

SCHEDULE 4

ENTITLEMENT TO REGISTRATION AND LEGAL INCAPACITY TO VOTE IN GIBRALTAR

PART 2

ENTITLEMENT TO REGISTRATION AND LEGAL INCAPACITY

Legal incapacity

Legal incapacity to vote of offenders in prison etc

3.—(1) A convicted person during the time that he is detained in a penal institution in Gibraltar in pursuance of his sentence or unlawfully at large when he would otherwise be so detained is legally incapable of voting at any European Parliamentary election.

(2) For this purpose—

- (a) “convicted person” means any person found guilty of an offence (whether under the law of Gibraltar or not), including a person found guilty by a court-martial, but not including a person dealt with by committal or other summary process for contempt of court; and
- (b) a person detained for default in complying with his sentence shall not be treated as detained in pursuance of the sentence, whether or not the sentence provided for detention in the event of default, but a person detained by virtue of a conditional pardon in respect of an offence shall be treated as detained in pursuance of his sentence for the offence.

(3) It is immaterial for the purposes of this paragraph whether a conviction or sentence was before or after the coming into force of these Regulations.

Legal incapacity to vote of offenders detained in mental hospitals

4.—(1) A person to whom this paragraph applies is, during the time that he is—

- (a) detained at any place in pursuance of the order by virtue of which this paragraph applies to him, or
- (b) unlawfully at large when he would otherwise be so detained,

legally incapable of voting at any European Parliamentary election.

(2) This paragraph applies to the following persons—

- (a) any person in respect of whom an order has been made under section 251, 252 or 256(1) of the Criminal Procedure Ordinance;
- (b) a convicted person, within the meaning of paragraph 3, in respect of whom an order has been made under section 257 of the Criminal Procedure Ordinance; and
- (c) any person in respect of whom an admission order has been made under section 116B of the Army Act 1955(1).

(3) Any reference in any of sub-paragraphs (2)(a) to (c) to a provision of any Ordinance or Act includes a reference to any earlier provision (whether of that Ordinance or Act as originally enacted or made or as previously amended, or otherwise) to the like effect.

(1) 1955 c. 18; section 116B was inserted by paragraph 1 to Schedule 2 to the Armed Forces Act 1996 (c. 46).

Persons under the age of 18

Entitlement to registration of person under the age of 18

5.—(1) A person otherwise qualified for registration is (despite sections 15(1)(d) and 16(1)(d) and (2)(d) of the 2003 Act) entitled to be registered in the register if he will attain voting age before the end of the period of 12 months beginning with the 1st December next following the relevant date, but—

- (a) his entry in the register shall give the date on which he will attain that age; and
 - (b) until the date given in the entry he shall not by virtue of the entry be treated as an elector for any purposes other than those of an election the date of the poll for which is the date so given or any later date.
- (2) In this paragraph “the relevant date”, in relation to a person, means—
- (a) the date on which an application for registration is made (or, by virtue of paragraph 6, is treated as having been made) by him;
 - (b) in the case of a person applying for registration in pursuance of a declaration of local connection or a service declaration, the date on which the declaration was made.

Circumstances in which an application for registration in the Gibraltar register may be treated as having been made

6. Where—

- (a) in connection with a canvass under paragraph 9 of Schedule 1 to the European Parliamentary Elections Ordinance 2004, the form completed in respect of any address specifies any person as a person who is entitled to be registered in the register, and
- (b) that person is not for the time being registered in the register in respect of that address,

he shall be treated as having made, on the canvass date (within the meaning of that Ordinance) in question, an application for registration in the register in respect of that address.

Alteration of Gibraltar register: pending elections

7.—(1) An alteration in a published version of the register which takes effect under paragraph 12(2) of Schedule 1 to the European Parliamentary Elections Ordinance 2004 after the final nomination day for a European Parliamentary election shall not have effect for the purposes of that election unless the alteration—

- (a) is made in consequence of a decision or determination falling within paragraph 12(1)(c) or (d) of that Schedule; and
- (b) takes effect on or before the fifth day before the date of the poll.

(2) In this paragraph—

“the final nomination day”, in relation to such an election, means the last day on which nomination papers may be delivered to the returning officer for the purposes of the election.

Residence

Residence: general

8.—(1) This paragraph applies where the question whether a person is resident at a particular address on the relevant date for the purposes of section 16(1)(a) of the 2003 Act falls to be determined for the purposes of that section.

(2) Regard shall be had, in particular, to the purpose and other circumstances, as well as to the fact, of his presence at, or absence from, the address on that date.

For example, where at a particular time a person is staying at any place otherwise than on a permanent basis, he may in all the circumstances be taken to be at that time—

- (a) resident there if he has no home elsewhere, or
- (b) not resident there if he does have a home elsewhere.

(3) For the purpose of determining whether a person is resident in a dwelling on the relevant date for the purposes of section 16(1)(a) of the 2003 Act, his residence in the dwelling shall not be taken to have been interrupted by reason of his absence in the performance of any duty arising from or incidental to any office, service or employment held or undertaken by him if—

- (a) he intends to resume actual residence within six months of giving up such residence, and will not be prevented from doing so by the performance of that duty; or
- (b) the dwelling serves as a permanent place of residence (whether for himself or for himself and other persons) and he would be in actual residence there but for his absence in the performance of that duty.

(4) For the purposes of sub-paragraph (3) any temporary period of unemployment shall be disregarded.

(5) Sub-paragraph (3) shall apply in relation to a person's absence by reason of his attendance on a course provided by an educational institution as it applies in relation to a person's absence in the performance of any duty such as is mentioned in that subsection.

(6) Subject to paragraphs 10 and 11, a person who is detained at any place in legal custody shall not, by reason of his presence there, be treated for the purposes of section 16(1)(a) of the 2003 Act as resident there.

Residence: merchant seamen

9. At any time when a merchant seaman is not resident in Gibraltar and would have been resident there but for the nature of his occupation, he shall be entitled to be treated for the purposes of section 16(1)(a) of the 2003 Act as resident—

- (a) at any place at which he would have been resident but for the nature of his occupation; or
- (b) at any hostel or club providing accommodation for merchant seamen at which he commonly stays in the course of his occupation.

For this purpose “merchant seaman” means any person not having a service qualification whose employment or the greater part of it is carried out on board seagoing ships, and includes any such person while temporarily without employment.

Residence: patients in mental hospitals who are not detained offenders or on remand

10.—(1) This paragraph applies to a person who—

- (a) is a patient in a mental hospital in Gibraltar (whether or not he is liable to be detained there), but
- (b) is not a person to whom paragraph 4 or paragraph 11 applies.

(2) A person to whom this paragraph applies shall (subject to sub-paragraph (5)) be regarded for the purposes of section 16(1)(a) of the 2003 Act as resident at the mental hospital in question if the length of the period which he is likely to spend at the hospital is sufficient for him to be regarded as being resident there for the purposes of electoral registration.

(3) A person registered in the register in pursuance of an application for registration made by virtue of sub-paragraph (2) is entitled to remain so registered until—

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- (a) the end of the period of 12 months beginning with the date when the entry in the register first takes effect, or
- (b) another entry made in respect of him in the register takes effect (whether or not in pursuance of an application made by virtue of sub-paragraph (2)),

whichever first occurs.

(4) Where the entitlement of such a person to remain so registered terminates by virtue of sub-paragraph (3), the registration officer concerned shall remove that person's entry from the register, unless he is entitled to remain registered in pursuance of a further application made by virtue of sub-paragraph (2).

(5) Sub-paragraph (2) shall not be taken as precluding the registration of a person to whom this paragraph applies—

- (a) by virtue of his residence at some place other than the mental hospital in which he is a patient, or
- (b) in pursuance of a declaration of local connection.

(6) In this paragraph "mental hospital" means any establishment (or part of an establishment) maintained wholly or mainly for the reception and treatment of persons suffering from any form of mental disorder; and for this purpose "mental disorder", has the same meaning as in section 3(1) of the Mental Health Ordinance.

Residence: persons remanded in custody etc

11.—(1) This paragraph applies to a person who is detained at any place in Gibraltar pursuant to a relevant order or direction and is so detained otherwise than after—

- (a) being convicted of any offence, or
- (b) a finding in criminal proceedings that he did the act or made the omission charged.

(2) A person to whom this paragraph applies shall (subject to sub-paragraph (5)) be regarded for the purposes of section 16(1)(a) of the 2003 Act as resident at the place at which he is detained if the length of the period which he is likely to spend at that place is sufficient for him to be regarded as being resident there for the purposes of electoral registration.

(3) A person registered in the register in pursuance of an application for registration made by virtue of sub-paragraph (2) is entitled to remain so registered until—

- (a) the end of the period of 12 months beginning with the date when the entry in the register first takes effect, or
- (b) another entry made in respect of him in the register takes effect (whether or not in pursuance of an application made by virtue of sub-paragraph (2)),

whichever first occurs.

(4) Where the entitlement of such a person to remain so registered terminates by virtue of sub-paragraph (3), the registration officer concerned shall remove that person's entry from the register, unless he is entitled to remain registered in pursuance of a further application made by virtue of sub-paragraph (2).

(5) Sub-paragraph (2) shall not be taken as precluding the registration of a person to whom this section applies—

- (a) by virtue of his residence at some place other than the place at which he is detained, or
- (b) in pursuance of a declaration of local connection.

(6) In this section "a relevant order or direction" means—

- (a) a remand or committal in custody;

- (b) a remand to a hospital under section 249(6)(c), 250(4) or (5) of the Criminal Procedure Ordinance;
- (c) a direction for removal to a hospital under section 257 of that Ordinance.

Notional residence: declarations of local connection

- 12.**—(1) A declaration under this paragraph (“a declaration of local connection”)—
- (a) may be made only by a person to whom this paragraph applies, but
 - (b) may be made by such a person despite the fact that by reason of his age he is not entitled to vote.
- (2) This paragraph applies to any person who on the date when he makes such a declaration is—
- (a) a person to whom paragraph 10 applies and who would not be entitled to be registered by virtue of residence at any place other than the mental hospital (within the meaning of that paragraph) at which he is a patient, or
 - (b) a person to whom paragraph 11 applies and who would not be entitled to be registered by virtue of residence at any place other than the place at which he is detained as mentioned in sub-paragraph (1) of that paragraph, or
 - (c) a person who does not fall within paragraph (a) or (b) (and is not otherwise in legal custody) and who is not, for the purposes of section 16(1)(a) of the 2003 Act, resident at any address in Gibraltar (a “homeless person”).
- (3) A declaration of local connection shall state—
- (a) the name of the declarant and either—
 - (i) an address to which correspondence for him from the registration officer or the returning officer can be delivered, or
 - (ii) that he is willing to collect such correspondence periodically from the registration officer’s office;
 - (b) the date of the declaration;
 - (c) that on the date of the declaration the declarant falls into one of the categories of persons to whom this paragraph applies, specifying—
 - (i) the category in question, and
 - (ii) (in the case of a person falling within sub-paragraph (2)(a) or (b)) the name and address of the mental hospital at which he is a patient or (as the case may be) of the place at which he is detained;
 - (d) the required address (as defined by sub-paragraph (4));
 - (e) the nationality of the declarant on the date of the declaration confirming that he is a Commonwealth citizen or a relevant citizen of the Union;
 - (f) whether the declarant has on the date of the declaration attained the age of 18 years, and, if he has not, the date of his birth.
- (4) For the purposes of this paragraph “the required address” is—
- (a) in the case of a person falling within sub-paragraph (2)(a) or (b)—
 - (i) the address in Gibraltar where he would be residing if he were not such a patient, or detained, as mentioned in that provision, or
 - (ii) if he cannot give such an address, an address in Gibraltar at which he has resided;

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(b) in the case of a homeless person, the address of, or which is nearest to, a place in Gibraltar where he commonly spends a substantial part of his time (whether during the day or at night).

(5) If a person—

(a) makes a declaration of local connection stating more than one address under subparagraph (3)(d), or

(b) makes more than one declaration of local connection bearing the same date and stating different addresses under that provision,

the declaration or declarations shall be void.

(6) A declaration of local connection may be cancelled at any time by the declarant.

(7) A declaration of local connection shall be of no effect unless it is received by the registration officer within the period of three months beginning with the date of the declaration.

Effect of declaration of local connection

13.—(1) Where a person’s declaration of local connection is in force when he applies for registration, he shall be regarded for the purposes of section 16(1)(a) of the 2003 Act as resident on the date of the declaration at the address stated in it in accordance with paragraph 12.

(2) A person registered in the register in pursuance of a declaration of local connection is entitled to remain so registered until—

(a) the end of the period of 12 months beginning with the date when the entry in the register first takes effect,

(b) the declaration is cancelled under paragraph 12(6), or

(c) another entry made in respect of him in the register takes effect (whether or not in pursuance of a declaration of local connection),

whichever first occurs.

(3) Where the entitlement of such a person to remain so registered terminates by virtue of subparagraph (2), the registration officer shall remove that person’s entry from the register, unless he is entitled to remain registered in pursuance of a further declaration of local connection.

(4) This paragraph shall not be taken as precluding the registration of a person falling within paragraph 12(2)(a) or (b) in pursuance of an application made by virtue of paragraph 10(2) or 11(2).

Overseas electors

Registration of overseas electors

14.—(1) A person qualifies for registration in Gibraltar as an overseas elector, for the purposes of section 16(2)(a) of the 2003 Act and these Regulations, if—

(a) he makes a declaration under and in accordance with paragraph 15; and

(b) on that date (“the relevant date”)—

(i) he is not resident in Gibraltar; and

(ii) he satisfies one of the following sets of conditions.

(2) The first set of conditions is that—

(a) he was included in the register in respect of an address at a place that is situated within Gibraltar,

- (b) that entry in the register was made on the basis that he was resident, or to be treated for the purposes of registration as resident, at that address,
 - (c) that entry in the register was in force at any time falling within the period of 15 years ending immediately before the relevant date, and
 - (d) subsequent to that entry ceasing to have effect no entry was made in the register on the basis that he was resident, or to be treated for the purposes of registration as resident, at any other address.
- (3) The second set of conditions is that—
- (a) he was last resident in Gibraltar within the period of 15 years ending immediately before the relevant date,
 - (b) he was by reason only of his age incapable of being included in the register in force on the last day on which he was resident in Gibraltar, and
 - (c) the address at which he was resident on that day was at a place that is situated within Gibraltar and a parent or guardian of his was included, in respect of that address, in the register in force on that day.

Overseas elector's declaration

15.—(1) A declaration made by an elector under and in accordance with this paragraph is referred to in these Regulations as an “overseas elector's declaration”.

(2) A person registered in the register in pursuance of an overseas elector's declaration is entitled to remain so registered until—

- (a) the end of the period of 12 months beginning with the date when the entry in the register first takes effect,
- (b) the declaration is cancelled under sub-paragraph (5), or
- (c) any entry made in respect of him in the register takes effect otherwise than in pursuance of an overseas elector's declaration,

whichever first occurs; and, where the entitlement of such a person to remain so registered terminates by virtue of this sub-paragraph, the registration officer shall remove that person's entry from the register, unless he is entitled to remain registered in pursuance of a further overseas elector's declaration.

(3) An overseas elector's declaration must state—

- (a) the date of the declaration,
- (b) the declarant's nationality confirming that he is a Commonwealth citizen,
- (c) that the declarant is not resident in Gibraltar on the relevant date, and
- (d) when he ceased to be so resident or, in the case of a person relying on registration in pursuance of a service declaration, when he ceased to have a service qualification or, if later, ceased to be so resident,

and must also satisfy the requirements of sub-paragraph (4) and paragraph 14 of Schedule 1 to the European Parliamentary Elections Ordinance 2004.

(4) An overseas elector's declaration must—

- (a) show which set of conditions in paragraph 14 the declarant claims to satisfy,
- (b) in the case of the first set of conditions, specify the address in respect of which he was registered, and
- (c) in the case of the second set of conditions, specify—
 - (i) the date of the declarant's birth,

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- (ii) the address in Gibraltar at which he was resident, and
 - (iii) the name of the parent or guardian on whose registration in respect of that address he relies, and whether the person named was a parent or guardian,
- and may not, in the case of either set of conditions, specify more than one such address; and if the declarant makes more than one such declaration bearing the same date and specifying different addresses in Gibraltar as the address in respect of which he was registered or, as the case may be, at which he was resident the declarations shall be void.

(5) An overseas elector's declaration may be cancelled at any time by the declarant.

(6) An overseas elector's declaration shall be of no effect unless it is received by the registration officer concerned within the period of three months beginning with the relevant date.

(7) For the purposes of paragraph 12, where a person is registered in the register in pursuance of an overseas elector's declaration, it shall be conclusively presumed that he was not resident in Gibraltar on the relevant date.

(8) In this paragraph "the relevant date" has the meaning given by paragraph 14(1).

Service Voters

Service qualification

16. A person has a service qualification for the purposes of these Regulations who—

- (a) is a member of the Royal Gibraltar regiment,
- (b) is the wife or husband of a member of the Royal Gibraltar regiment.

Service declaration

17.—(1) A service declaration shall be made only by a person who has a service qualification, and a service declaration may be made by such a person notwithstanding the fact that by reason of his age he is not yet entitled to vote.

(2) Where a person is registered in the Gibraltar register in pursuance of a service declaration, the person is entitled to remain so registered until—

- (a) the end of the period of 12 months beginning with the date when the entry in the register first takes effect,
- (b) the declaration is cancelled under sub-paragraph (5), or
- (c) another entry made in respect of him in the register takes effect (whether or not in pursuance of a service declaration),

whichever first occurs.

(3) Where the entitlement of such a person to remain so registered terminates by virtue of sub-paragraph (2), the registration officer shall remove that person's entry from the register, unless he is entitled to remain registered in pursuance of a further service declaration.

(4) If a person—

- (a) makes a service declaration declaring to more than one address, or
- (b) makes more than one service declaration bearing the same date and declaring to different addresses,

the declaration or declarations shall be void.

(5) A service declaration may at any time be cancelled by the declarant.

(6) A service declaration shall be of no effect unless it is received by the registration officer within the period of three months beginning with the date of the declaration.

(7) Arrangements shall be made by the Gibraltar Ministry of Defence for securing that (so far as circumstances permit) every person having a service qualification by virtue of sub-paragraph (a) or (b) of paragraph 16 shall—

- (a) have an effective opportunity of exercising from time to time as occasion may require the rights conferred on him by these Regulations in relation to the making and cancellation of service declarations and of appointments of a proxy, and in relation to voting by post; and
- (b) receive such instructions as to the effect of these Regulations, and such other assistance, as may be reasonably sufficient in connection with the exercise by him and any wife of his or, as the case may be, by her and any husband of hers, of any rights conferred on them as mentioned above.

Contents of service declaration

18. A service declaration shall state—

- (a) the date of the declaration,
- (b) that on that date the declarant is, or but for the circumstances entitling him to make the declaration would have been, residing in Gibraltar,
- (c) the address where the declarant is or, as the case may be, would have been residing in Gibraltar or, if he cannot give any such address, an address at which he has resided in Gibraltar,
- (d) the nationality of the declarant on the date of the declaration confirming that he is a Commonwealth citizen or a relevant citizen of the Union,
- (e) whether the declarant had on the date of the declaration attained the age of 18 years, and, if he had not, the date of his birth, and
- (f) such particulars (if any) of the declarant's identity and service qualifications as are required by paragraph 19 of Schedule 1 to the European Parliamentary Elections Ordinance 2004.

Effect of service declaration

19.—(1) Where a person's service declaration is in force when he applies for registration, he shall be regarded for the purposes of section 16(1)(a) of the 2003 Act as—

- (a) resident on the date of the declaration at the address specified in it in accordance with paragraph 18(c);
- (b) until the contrary is proved, as being a Commonwealth citizen or a relevant citizen of the Union of the age appearing from the declaration and as not being subject to any legal incapacity except as so appearing.

(2) Where a service declaration appearing to be properly made out and (where required) attested is transmitted to the registration officer in the proper manner, the declarant shall, until the contrary is proved, be treated for the purposes of registration as having had from the date of the declaration or such later date, if any, as appears from it, and as continuing to have, a service qualification.

Relevant citizens of the Union

Notification of and removal of names of relevant citizens of the Union from the register

20.—(1) As soon as practicable after the registration officer has entered the name of a relevant citizen of the Union in the register where he would be entitled to vote at a European Parliamentary

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election in pursuance of the registration, he shall send a copy of the application and declaration by virtue of which he entered the name in the register to the person shown as the representative of the State in respect of which the applicant is a national in a direction containing a list of such representatives issued by the Lord Chancellor under regulation 8(3) of the 2001 Franchise Regulations⁽²⁾.

(2) A declaration under paragraph 25(3)(b) of Schedule 1 to the European Parliamentary Elections Ordinance 2004 may be cancelled at any time by the declarant.

(3) A relevant citizen of the Union registered in the register is entitled to remain so registered until—

- (a) the end of the period of 12 months beginning with the date when the entry in the register first takes effect;
- (b) the declaration under paragraph 25(3)(b) of Schedule 1 to the European Parliamentary Elections Ordinance 2004 is cancelled under sub-paragraph (2);
- (c) the citizen applies for his name to be removed,

whichever first occurs.

(4) Where the entitlement of such a person to remain registered terminates by virtue of sub-paragraph (3), the registration officer shall remove the person's entry from the register, unless he is entitled to remain in pursuance of a further application and declaration under paragraph 25 of Schedule 1 to the European Parliamentary Elections Ordinance.

(5) The registration officer shall remove the name of a relevant citizen of the Union from the register where the Secretary of State sends to that officer a copy of information provided by the Member State of which that citizen is a national to show that he has lost the right to vote there.

(2) Regulation 8(1) was amended and Regulation 8(3) was inserted by Regulation 5(a) and (b) of S.I.2003/1557, respectively.