

Commissions of Inquiry Act

INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

Convened by a Commission issued by His Majesty's Government of Gibraltar on 4th February 2022 in Legal Notice No.34 of 2022

RGP's Opening Submissions Inquiry Hearing 8 April 2024

A: Introduction & Background

1. These are the RGP's Opening Submissions ("**RGP Opening Submissions**") for the Inquiry Hearing 8 April 2024 ("**Inquiry Hearing**") and in response to the invitation to Core Participants ("**CP's**") to make opening submissions by the 18 March 2024. The RGP were granted CP status following a ruling of the Commissioner of the Inquiry ("**COI**") dated the 20 October 2022 ("**the RGP CP Ruling**").
2. The RGP maintains that at all times including at the material times it has acted professionally, correctly and in accordance with their Policing Obligations, in keeping with their Code of Ethics and as would be expected in accordance with the Nolan Principles¹ that apply to all public office holders, all of which is explained further below. This includes recognising where mistakes have been made, being accountable, reacting accordingly and learning and developing from those experiences as an organisation.
3. As explained in previous RGP Submissions (ventilated in preliminary hearings) it is very important to the RGP for all to understand, in what capacity, as a CP, the RGP participate in this Inquiry. Whilst several of its officers are witnesses and may assist in relation to some of the issues raised in this Inquiry, however

¹ [The Seven Principles of Public Life - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

that evidence falls to be considered, the RGP is a CP and whilst a very interested party, the RGP as an organisation does not in effect participate as a witness. To some extent its role is akin to an amicus curiae, and as an organisation its outlook is, and must always be (and perceived to be) entirely honest, impartial, transparent, and accountable. The RGP's objective is to assist the COI in establishing whether due process in accordance with the Police Act² and Nolan Principles (explained below) occurred.

B: Policing Obligations

4. Importantly the RGP in this Inquiry has obligations including those under the Gibraltar Constitutional Order 2006 and the Police Act 2006 ("**Policing Obligations**"). To give further context (and with as much brevity as the RGP Opening Submissions allow) the Policing Obligations are enshrined in the Police Act 2006 ("**Police Act**") and responsibility falls to the Governor with the Gibraltar Police Authority ("**GPA**") in the first instance (and the Governor in default) to secure the maintenance of an efficient and effective police force for Gibraltar and ensure the highest standards of integrity, probity and independence of policing in Gibraltar.
5. Policing Obligations are delegated to the Commissioner of Police ("**COP**") appointed by the Governor acting on the advice of the GPA. The COP must ensure the police officers as members of the Force (as therein defined) carry out their duties under section 44 of the Police Act, including in general terms: to preserve peace and prevent and detect crime and other infractions of the law, to keep law and order and to ensure public peace and security and collect and communicate intelligence affecting public peace or public security order. It also includes apprehending and prosecuting persons reasonably suspected of having committed a criminal offence.

C: Ethical Policing & Code of Ethics

6. The RGP when discharging its Police Obligations and arising from the *Code of Ethics* recognise and do their best to adhere, at all times (and they submit at the material time) to the Nolan Principles³ that apply to anyone who works as

² Police Act 2006

³ Idem 1

a public officeholder. These seven principles are: selflessness; integrity; objectivity; accountability; openness; honesty and display of leadership.

7. The RGP recognise that everyone in the RGP routinely makes important decisions to carry out the Policing obligations this requires *consent of the public*. Their mission is to help keep the public safe, and that relies on us having public acceptance and cooperation. The RGP strives to deliver an honourable and legitimate police service deserving of the public's support.
8. To collect and maintain public support the RGP is committed to good communication and being accountable for its decision making, most importantly in difficult situations which are often uncertain. Owning those decisions and being able to transparently explain the rationale of any such decision and the actions that flow from them is very important to the RGP. It strives to do so and to be judged on any consequence, always learning from the experience. The RGP invites scrutiny and feedback including or particularly where it makes mistakes. Integrity and truthfulness are at the core of its ethical policing policy.

D: Appointment/ Removal of a Commissioner of Police

9. The Police Act and underpinned by the Gibraltar Constitutional Order rightly sets out the process for the appointment/removal of a COP in addition to the other ranks in the police force, including police officers.
10. The Constitution⁴ section 47 and 48 provide for internal security to be reserved to the Crown, acting through the Governor, and subject to the establishment of a Gibraltar Police Authority ("**GPA**") that shall be independent in the exercise of its functions. It is expressly stated that the appointment of a COP is reserved to the Governor acting in accordance with the advice of the GPA (that he/she can only disregard if judged to prejudice His Majesty's service). This is further reflected in section 32 of the Police Act. The power to appoint the Assistant Commissioner of Police ("**ACOP**") is also vested in the Governor as per section 36 on advice of the GPA. The power of appointment of Police Officers is vested in the COP, with the approval of the

⁴ The Gibraltar Constitutional Order 2006

GPA. This is a Constitutional balance that must be carefully guarded at all times.

11. Of particular focus in this Inquiry is the removal or departure of a COP. The subject matter of this Inquiry namely that identified in LN.2022/034⁵:

“...as Commissioner to inquire, as he shall in his absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement.”

(hereinafter referred to as “**the Inquiry Mandate**”)

12. Whilst this question is for the COI to determine, it is of fundamental importance to the RGP that the clarity (that the RGP recognise) in the Constitution and the Police Act, surrounding the independence of the RGP is also expressly recognised.
13. It is the RGP’s position (that should be non-contentious to all CPs) that the Police Act must be strictly followed so as to ensure, that at all times, the independence of the RGP can never be compromised, or in any way threatened. Moreover, that there should be clarity: that any executive, namely the Government, does not and cannot have any responsibility or operational role, or involvement in the carrying out of the Policing Obligations. The RGP is answerable to the GPA under section 5 of the Police Act and only in default to the Governor under section 13 of the Police Act. Operational responsibility of the RGP is vested in the COP as provided in sections 18 and 33 of the Police Act. The Chief Minister’s role (under the Police Act and the Constitution) is strictly prescribed under sections 4, 14,15 and 34 of the Police Act, as therein limited (primarily financial oversight).
14. The power to remove a COP is rightfully a power of last resort and enshrined in section 34 of the Police Act. The power to remove a COP is only vested (save in default) in the GPA and after a careful process as therein prescribed, and only in defined circumstances “...in the interest of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar”. There is no provision in the Police Act or the Constitution that allows for removal of the

⁵ Legal Notice 2022/034 – 4 February 2022

COP because the Governor or the Chief Minister “*has lost confidence in the COP*”.

15. The Governors powers (reserved to default under section 13) in order to ensure he/she meets their obligations under section 11 (“*the overall, ultimate responsibility for-integrity, probity and independence of policing in Gibraltar*”) do not include, certainly in any first instance, without evident default of the GPA, the right to exercise any determination over the cessation of any COP’s tenure. The decision not to exercise powers under section 34, whether for procedural reasons or otherwise cannot constitute a default.
16. The clear understanding of the Constitutional and Statutory background will feature in this Inquiry (specifically on issues 8, 9 and 10 identified below) and the RGP will emphasise that there can be no softening of these safeguards or blurring of roles and responsibilities. Moreover consultation, cooperation with the executive for good reason, even if in the practice (in good faith) it may have gone further than that readily envisaged in the Police Act, cannot diminish adherence to the relevant provisions of our Constitution and the Police Act which must remain paramount.

E: The Inquiry Mandate and Issues

17. The RGP recognise that it is against the statutory backdrop identified above the COI must in exercise of the Inquiry Mandate consider issues that he has determined may have had a bearing: “*into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement.*” By the time RGP were granted CP status following the RGP CP Ruling the Provisional List of Issues (“**PLOI**”) although subject to review, had been determined.
18. The PLOI as they stand are as follows:
 - a. Issue 1 – Airport Incident
 - b. Issue 2 – Assault Investigation
 - c. Issue 3 – Incident at Sea
 - d. Issue 4 – HMICFRS
 - e. Issue 5 – Conspiracy Investigation
 - f. Issue 6 – Federation Complaints

- g. Issue 7 – Alcaidesa Claims
- h. Issue 8 – 29 May Letter
- i. Issue 9 – Section 13 Issue
- j. Issue 10 – the GPA Process

19. The RGP at the fourth preliminary hearing (“**4PH**”) made an application to restrict the issues to issues 3, 4 and 5, not recognising the relevance of other issues (that pre-dated Mr McGrail tenure as COP) but the COI ruled that they should remain. Specifically in his ruling dated 26 July 2023 at paragraph 9 he stated:

“9. As it seems to me, the criticisms made by Mr Cruz of the Provisional List of Issues are really arguments to the effect that – as he contends – many of the reasons given will not stand up to challenge and examination. In my opinion, his argument therefore goes to the weight that I should attach to the reasons given. In my opinion, the safeguard to the RGP is that the reasons given will be examined and, if necessary, challenged at the Inquiry. Mr Cruz can participate in that process; he can – if permitted to do so – cross-examine witnesses himself; he can disclose to the Inquiry other evidence which he can suggest is relevant and should be called, and he can present such arguments as he thinks fit. If, as he contends, some or all of the reasons do not withstand challenge, then I will so find; in the same way, I will find if some or all of the reasons are made out.”

10. Mr Cruz further submits that challenging all these reasons places an unreasonable burden on the RGP, but I think that the answer to that is that the underlying facts of many of these events are not controversial and can readily be covered by agreements of fact, on which he can base his submissions that the reasons given were inadequate, or unlawful.

11. I have well in mind the submission by Mr Wagner, on behalf of Mr McGrail that I should focus on Issue 5 (arising out of Operation Delhi), and that I should not be deflected by other, less important matters, and I will not be.

12. But, in my judgment, it is not appropriate now to remove from our Provisional List of Issues any of the reasons upon which the Chief Minister and the Interim Governor said they were relying at the time, or in one instance now stated by the Interim Governor to have contributed to the loss of confidence, just because the RGP submits that those reasons are inadequate or insufficient.

13. I will keep however keep this under review.”

20. The COI has clearly kept these matters under review, but evidently to some extent (given objections by other CP's) they remain alive. Inevitably (notwithstanding "Agreed or Undisputed Facts") that means that to some extent the Inquiry will delve in evidence into past RGP performance or conduct in numerous investigations or operations over more than a decade. So, whilst the RGP Opening Submissions do not (intentionally) seek to carry out a detailed review of witness statements of the issues, or of the many witness statements submitted, it should not be assumed that the decision not to do so acknowledges any failings by the RGP, or any of its officers, and/or its senior command.
21. The RGP will avail itself of the opportunity offered by the COI in his 26 July Ruling to participate (where required) to protect its reputation and its conduct of passed investigations or RGP Operations.

F: RGP Interaction with the Inquiry

22. Because of the inevitable role the RGP have carried out in meeting the Policing Obligations at all material times namely during the period under consideration by the COI in relation to the PLOI that have spanned 15 years, the RGP has during this Inquiry made very significant efforts and applied significant resources to assist the Inquiry generally including the COI, the Solicitors and Counsel to the Inquiry ("**the Inquiry Team**") and other CPs. This has extended to extensive submissions on matters brought to its attention and at the invitation of the Inquiry Team; comprehensive disclosure to the Inquiry Team for circulation to CP's and additionally making disclosure available to other CPs who were former police officers.
23. The RGP has clearly provided the most disclosure of all CP's.
24. However, unlike other CP's importantly the RGP has (during this Inquiry period) continued to meet its Police Obligations in Gibraltar. This inevitably put the RGP in a position that is different to those of other CP's or the Inquiry Team.
25. Therefore, it is inevitable that the RGP is not able to ventilate all its concerns or views in public and even in private. These include ongoing, or envisaged police investigations into complaints, or information brought to its attention

that may have had or have a relationship with the Inquiry or any CP or witness or related persons (“**Investigations**”).

26. In trying to protect the integrity of Investigations (and any future prosecution that may follow) the RGP made a restriction application in relation to Issue 5 (during the fifth preliminary hearing in October 2023) so as to maintain evidence related to that matter in private, so as to safeguard the possibility that those charged and or suspected could be subject to future prosecution (for the same or related offences) after this Inquiry when the reasons for the nolle prosequi entered by the Attorney General, cease to exist. Whilst the COI did not grant the application (for reasons given in his ruling namely risk to public interest was outweighed by the interest of the hearing of this issue being in public) and the RGP respect the COI decision, the RGP submits this evidences that irrespective of the circumstances the RGP takes its Policing Obligations and specifically its obligations to detect, investigate and prosecute crime solemnly and without fear or favour.
27. The RGP, has and will continue as the needs arises to temper its representations and submissions where they are sensitive to the Investigations. It is paramount for all in Gibraltar and to ensure the rule of law always prevails, that the RGP at all times prioritise its Policing Obligations above any desire to self-exculpate in the context of current operational decisions or even historic matters connected to the PLOI.
28. The RGP recognises that during the course of the Inquiry Hearing it may need to intervene and participate as suggested by the COI (where permitted) in order to assist the COI or correct any possible inaccuracies in relation to any issues and reserves it positions in this respect.
29. Moreover, as matters evolve during the Inquiry Hearing the RGP may need to meet its Policing Obligations to intervene and make whatever applications are required should a line of questioning or process threaten the integrity of the Investigations (although such intervention (if any) will be only when deemed absolutely necessary). In this respect the RGP has and will continue as the need arises to make submissions to the Inquiry Team alone in relation to the Investigations.

30. The RGP makes the simple non-controversial observation that it is important for all (including all CP's) to always remember that whilst the narrow subject matter of this Inquiry Mandate, is very important (not least for the RGP) the RGP must always be cognisant of its wider and ongoing role to the community.

G: Comments on PLOI Issues.

31. As an overarching comment germane to all PLOI the RGP will maintain in this Inquiry that at all material times it has understood the Policing Obligations and has subscribed to ethical policing and has never deviated from those obligations and principles so as to ensure the highest standards of integrity, probity and independence of policing in Gibraltar and as per section 44 of the Police Act, namely in summary to preserve the peace and prevent and detect crime and other infractions of the law without fear or favour whilst retaining public trust and confidence.
32. Whilst not infallible and immediately recognizing possibilities of improvement the RGP involvement in all of the investigations and matters identified in the PLOI has attempted to act with utmost professionalism even where errors or omissions may have been made by any individual officer or officers.
33. The RGP does not wish for the reasons given above to comment on every issue in the PLOI in detail. However, in so far as what would appear to be the central issues it simply makes several observations mostly evident from the Agreed or Undisputed Facts:
- 33.1 **Issue 1 – Airport Incident**: In this matter that predates Mr McGrail's tenure as COP the RGP's conduct was entirely vindicated at the highest level in the UK and in Gibraltar including the recognition by Rear Admiral A D Radakin (on behalf of the Joint Forces Command) in a letter on the 8 March 2017 to the then COP E Yome apologising to the RGP that the RGP had acted correctly.

On Agreed Facts:

On 3 March 2017, FP sent an email to Mr Yome (copying ML) with a strong message of support for the RGP's actions. He concluded: *"Gibraltar, its Chief Minister and its people are proud of their police and*

the SMT, Commissioner and their Attorney General. The UK as a whole, conversely, has been embarrassed by its senior ranks on the rock..."

On 8 March 2017, Rear Admiral A D Radakin wrote to Mr Yome (copying ML and Lt Gen Davis) apologising on behalf of the Joint Forces Command. He accepted that the MOD's view at the time that the case was subject to exclusive Service Police jurisdiction was not correct. He admitted that Joint Forces Command *"did not immediately recognise the jurisdictional legal primacy in this case for [the RGP] to investigate, and if necessary, prosecute the individual"*. He expressed his *"regret"* that there were *"altercations"* between British Forces personnel and RGP officers and accepted that British Forces Personnel had behaved *"disrespectfully"* towards RGP officers.

On 9 March 2017, a member of Foreign and Commonwealth Office staff emailed FP (copying ML, NP and Lt Gen Davis) stating: *"I just went to update Sir Alan Duncan [Secretary of State of the FCO] in relation to the events of 8 February and beyond. The Minister was very happy that we appear to have reached a good outcome. He asked me to pass on his personal gratitude to you, and the Commissioner of Police, for helping us get to this point."*

On 10 March 2017, Lt Gen Davis sent an email to Mr Yome (copying FP and ML) offering *"deep gratitude to [Mr Yome] and [his] Police Officers for the efficacy and manner in which the RGP has conducted this investigation... in short a very tough job, very well done"*.

33.2 **Issue 2 – Assault Investigation:** In this matter that predates Mr McGrail's tenure as COP its conduct in investigations was entirely vindicated.

On Agreed Facts: *"... there was no evidence to prove that any of the suspects were involved in this assault. No eyewitnesses identified any of them, least of all the victims themselves. He concluded that "the likelihood of any conviction against [the suspects] is non-existent"* and he recommended that they be released from arrest.

In the circumstances, there was a thorough and professional investigation into the incident.

- 33.3 **Issue 3 – Incident at Sea:** In so far as Operation Kram Issue 3 the RGP reacted to a difficult and tragic situation in a thoroughly professional manner in accordance with its Policing Obligations and RGP Policing Policy. This is an ongoing matter; the Court of Appeal has heard the appeal brought by the relevant retired police officers on the Judicial Review of the inquest directions on Wednesday the 13th of March. It is possible that this results in another inquest. The integrity of that potential inquest must be maintained. The RGP position on this has been to assist the Court, during the inquest, the Judicial Review and now the appeal. The RGP recognize that it is also natural and necessary for an organisation to improve following such an event.
- 33.4 **Issue 4 – HMICFRS.** 9 April 2020 HMICFRS Report following the 2019 (backwards looking) audit the RGP recognized that it needed to make improvements which it has made and are recognized in the April 2022 and HMICFRS Report. The RGP continues to try and maintain the highest levels. From extract from the 2022 HMICFRS report:
*“We are pleased to report that the RGP has made good progress since 2020. The force’s senior leadership team has prioritised addressing our recommendations and AFIs. This is part of its efforts to improve the force’s effectiveness, efficiency and legitimacy.
[...] the work they have done to address our recommendations and AFIs has significantly improved the effectiveness and efficiency of the force in many areas.”*
- 33.5 **Issue 5 – Conspiracy Investigation** More specifically in so far as Operation Dehli Issue 5 the RGP conducted a thoroughly professional investigation in accordance with its Policing Obligations as recognized in previous preliminary hearings: where the thoroughness, professionalism and forensic astuteness with which the RGP conducted the investigation has not been subject to any criticism.
- 33.6 **Issue 6 – Federation Complaints.** The RGP were not aware of any GPF complaints.
- 33.7 **Issue 7 – Alcaidesa Claims** In this matter that predates Mr McGrail’s tenure as COP the RGP understood the issues here and addressed any perceived failings with a thorough and professional internal investigation.

33.8 The RGP has no evidential view on issues 8,9 and 10 save that it repeats its position that the Police Act must be strictly followed so as to ensure that at all times the independence of the RGP can never be compromised or in any way threatened.

Conclusion

34. The RGP will continue to assist the Inquiry constructively and in a manner that recognises its role including as entirely honest, impartial, transparent, and accountable statutory body with ongoing and importantly continued Policing Obligations.
35. It will continue to act as it has always done at all material times with integrity, probity and will never sacrifice the independence of policing in Gibraltar.
36. In doing so the RGP will always seek at all costs to maintain community confidence and trust recognising that it can only properly carry out its role if Gibraltar has confidence and faith that it will stand as the guardian of the rule of law without fear or favour.

Nick P Cruz
Counsel for RGP

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21 March 2024.

[Home](#) > [Government](#)

> [Government efficiency, transparency and accountability](#)

> [The Seven Principles of Public Life](#)

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Guidance

The Seven Principles of Public Life

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1. The Seven Principles of Public Life

The Seven Principles of Public Life (also known as the Nolan Principles) apply to anyone who works as a public office-holder. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies (NDPBs), and in the health, education, social and care services. All public office-holders are both servants of the public and stewards of public resources. The principles also apply to all those in other sectors delivering public services.

1.1 Selflessness

Holders of public office should act solely in terms of the public interest.

1.2 Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

1.3 Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

1.4 Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

1.5 Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

1.6 Honesty

Holders of public office should be truthful.

1.7 Leadership

Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

[↑ Back to top \(https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2#contents\)](https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2#contents)

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Police Act 2006

Principal Act

Act. No. 2006-20	<i>Commencement (LN.2007/033)</i>	22.2.2007
	<i>Assent</i>	14.7.2006

Amending enactments	Relevant current provisions	Commencement date
Act. 2008-16	s. 78(2)-(3)	30.10.2008
2010-08	ss. 4(1), (c), (6), 6(1), (b), 9(1)	15.4.2010
2018-07	ss. 2, 49-55, 79(1)(d), (2)-(3)	21.6.2018
LN. 2018-210	s. 30(1)	4.10.2018
Act. 2019-21	ss. 2, 30(1), 36(1), (2), 37(1)	25.7.2019

PART I
THE GIBRALTAR POLICE AUTHORITY

Constitution of Gibraltar Police Authority.

3.(1) There is hereby established the Gibraltar Police Authority.

(2) The Authority shall be a body corporate with perpetual succession and shall have a common seal which shall be officially and judicially noted.

(3) The common seal of the Authority may only be affixed to an instrument by decision of the Authority and in the presence of the Chairman and one member of the Authority.

Composition of Authority.

4.(1) The Authority shall consist of the ten members comprising—

- (a) a Chairman appointed by the Governor acting on the advice of the Specified Appointments Commission from among persons proposed by the Governor or the Chief Minister; and
- (b) one member appointed by each of the Governor and the Chief Minister; and
- (c) seven members appointed by the Governor acting on the advice of the Public Service Commission from a list of persons that shall have been approved by the Governor and the Chief Minister.

(2) Every member of the Authority shall hold office for a period of three years, and at the expiration of any such period or periods shall be eligible for reappointment.

(3) Other than the Speaker, no member of the Parliament shall be eligible for appointment to the Authority.

(4) If any member of the Authority—

- (a) has been absent from three consecutive meetings of the Authority without having been excused by the Chairman; or
- (b) has become bankrupt or made any arrangement with his creditors; or
- (c) has been convicted of an offence (other than a traffic offence); or
- (d) is incapacitated by physical or mental illness; or

- (e) is otherwise unable or unfit to discharge the functions of a member for a period of three months or more; or
- (f) has become a member of the Parliament, other than its Speaker; or
- (g) the Governor and the Chief Minister call for such person to cease to be a member of the Authority,

such person shall cease to be a member of the Authority.

(5) Notwithstanding the foregoing provisions of this section any member may resign his office by giving written notice to the Authority.

(6) When any person has ceased to be a member of the Authority another person may be appointed by the person so empowered under subsection (1) and in the manner that the person so ceasing to be a member had been appointed.

(7) Any member of the Authority who ceases to be a member by virtue of sub-section (4) or where he would have ceased to be a member in that manner but for his voluntary resignation, shall be in-eligible for re-appointment (except where he ceases to be a member by virtue of subsection 4(f) of this section and subsequently ceases to be a member of the Parliament).

Responsibilities and powers of the Authority.

5. The responsibilities and powers of the Authority are as follows–

- (a) to secure the maintenance of an efficient and effective police force for Gibraltar within the financial resources available to it and on a value for money basis;
- (b) to ensure high standards of integrity, probity and independence of policing in Gibraltar;
- (c) to provide information on police issues to the community;
- (d) to establish, operate and supervise the process for investigating complaints against police officers under this Act;
- (e) to provide a mechanism for enhanced police accountability through a process of consultation with the community;
- (f) to ensure value for money in policing;
- (g) to draw up and publish an Annual Policing Plan and an Annual report, in accordance with sections 8 and 10 respectively;

- (h) to submit to the Minister for public finance, in accordance with the form, procedures and timetables established by the Government generally in relation to the preparation of its budget, an annual budget bid for the Force;
- (i) to hold the Commissioner to account for matters which are the responsibility of the Authority.

Meetings and proceedings of the Authority.

6.(1) The quorum at meetings of the Authority shall be six members comprising—

- (a) the Chairman, or another member presiding with the authority of the Chairman or in the absence of the Chairman or his failure or inability to authorise another member to preside another member elected by the members present from among their number to preside over the meeting; and
- (b) five other members.

(2) Meetings of the Authority shall be held at least once in any period of 3 months and additional meetings shall be convened by the Secretary at the request of the Chairman or any three members.

(3) Any matters arising at a meeting of the Authority shall be decided by a majority of the members present and voting thereon at the meeting and in the case of an equality of votes, the Chairman (but not any member presiding in the absence of the Chairman) shall have a second or casting vote.

(4) Minutes of every meeting shall be kept and once signed by the Chairman of the meeting at which they were approved, shall be rebuttable evidence of the proceedings of the meeting to which they relate.

(5) Subject as aforesaid, the Authority shall have power to regulate its own proceedings.

(6) The Chief Secretary of the Government shall designate a public officer to be the Secretary of the Authority and shall provide the Authority with such further administrative support as the Chief Secretary shall consider reasonable.

Liability of members.

7. No personal liability shall attach to any member of the Authority in respect of anything done or omitted to be done, in good faith, under the provisions of this Act.

Annual Policing Plan.

8.(1) The Authority shall, in respect of each financial year, after consulting—

(2) The Chairman shall send the Annual Report to the Governor, the Chief Minister and the Commissioner within 7 days of its approval by the Authority.

(3) The Chief Minister shall lay the Annual Report in the Parliament at the next sitting of the Parliament following receipt by him of the Annual Report.

(4) The Authority shall cause the Annual Report to be published not earlier than 48 hours after it has been laid in the Parliament.

PART II

THE GOVERNOR'S AND GOVERNMENT'S RESPONSIBILITIES FOR POLICING

Governor's Responsibilities.

11. The Governor shall have overall, ultimate responsibility for—

- (a) the integrity, probity and independence of policing in Gibraltar; and
- (b) the policing aspects of national security including internal security.

Governor's powers.

12. The Governor shall have power to—

- (a) hold the Authority to account for any matter to which section 11 relates;
- (b) hold the Authority to account for the professional standards of the Force;
- (c) call for and hold meetings with the Chairman, the Commissioner and other senior officers of the Force to discuss matters under his responsibility or in respect of which he has powers under this Act.

Governor's powers in default by Authority.

13.(1) The following powers are exercisable by the Governor where the Authority has failed to discharge or perform a responsibility imposed on the Authority under this Act—

- (a) to require the Authority to provide a report on any policing matter;
- (b) to direct the Authority to submit the Force to an inspection by an appropriate inspectorate;
- (c) to direct that an inquiry into policing in Gibraltar be made;

- (d) where an inspection or inquiry under this section identifies any shortcomings, to direct that, within the financial resources available to it, the Force take appropriate remedial action;
- (e) where in the opinion of the Governor the integrity, probity or independence of the police has been compromised or is at risk, to direct the Force to take appropriate action to remedy the situation or avoid the risk;
- (f) to suspend from duty, or call for the resignation of the Commissioner.

(2) The Governor will keep the Chief Minister informed of any exercise by him of a power under this section and shall provide to the Chief Minister a copy of any report produced as a consequence thereof.

Government's Responsibilities.

14. The Minister with responsibility for public finance shall decide, and seek the appropriation of the Parliament for the grant of both recurrent and capital expenditure to be made for the Force and policing in Gibraltar in respect of any financial year.

Powers of the Government.

15.(1) The Chief Minister may exercise the following powers on behalf of the Government—

- (a) to require factual or assessment reports from the Force or the Authority on any policing matter:

Provided that there may be withheld from any such report any fact disclosure of which is likely to prejudice the effective operation of the Force or the confidentiality of any information which the Force is bound to maintain;

- (b) to hold the Force and the Authority to account for the cost effectiveness and efficiency of the Force within its allocated budget;
- (c) to hold the Force and the Authority to account for those parts of the Annual Policing Plan which do not relate to National Security;
- (d) to call for and hold meetings with the Chairman, the Commissioner and other senior officers of the Force to discuss matters under the Government's responsibility or in respect of which it has powers under this Act.

(2) The Chief Minister will keep the Governor informed of any exercise by him of a power under this section and shall provide to the Governor a copy of any report produced as a consequence thereof.

General duties of Commissioner.

18.(1) It shall be the duty of the Commissioner to ensure that he is kept informed, in relation to the Force about all matters falling within subsection (2).

(2) Those matters are–

- (a) matters with respect to which any provision of this Part has effect;
- (b) anything which is done under or for the purposes of any such provision; and
- (c) any obligations to act or refrain from acting that have arisen by or under this Part but have not yet been complied with, or have been contravened.

(3) It shall be the duty of the Commissioner to provide the Authority and every member of the Authority's staff with all such assistance as the Authority or that member of staff may reasonably require for the purposes of, or in connection with, the carrying out of any investigation by the Authority under this Part.

(4) It shall be the duty of the Commissioner to ensure that a person appointed under this Part to carry out an investigation is given all such assistance and co-operation in the carrying out of that investigation as that person may reasonably require.

Provision of information to the Authority.

19.(1) It shall be the duty of the Commissioner at such times, in such circumstances and in accordance with such other requirements as may be set out in regulations made by the Government, to provide the Authority with all such information and documents as may be specified or described in regulations so made.

(2) It shall also be the duty of the Commissioner–

- (a) to provide the Authority with all such other information and documents specified or described in a notification given by the Authority to the Commissioner; and
- (b) to produce or deliver up to the Authority all such evidence and other things so specified or described,

as appear to the Authority to be required by it for the purposes of the carrying out of any of its functions.

(3) Anything falling to be provided, produced or delivered up by any person in pursuance of a requirement imposed under subsection (2) must be provided, produced or delivered up in such form, in such manner and within such period as may be specified in–

31.(1) It shall be lawful for the Commissioner, with the prior approval of the Government and the Authority, to enlist so many fit and proper persons as police cadets, to undergo training in the Force, as the Government and the Authority shall from time to time authorize.

(2) The Commissioner may, with the approval of the Governor, the Government and the Authority, make regulations for the government, administration and conditions of service of police cadets and in particular but without prejudice to the generality of the foregoing may make regulations regarding—

- (a) the appointment and dismissal of police cadets;
- (b) the rank and remuneration of police cadets;
- (c) the terms of service and discipline of police cadets;
- (d) the training and administration of police cadets;
- (e) the duties and responsibilities of police cadets;
- (f) the uniform and equipment of police cadets;
- (g) the application of this Act and standing orders to police cadets.

Appointment of Commissioner of Police.

32.(1) The Governor, acting on the advice of the Authority, and subject to any provision of the Constitution, shall appoint the Commissioner.

(2) The Commissioner shall be appointed for such term as the Authority may advise and shall be set out in the instrument of appointment.

Powers and duties of the Commissioner.

33.(1) The Commissioner shall, subject to the provisions of this Act, have command, superintendence, direction and control of the Force, and shall be responsible for the efficient administration and government of the Force and for the proper expenditure of all public moneys appropriated for the service thereof.

(2) In discharging his functions, the Commissioner shall have regard to the Annual Policing Plan.

Removal of Commissioner.

34.(1) The Authority acting after consultation with the Governor and the Chief Minister and with the agreement of either of them, may call upon the Commissioner to retire, in the interests of efficiency, effectiveness, probity, integrity, or independence of policing in Gibraltar.

(2) Before seeking the approval of the Governor and the Chief Minister under subsection (1), the Authority shall give the Commissioner an opportunity to make representations and shall consider any representations that he makes.

(3) Where the Commissioner is called upon to retire under subsection (1), he shall retire on such date as the Authority may specify or on such earlier date as may be agreed upon between him and the Authority.

Appointment of police officers.

35. Subject to the provisions of this Act, the Commissioner may, with the approval of the Authority, make such appointments, promotions and reductions in rank and grades as he may think fit.

Assistant Commissioner.

36.(1) There may be an Assistant Commissioner appointed by the Governor acting on the advice of the Authority.

(2) The Assistant Commissioner shall act as principal assistant to the Commissioner in the performance of his duties in respect of the Force. Any act or thing which may be done, ordered or performed by the Commissioner may, during the absence or incapacity of the Commissioner or to the extent to which he is authorized by the Commissioner, be done, ordered or performed by the Assistant Commissioner.

Acting Commissioner.

37.(1) In the absence of the Commissioner and the Assistant Commissioner, (if there be one), the Authority may, with the consent of the Governor and the Chief Minister, appoint any officer of the rank of Superintendent to act as Commissioner for such period as may be specified in his instrument of appointment.

(2) Any act or thing which may be done, ordered or performed by the Commissioner may be done, ordered or performed by the acting Commissioner.

Pay and allowances.

38. The members of the Force shall receive such pay and allowances as may be assigned to them from time to time by the Government.

Oaths and declaration.

39.(1) Every member of the Force shall, on his appointment as such, take such oaths as may be prescribed by the Oaths Act or any other law.

(2) Every member of the Force, other than the Commissioner, on his appointment as such shall make and sign before the Commissioner and in the presence of a witness the declaration following, that is to say–

I do solemnly and sincerely declare that I do willingly enlist to serve in the Royal Gibraltar Police and that, while so serving, I will comply with and hold myself amenable to the laws and regulations now established, or which may hereafter be established, for the government of the Force, and will comply with all regulations now in force or which may hereafter be made for the organization and discipline of the Force; and I further declare that I will not withdraw myself from the Force except in accordance with the said laws and regulations framed under them.

C. D.
Signature of person enlisting.

E. F.
Signature of witness.

Declared before me on this day of , at Gibraltar.

A. B.
Commissioner of Police.

PART V DUTIES, PRIVILEGES AND IMMUNITIES

Status of members of the Force.

40. Every person for the time being serving in the Force shall be deemed to be a member of the Force, and shall have and enjoy all the rights, powers, authorities, privileges and immunities conferred upon a member of the Force by any law.

Rights and liabilities of members of the Force.

41. Every member of the Force shall have such rights, powers, authorities, privileges and immunities, and shall be liable to such duties and responsibilities as are conferred or imposed upon police officers or constables by any law.

Non-liability for act done under warrant.

42.(1) Where the defence to any suit instituted against a police officer is that the act complained of was done in obedience to a warrant purporting to be issued by the Chief Justice, the Judge of the Court of First Instance*, the Stipendiary Magistrate, a justice of the peace or any officer of any court, the court shall, upon production of the warrant containing the signature of any such person, accept such warrant as prima facie evidence of the due making thereof, and upon proof that the act complained of was done in obedience to such warrant, enter judgment in favour of the police officer.

(2) No proof of the signature of such person shall be required unless the court has reason to doubt the genuineness thereof; and if it shall be proved that such signature is not genuine, judgment shall nevertheless be given for the police officer if it is proved that at the time when the act complained of was committed, he believed on reasonable grounds that such signature was genuine.

Salary of police officer not to be attached.

43. No salary or allowance paid to any member of the Force shall be liable to be attached, sequestered or levied upon for or in respect of any debt or claim for any money borrowed by him or any goods supplied to him or to any person on his behalf while he is a member of the Force.

General duties of the Force.

44. It shall be the duty of all members of the Force—

- (a) to preserve the peace and prevent and detect crime and other infractions of the law;
- (b) to apprehend and bring before a justice of the peace persons found committing any offence rendering them liable to arrest without warrant, or whom they may reasonably suspect of having committed any such offence, or who may be charged with having committed any such offence;
- (c) to summon before a justice of the peace and to prosecute persons reasonably suspected of having committed offences, where an order to that effect is made by the Attorney-General or the Commissioner, either generally or in any particular case or class of cases;
- (d) to serve and execute at any time all process which they may be directed by any competent authority to serve or execute;

* *Court of first Instance Act repealed by the Administration of Justice Act 2004 (2004-11) s.3 as from 1.9.2004. All references to the Court of First Instance shall be read as if it were a reference to the Supreme Court (see Act 2004-11 s.7).*



At the Court at Buckingham Palace

THE 14th DAY OF DECEMBER 2006

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

Whereas Gibraltar is part of Her Majesty's dominions and Her Majesty's Government have given assurances to the people of Gibraltar that Gibraltar will remain part of Her Majesty's dominions unless and until an Act of Parliament otherwise provides, and furthermore that Her Majesty's Government will never enter into arrangements under which the people of Gibraltar would pass under the sovereignty of another state against their freely and democratically expressed wishes:

And whereas the people of Gibraltar have in a referendum held on 30th November 2006 freely approved and accepted the Constitution annexed to this Order which gives the people of Gibraltar that degree of self-government which is compatible with British sovereignty of Gibraltar and with the fact that the United Kingdom remains fully responsible for Gibraltar's external relations:

Now, therefore, Her Majesty, by virtue and in exercise of all the powers enabling Her to do so, is pleased, by and with the advice of Her Privy Council, to order, and it is ordered, as follows:-

Citation, commencement and interpretation

- 1.-(1) This Order may be cited as the Gibraltar Constitution Order 2006.
- (2) This Order shall be published in the Gazette and shall come into force on the day it is so published.
- (3) In this Order –
“the appointed day” means such day as may be prescribed by the Governor by proclamation in the Gazette;
“the Constitution” means the Constitution set out in Annex 1 to this Order;

“the existing Order” means the Gibraltar Constitution Order 1969^(a).

(4) Section 78 of the Constitution shall apply for the purposes of interpreting this section, section 2 and Annex 2 to this Order and otherwise in relation thereto as it applies for the purpose of interpreting and in relation to the Constitution.

Commencement of Constitution and revocation of existing Order

2. With effect from the appointed day –

(a) the Constitution set out in Annex 1 to this Order shall (subject to the transitional and other provisions set out in Annex 2 to this Order) have effect in Gibraltar, a part of Her Majesty’s dominions, known as the City of Gibraltar;

(b) the existing Order shall be revoked.

A.K.Galloway

^(a) S.I. 1969, II p.3602

(9) Upon the dissolution of the Parliament the Chief Minister and Ministers in office at the time of such dissolution shall remain in office and shall discharge their functions until new elections are held and a Chief Minister appointed in accordance with this Constitution following such elections; but such executive authority may not be exercised, save in the event of public emergency (including public order or safety), to commit or bind the next successor Government of Gibraltar to public funding or liability except in the ordinary course of the day to day affairs of Gibraltar.

Assignment of business to Ministers

46.-(1) The Governor, acting in accordance with the advice of the Chief Minister, shall, by directions in writing, charge any Minister with responsibility for any business of the Government of Gibraltar (including the administration of any department of government).

(2) A Minister may not be charged under this section with responsibility for -

(a) those matters referred to in section 47(1);

(b) any function which this Constitution or any other law stipulates is to be exercised by the Governor, acting in his discretion.

(3) Ministers shall be collectively responsible to the Parliament with respect to any matter for which a Minister is responsible under this section.

Governor's special responsibilities

47.-(1) The Governor, acting in his discretion, shall be responsible in Gibraltar for the conduct (subject to this Constitution and any other law) of the following matters -

(a) external affairs;

(b) defence;

(c) internal security, including (subject to section 48) the police;

(d) such functions in relation to appointments to public offices and related matters as are conferred on him by this Constitution:

Provided that the Governor shall in respect of external affairs as far as practicable act in consultation with the Chief Minister.

(2) For the avoidance of doubt it is declared that any matter which falls outside the special responsibilities of the Governor set out in subsection (1), or which is not a function which this Constitution or any other law requires the Governor to exercise in his discretion, is the responsibility of Ministers.

(3) Without prejudice to the United Kingdom's responsibility for Gibraltar's compliance with European Union law, matters which under this Constitution are the responsibility of Ministers shall not cease to be so even though they arise in the context of the European Union.

(4) The exercise by the Governor of his responsibility for external affairs and defence is without prejudice to the overall responsibility of Her Majesty's Government in the United Kingdom for these matters.

Gibraltar Police Authority

48.-(1) There shall be a Police Authority for Gibraltar, composed in such manner and having such functions as may be prescribed by a law enacted by the Legislature consistent with this Constitution; and subject to the provisions of any such law such Authority shall be independent in the exercise of its functions.

(2) The Police Authority established under this section shall be a body corporate to be known as the Gibraltar Police Authority.

(3) The Commissioner of Police shall be appointed by the Governor acting in accordance with the advice of the Gibraltar Police Authority, provided that the Governor may disregard the advice of the Gibraltar Police Authority in relation to any person where he judges that accepting that advice would prejudice Her Majesty's service.

Governor to keep Chief Minister informed

49. The Governor shall keep the Chief Minister fully informed concerning the general conduct of those matters for which he is responsible.

Consultation with Council of Ministers

50.-(1) Subject to subsection (2), the Governor shall act in accordance with the advice of the Council of Ministers as signified to him by the Chief Minister in the exercise of any power conferred upon him by this Constitution or any other law other than a power in respect of an area within his special responsibility as defined in section 47(1).

(2) The Governor shall not be obliged to consult with, or act in accordance with the advice of, the Council of Ministers or the Chief Minister in the exercise of –

- (a) any power conferred upon him by this Constitution or by any other law that he is empowered to exercise in pursuance of instructions from Her Majesty; or
- (b) any power conferred upon him by this Constitution or by any other law that he is directed or empowered by this Constitution or by any other law to exercise

RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

ISSUE OF COMMISSION

LN.2022/034

WHEREAS the Government has committed to issue a commission for an Inquiry under the Commissions of Inquiry Act into the matters more particularly detailed below;

AND WHEREAS the Government has requested that His Excellency the Governor, Vice Admiral Sir David Steel KBE, DL, identify a retired High Court Judge of the jurisdiction of England & Wales to carry out such an Inquiry;

AND WHEREAS His Excellency the Governor has, with his consent, identified Sir Charles Peter Lawford Openshaw, DL, formerly a judge of the High Court of England and Wales, Queen's Bench Division;

THE GOVERNMENT NOW HEREBY, in exercise of the powers conferred on it by Section 3 of the Commissions of Inquiry Act, appoints the aforesaid Sir Charles Peter Lawford Openshaw, DL, as Commissioner to inquire, as he shall in his absolute discretion consider appropriate, into the reasons and circumstances leading to Mr Ian McGrail ceasing to be Commissioner of Police in June 2020 by taking early retirement.

The Commissioner is to ascertain the facts and report to the Government on the above matters.

Save as the Commissioner may in his discretion determine, the Inquiry is to be held in public at a venue, and to commence on a date, to be specified by the Government by notice in the Gazette.

Dated: 4th February 2022.

VICE ADMIRAL SIR DAVID STEEL KBE, DL,
Governor,
For the Government,
At the request of the Chief Minister.