00	in euro per gigajoule gross calorific value

Table B - Minimum levels of taxation applicable to motor fuels used for the following industrial and commercial purposes-

- (a) agricultural, horticultural or piscicultural works, and in forestry;
- (b) stationary motors;
- (c) plant and machinery used in construction, civil engineering and public works;
- (d) vehicles intended for use off the public roadway or which have not been granted authorisation for use mainly on the public roadway.

Goods	Quantity	Minimal tax
Gas oil CN codes 2710 19 43 to 2710 19 48 and 2710 20 11 to 2710 20 19	in euro per 1 000 l	21
Kerosene CN codes 2710 19 21 and 2710 19 25	in euro per 1 000 l	21
LPG CN codes 2711 12 11 to 2711 19 00	in euro per 1 000 kg	41
Natural gas CN codes 2711 11 00 and 2711 21 00	in euro per gigajoule gross calorific value	0.3

Table C - Minimum levels of taxation applicable to heating fuels and electricity

Goods	Quantity	Minimal tax	
		Business use	Non-business use
Gas oil CN codes 2710 19 43 to 2710 19 48 and 2710 20 11 to 2710 20 19	in euro per 1 000 l	21	21
Heavy fuel oil CN codes 2710 19 62 to 2710 19 68 and 2710 20 31 to 2710 20 39	in euro per 1 000 kg	15	15
Kerosene CN codes 2710 19 21 and 2710 19 25	in euro per 1 000 l	0	0
LPG CN codes 2711 12 11 to 2711 19 00	in euro per 1 000 kg	0	0
Natural gas CN codes 2711 11 00 and 2711 21 00	in euro per gigajoule gross calorific value	0,15	0.3
Coal and coke CN codes 2701, 2702 and 2704	in euro per gigajoule gross calorific value	0,15	0.3
Electricity CN code 2716	in euro per MWh	0,5	1,0

11. For energy products specified in the tables, with levels of taxation based on volumes, the volume is measured at a temperature of 15° C.

12. “Business use” means the use by a business entity, identified in accordance with paragraph 2, which independently carries out, in any place, the supply of goods and services, whatever the purpose or results of such economic activities.

13. The economic activities comprise all activities of producers, traders and persons supplying services including mining and agricultural activities and activities of the professions.

14. States, regional and local government authorities and other bodies governed by public law shall not be considered as business entities in respect of the activities or transactions in which they engage as public authorities. However, when they engage in such activities or transactions, they shall be considered as a business in respect of these activities or transactions where treatment as a non-business would lead to significant distortions of competition.

15. The business entity cannot be considered as smaller than a part of an enterprise or a legal body that from an organisational point of view constitutes an independent business, that is to say an entity capable of functioning by its own means.

16. Where mixed use takes place, taxation shall apply in proportion to each type of use, although where either the business or non-business use is insignificant, it may be treated as nil.

17. The United Kingdom, in respect of Gibraltar, may limit the scope of the reduced level of taxation for business use.

#### Section 3 - manufactured tobacco

18. Manufactured tobacco shall be subject to excise duties. Manufactured tobacco are-

- (a) cigarettes;
- (b) cigars and cigarillos;
- (c) smoking tobacco-
  - (i) fine-cut tobacco for the rolling of cigarettes;
  - (ii) other smoking tobacco.

19. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria of cigarettes, cigars, cigarillos and smoking tobacco respectively shall be treated as cigarettes, cigars, cigarillos and smoking tobacco.

20. Cigarettes shall be subject to *an ad valorem* excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty (of between 7.5% and 76.5% of the total tax burden) calculated per unit of the product.

21. The overall excise duty (specific duty and *ad valorem* duty excluding VAT) shall not be less than EUR 115 per 1000 cigarettes. The price difference resulting from the

applicable overall excise duty shall not exceed 0.80 EUR or 15% per packet of cigarettes, whichever leads to the lower price differential.

The rate of the *ad valorem* excise duty and the amount of the specific excise duty must be the same for all cigarettes.

The minimum excise duty for manufactured tobacco other than cigarettes shall be-

- (a) either an *ad valorem* duty calculated on the basis of the maximum retail selling price of each product; or
- (b) a specific duty expressed as an amount per kilogram, or in the case of cigars and cigarillos, alternatively for a given number of items; or
- (c) a mixture of both, combining an *ad valorem* element and a specific element.

22. The overall excise duty (specific duty and *ad valorem* duty excluding transaction tax), expressed as a percentage, as an amount per kilogram or for a given number of items, shall be at least equivalent to the rates or minimum amounts laid down for-

- (a) cigars or cigarillos: 15% of the retail selling price inclusive of all taxes or EUR 12 per 1 000 items or per kilogram;
- (b) fine-cut smoking tobacco intended for the rolling of cigarettes: 50 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or EUR 60 per kilogram;
- (c) other smoking tobacco: 20 % of the retail selling price inclusive of all taxes, or EUR 22 per kilogram.

23. For the purposes of paragraphs 3 and 5 the weighted average retail selling price of cigarettes and fine-cut smoking tobacco intended for the rolling of cigarettes shall be calculated by reference to the total value of all cigarettes and fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, based on the retail selling price including all taxes, divided by the total quantity of cigarettes and fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.

24. The rates referred to in paragraphs 4 and 5 shall be effective for all products belonging to the group of manufactured tobacco concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.

**EXPLANATORY MEMORANDUM**

This Act implements the Agreement in respect of Gibraltar between the European Union and the European Atomic Energy Community of the one part and the United Kingdom of Great Britain and Northern Ireland in respect of Gibraltar, of the other part.

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**Printed by the Gibraltar Chronicle Printing Limited  
Unit 3, New Harbours  
Government Printers for Gibraltar,  
Copies may be purchased at 6, Convent Place, Price. £6.50.**