



PRESS RELEASE

No: 680/2018

Date: 8th November 2018

Armed Forces (Gibraltar) Bill 2018 - Speaking Note

The Chief Minister

Mr Speaker,

I take great pleasure in bringing this Bill to the Parliament.

The support of our Armed Forces, British Armed Forces, is one of the key features of our unique and enduring relationship with the United Kingdom.

It is one of the key features of our role as one of the British family of nations.

And, indeed, it is the key strategic feature that makes this Rock of ours such a geopolitically relevant asset to the United Kingdom and so desirable to others.

It is in that context that we are today going to be able to appreciate in this Parliament a part of the growth and maturity of our self-government in the past three decades.

And that growth and that maturity, Mr Speaker, has manifested itself in every iteration of our successive Constitutions since the Second World War.

In particular, it started to manifest, exactly thirty years ago, when the GSLP first took over the Executive branch in Gibraltar and started the work of *de facto* Constitutional reform.

Mr Speaker, until 2006 the presence of British Armed Forces in Gibraltar had been covered by successive Armed Forces Act of the United Kingdom since 1952 as periodically refreshed from time to time.

The UK Acts were extended to Gibraltar in the UK legislation itself.

In its 2011 iteration, the mechanism for the extension of the application of the Act to overseas territories was amended, so that it was an Order in Council would provide for this, as opposed to it being contained within the Act itself.



Honorable Members should know that in the United Kingdom there is a convention, arising from the times of the Civil War, that Parliament must renew its Armed Forces legislation every five years.

There was a coincidence in the refreshment of that Act in 2006 with our 2006 Constitution.

In fact, as a result of the current iteration of our Constitution, Honorable Members will also know that there is a Convention between Gibraltar and the United Kingdom that no legislative acts are done by the UK for Gibraltar without Gibraltar's express consent.

That has resulted, Mr Speaker, in the sparse use of Orders in Council mechanism in respect of Gibraltar.

For that reason, the 2006 Armed Forces Act was NOT extended to Gibraltar.

There was agreement between the then administration of the Gibraltar Government that a piece of Gibraltar legislation would be enacted to provide the same cover as the Armed Forces Act 2006.

The Honorable Mr Feetham will recall that this was one of the matters on which he and Sir Peter Caruana kindly briefed the Deputy Chief Minister and me the week after the last election in their "hand over" session with us at No 6 Convent Place in December 2011, just days after the glorious 'New Dawn' of socialist and liberal government, Mr Speaker.

This was the position set out in both Houses of Parliament in the United Kingdom when these UK Acts were being considered in 2006, its refreshment in 2011 and its latest iteration in 2016.

With the agreement of the current Government that I lead, the UK's 2016 Act has also not been extended to Gibraltar given our commitment to make a Gibraltarian law for this purpose.

The net effect of that is that whilst a person serving in the United Kingdom Armed Forces is subject to the terms of the Act, and it applies wherever in the world the service person is, executive powers are not available in Gibraltar in the absence of an Act of this Parliament.

Indeed, Mr Speaker, I think it is important that I should quote for Honorable Members and for Hansard the references made by the Secretary of State for Defence in his presentation of the Second Reading of the Bill for the Armed Forces Act 2016 in the House of Commons. This is a clear and most recent statement of the position as seen from the United Kingdom government as to the territorial ambit of the 2016 UK Act.

The Rt Hon Mr Fallon said this:

"Clause 13 brings the Armed Forces Act 2006 back into force in the Isle of Man and British overseas territories except for Gibraltar. Under United Kingdom law, the 2006 Act has always applied to members of the armed forces, wherever in the world they are operating, and that will remain the case. That means that a member of the armed forces commits an offence under UK law if they do something in another jurisdiction which, had they done it in England or Wales, would have been a criminal offence.



In addition, the 2006 Act originally formed part of the law of the Isle of Man and the British overseas territories. However, the Act expired in those jurisdictions in 2011. Clause 13 and the schedule to the Bill revive the Act in those jurisdictions so that, as it currently has effect in the UK, it will also be in force there. That ensures that things that members of the armed forces might do under the 2006 Act in those jurisdictions, such as the exercise of service police powers of arrest or search, would be lawful there not only as a matter of UK law but as a matter of the local law. It also ensures that the civilian authorities within those jurisdictions can do things under the 2006 Act which they might not otherwise have powers to do under the local law, such as the arrest of a person suspected of a service offence under a warrant issued by a judge advocate.

An exception is being made for Gibraltar. This is because we are currently consulting the Government of Gibraltar on how best to extend the provisions of the 2006 Act—and, therefore, of the Bill—to that territory.”

Mr Speaker, after many years of negotiation and discussion, we have now agreed a text of a proposed Armed Forces (Gibraltar) Act, which is in this House for debate today.

Mr Speaker, it is also undoubtedly true that the events of February 2016 at Gibraltar airport – when a stand-off ensued between officers of the Royal Gibraltar Police and officers of the Ministry of Defence - brought into sharp focus a jurisdictional gap in our law in respect of the presence in Gibraltar of Her Majesty's Armed Forces.

This Bill addresses those issues by applying in Gibraltar certain provisions of the UK's Armed Forces Act 2006.

It does so whilst respecting the primacy of the Royal Gibraltar Police as the lead law enforcement agency throughout Gibraltar and the Gibraltar Constitution.

It could not be otherwise Mr Speaker and this Government and I am sure every member of this Parliament would not countenance any other solution.

Indeed, if I may say so, I think that the actions of the Royal Gibraltar Police on the day in question, have been demonstrated to have been entirely proper and a conviction has since resulted, Mr Speaker, outside of Gibraltar.

Honorable Members will also be aware that by Section 35(2) our Constitution provides that:

“Except with the consent of the Governor, acting in his discretion, signified by the Chief Minister, the Parliament shall not proceed upon any bill (including any amendment to a bill) that, in the opinion of the Governor, acting in his discretion, signified as aforesaid, concerns a matter for which he is responsible under section 47(1).”

Mr Speaker, those of course include defence and security. I am able to signify that consent to the Parliament.



And so, now, Mr Speaker, we are about to take the step of seeing through that commitment to make in this Parliament and for ourselves, the law that will regulate the presence of the British Armed Forces in Gibraltar.

This is an important step in the emancipation of the People of Gibraltar.

At the time of the last World War, Gibraltarians were oft not best treated by some parts of the hierarchy of the Armed Forces.

Many are the stories of Gibraltarians having to get off the pavement for a British officer.

There are photographs to remind us of the different use of sanitary facilities for UK based civilians of the Ministry of Defence, as opposed to Gibraltarians and other 'aliens'.

Those days are long gone.

Our relationship is now one that arises from our common British Citizenship.

A relationship of partnership and complicity in pursuit of British foreign policy interests.

After the last world war, Gibraltarian families who had been evacuated returned to Gibraltar. Self-government developed. The Ministry of Defence, who had long been the guardians for Britain of a Fortress that was also our home, slowly ceded control of it to the emerging civilian authorities.

The 'useless mouths' that had been removed from their homeland had returned to become masters in this place.

Slowly, civilian self-government established itself in Gibraltar.

Parts of the estate previously controlled exclusively by the Ministry of Defence were released to the Gibraltar authorities.

A City Council became a Government.

Our nation was listed as one of the 'non-self governing territories' subject to United Nations' decolonisation process.

The right to our land and the right to self-determination became the rallying cries of the Gibraltarians.

Successive governments entered into successive 'Lands Memoranda' with the Ministry of Defence as more and more land in our small geography has become surplus to defence requirements and has been made available to the Gibraltar Government.

No longer do our People inhabit only one third of the Rock, with the rest taken over by the Armed Forces.



That ratio is now a thing of the past.

And now, in a final step in this important process of this fortress passing from military to civilian control, the regulation of the British Armed Forces that had previously ruled the roost in this place, will arise from legislation passed in a Parliament elected by direct universal suffrage of the People of Gibraltar.

Mr Speaker, for all of those reasons, this is a seminal moment and all Honorable Members will want to reflect on it as such.

Application of the Bill *ratione personae*.

Moving now to the substance of the Bill, it is important that Honorable Members should bear in mind that the Bill will only apply to two very specific types of persons.

The first category are persons who are subject to service law, a term which is defined in Clause 2 (2) (a) and which effectively means members of the UK Armed Forces; and

The second category are civilians who are subject to service discipline, a term which is defined in Clause 2 (2) (b) and which effectively means civilians with a close family or employment nexus to the UK Armed Forces.

I shall be referring to these two categories of persons collectively as “persons subject to the Act”.

Importantly, Mr Speaker, technical discussions are currently ongoing as to the application of the Act to members of the Royal Gibraltar Regiment.

The relevant provisions of the Bill that will apply the Act to the Royal Gibraltar Regiment (Clauses 2 (2) (a) (ii) and (iii), (c) and (d)) will be brought into effect once those discussions have been concluded.

Clause 4 makes it clear that the Act will not apply to ordinary civilians or to civilian property and Clause 25 makes it clear that the Act will not affect any right conferred upon any person by the Gibraltar Constitution.

Analysis of the Act.

The Act, in fact, comprises 5 Parts.

Part 1 (Clauses 1 and 2)

Part 1 contains the interpretation clause setting out the definitions of the key terms of the Act. It also contains provisions for the entry into force of the Act including the power for differential commencement dates, which is relevant to my comments a moment ago in relation to the Royal Gibraltar Regiment.



Part 2 (Clauses 3-17)

Part 2 is the most important part of the Act.

Clause 3 makes provision for the application of the UK's Armed Forces Act in Gibraltar and Clause 5 confirms that service authorities shall have jurisdiction in Gibraltar in relation to persons subject to the Act.

Clause 4 specifically provides for the Act not to apply to civilians.

Section 4 states that: "*nothing in this Act is to be construed as permitting the exercise by any service court or service authority of any jurisdiction, powers, functions or competences under the Armed Forces Act over a person who is a civilian.*"

Additionally, the section provides that: "*the exercise of any jurisdiction, powers, functions or competences under the Armed Forces Act in Gibraltar does not limit any right of a civilian in relation to any civilian property.*"

As I shall explain Mr Speaker, the remaining provisions of Part 2 set out the cases where the RGP and the military police shall exercise exclusive, primary or concurrent jurisdiction in Gibraltar in accordance with the mechanisms for close cooperation between both police forces that the Act establishes.

Clause 7 grants the service authorities exclusive jurisdiction with respect to the offences punishable under forces law but not otherwise under the laws of Gibraltar. A prime example of such an offence would be where a soldier is absent without leave ("AWOL").

Clause 8 sets out the cases where the service authorities enjoy primacy of jurisdiction. That is, the cases where a person subject to the Act commits an offence that is punishable under both forces law and the laws of Gibraltar and jurisdiction is granted to the service authorities.

The main criterion for determining such primacy in favour of the service authorities is that the offence arose out of and in the course of that person's duty as a member of Her Majesty's forces or as a civilian subject to service discipline. Other cases concern offences committed against other military persons or against military property and offences against the security of the United Kingdom.

In all other cases, primacy will vest with the RGP (Clause 9). So, for instance, where a soldier commits an offence against a civilian or civilian property, primacy of jurisdiction will vest with the RGP.

As an example of the spirit of closer cooperation between both police authorities that will result from this Act, and that I am sure all of us will welcome this, Mr Speaker, Clause 10 provides that one police force may waive jurisdiction in favour of the other where they both consider that the circumstances so require.



That spirit of closer cooperation will best be exemplified by the requirement set out in Clause 13 that the Commander of British Forces in Gibraltar and the Commissioner of Police shall enter into an operational protocol between their respective forces setting out the circumstances and manner in which jurisdiction, power and competence shall be exercised by one or other of them or concurrently. Such protocols between the civilian and service authorities exist in the UK and in the Sovereign Base Areas in Cyprus and one has already been agreed for Gibraltar. It will become effective on the same day as the Act enters into force. It is the first time that such a Protocol will exist in Gibraltar and I greatly welcome it.

The Protocol is intended to support the practical application of the Act by providing a guide to the coordination of approach to policing in Gibraltar between the RGP and the service police. Both forces have shown their commitment to establish close and regular support, consultation and co-operation which they have recognised as being crucially important and essential in order to promote a clear and effective working relationship between them to achieve their common purpose of upholding law and order in Gibraltar.

I am aware that a lot of work has gone into the drafting of the Protocol and I would like to express my deep gratitude to both police forces for the efforts they have made to reach agreement on the Protocol and to better understand each other's concerns.

In fact, here it is worth just reflecting the deep and sincere gratitude of Her Majesty's Government of Gibraltar to those who have delivered this act.

Principle thanks must go to the Attorney General, Michael Llamas QC, who has spent many hours working with Vice Admiral Tony Radakin on this sensitive matter, to whom we must also record our thanks. Current and former Commissioners of the Royal Gibraltar Police Ian McGrail and Eddie Yome and their respective teams have worked to deliver a sensible protocol with their MoD colleagues, together with, if I may say so, Command Secretary Richard Johnson. Their sensible approach makes the workings of these new rules possible.

Mr Speaker, I am leaving a copy of the protocol agreed between the RGP and the MoD in the Ante Chamber for Members to be able to consult its terms if they wish.

Central to the Government's own concerns in this area has been the delicate issue of policing outside MoD Premises. The guiding principle in this respect is set out in Clause 12 of the Bill, which provides that, as the general rule, the service police will not exercise any power of entry, search or seizure outside MoD Premises in Gibraltar. This is supplemented by the Protocol which establishes that outside MoD Premises the service police shall be employed subject to such arrangements with the RGP as are set out in the Protocol and only in so far as such employment is necessary to maintain discipline and order among persons subject to the Act.

This is itself consistent with the Agreement regarding the Status of Forces of Parties to the North Atlantic Treaty Organisation of 1951 which applies to Gibraltar pursuant to the UK's Visiting Forces Act 1952, which was extended to Gibraltar in those days by Order in Council in 1954.

Schedule 1 of the Protocol contains a clarificatory agreed list and a map of the sites which currently constitute MoD Property for the purposes of determining where that is in the geography.



The remaining provisions of Part 2 contain further aspects for cooperation such as how the RGP will give effect to a warrant issued by a judge advocate in the UK under section 313 of the UK's Armed Forces Act for the arrest of a person subject to the Act (Clause 11), procedures for detention pending decision on jurisdiction (Clause 14), safeguards against double jeopardy (Clause 15) and a reiteration of the jurisdiction of the civilian courts and authorities in Gibraltar (Clause 17).

Part 3 (Clauses 18-22)

Part 3 of the Bill deals with desertion and absence without leave ("AWOL"). It creates certain offences relating to the armed forces, including where a civilian knowingly aids or abets a person subject to service law to commit the offences of desertion or absence without leave (Clauses 18 and 19).

It also grants police officers of the RGP powers to arrest any person who is unlawfully at large or who is reasonably suspected of being an unlawful absentee and to deal with such persons where they surrender themselves to a police officer (Clauses 20, 21 and 22).

Parts 4 and 5 (Clauses 23-22)

The final Parts of the Bill deal with various general provisions that enhance the cooperation between the RGP and the service police, such as a person in service custody being detained in Gibraltar's Prison pending his/her removal from Gibraltar (Clause 24).

Clause 25, as I said earlier, makes it clear that the Act will not affect any right conferred upon any person by the Gibraltar Constitution.

Mr Speaker this is a hugely important clause in the assertion of the jurisdictional primacy of the Gibraltar Constitution.

I think it is important to reflect it entirely in this debate and I therefore propose to take members through the whole of this section.

The section provides as follows:

Rights and obligations under the Constitution and other rights.

25.(1) No provision in this Act may be construed as in any way affecting any right conferred upon any person by the Constitution, and any act whether undertaken pursuant to a provision within this Act or which is undertaken in Gibraltar pursuant to the Armed Forces Act, is subject to the Constitution.

(2) For the avoidance of doubt, a person may seek to enforce any right or obligation conferred by or imposed under the Constitution irrespective of anything provided for in this Act or the Armed Forces Act.

(3) No provision in this Act or in the Armed Forces Act affects the civilian court's powers to make



orders with respect to any application before it concerning a matter provided for in the Constitution.

(4) For the avoidance of doubt, a person who by virtue of this Act or by virtue of the application of forces law by this Act may apply to the Supreme Court where that person believes that any right conferred by the Constitution has been violated.

(5) The Supreme Court may, on hearing an application under subsection (4), make such orders as it deems fit, including any temporary order.

And most importantly, Mr Speaker,

(6) Nothing in this Act or in the Armed Forces Act shall affect the right of a person who is detained at a place against that person's will from applying to the Supreme Court for a writ of *habeas corpus* or other prerogative remedy."

Mr Speaker, there can be no clearer statement of the absolute primacy of the Gibraltar Constitution, than section 25 of this bill.

Clause 26 allows the Chief Minister, in agreement with the Governor, to make subsidiary legislation for the administration of the Act. This consultation is required given the Section 35(2) nature of this legislation.

Clause 27 preserves the immunity of the Crown in right of Her Majesty's Government of Gibraltar and of public officers in Gibraltar for any damages or anything done or omitted by any service authority under the Armed Forces Act.

That is the extent of the Act.

Importantly, Mr Speaker, I want to reflect what I am sure is the position of every member of this House in support of that particular part of the British Army that is so innately a part of our DNA, the Royal Gibraltar Regiment.

The Barbarians, as they are known by nickname in the British Army.

They are part of the core of what Gibraltar is all about and part of how we express our Britishness and our British citizenship also.

Now they are providing services beyond Gibraltar for extended periods.

Away from their families.

Taking risks.

Just like all other members of the British Armed Forces.



As far as Her Majesty's Government of Gibraltar is concerned there is no reason whatsoever why they should be dealt with in any manner that is not entirely in keeping with the manner of treatment of all other members of the British Army; X factor included.

Mr Speaker, more generally now, I think this Act is the product of the work of all Chief Ministers and Ministers of Gibraltar, starting from our first Chief Minister, Sir Joshua, through Sir Bob Peliza, a military man himself, yourself, Sir Joe Bossano – who led the de facto Constitutional revolution of 1988 – Sir Peter Caruana who delivered the 2006 Constitution as well as the contribution of the Government that I lead.

This is the product of our Constitutional maturity and the growth of our democracy as a nation. It is the effect of the work of every single parliamentarian in their own way as we have grown our democracy and matured it to its current state.

It is the effect of the work of every Gibraltarian that has worked to mature our nation as we – the civilians who flocked to the rock in the aftermath of the British liberation of 1704 – now assert by our law what the rights of the British Armed Forces are on this OUR ROCK.

That is the normal balance in any modern, constitutional, democratic monarchy.

And it is, from today, the position in Gibraltar.

We will cross a rubicon today.

A massive coming of age in many respects.

And we create these rights for our British Armed Forces with great pleasure, Mr Speaker, because the British Armed Forces are our Armed Forces too.

They are the defenders of this Rock.

They are defenders of freedom and justice around the world.

They are the best of Britain.

And in so being they are the best of us.

Mr Speaker, I heartily, proudly and I beg to say historically, commend this seminal Bill to the House and I congratulate this nation of ours for this collective achievement.