

Hassans

International Law Firm Limited

FAIR TRADING ACT 2023



JANUARY 2024

The Fair Trading Act 2023 came into effect on the 1st of October 2023 establishing several significant amendments to the previous business licence application process and legislative framework applying to licenced businesses in Gibraltar.

The following tables:

1. highlight the main changes under the new regime
2. outline the new process for applying for a business licence, and
3. list the revised fees.

Fair Trading Act 2023 (New Regime)	Fair Trading Act 2015 (Old Regime)	Effect of Differences
	<p style="text-align: center;">Section 58 Composition of the Business Licencing Authority within the OFT.</p>	<p>Formally, the Trade Licencing Authority was transferred and subsumed within the remit of the Office of Fair Trading ("OFT"), known as the Business Licencing Authority ("BLA").</p> <p>The BLA was the body that had the power to issue/refuse business licences prior to the commencement of the new act.</p> <p>Under the new regime, the OFT has authority to grant and refuse licences and regulate its own procedures. The BLA, therefore, no longer exists.</p>
<p style="text-align: center;">Section 24 Requirement to obtain a business licence</p>		<p>New regime sets out the legal requirement to obtain a business licence.</p> <p>Non-compliance with the requirement constitutes an offence. Persons who commit this offence are liable on summary conviction to a fine at level 4 on the standard scale.</p> <p>No equivalent provision under the old regime.</p>
<p style="text-align: center;">Section 25 Persons who are deemed not to carry on business</p>	<p style="text-align: center;">Section 65 Exceptions to carrying on business</p>	<p>New regime has extended provision regarding persons who are deemed not to carry on business.</p> <p>This includes:</p> <ul style="list-style-type: none"> • Persons employed by person who carries on business; • Body corporate providing services to other persons in same group or persons who are members of a single family; • Domestic services such as home-help services or care for children, vulnerable people;

Fair Trading Act 2023 (New Regime)	Fair Trading Act 2015 (Old Regime)	Effect of Differences
		<ul style="list-style-type: none"> Journalists, persons printing/distributing printed newspapers Cottage industry, artists, service providers with annual turnover less than £20,000 [1]; Persons selling goods/providing services concerning raising funds for philanthropic, charitable, cultural, sporting, or educational purposes [2]. <p><i>[1] Those falling under section 25(1)(f), Fair Trading Act 2023, must be registered with the OFT and renew their registration annually in accordance with section 25(3) of the Act.</i></p> <p><i>[2] These goods/services require such persons to inform the OFT in writing prior to selling the goods and/or providing the services subject to section 25(4), Fair Trading Act 2023.</i></p>
<p style="text-align: center;">Section 26 Issue of Licences</p>	<p style="text-align: center;">Section 60 Issue of Licences</p>	<p>BLA no longer the body responsible for issuing licences. OFT is the sole body responsible for issuing licences to carry on business. These are signed by the Chief Executive or a delegated person.</p> <p>Business licences issued are in respect of one premises. Exceptions permitted as OFT has discretion to allow more than one licence over same premises, same principle under old regime.</p> <p>Timeframe for the issuing/granting of licences under the new regime is not specified, even if the OFT is in receipt of the full required documentation. Under the old regime, timeframe of three business days to issue/grant licences.</p>
<p style="text-align: center;">Section 27 Premises</p>	<p style="text-align: center;">Section 60(8) Issue of Licences</p>	<p>New regime outlines factors OFT considers when determining the appropriateness of premises and whether to grant a waiver of premises.</p> <p>Licences shall only be granted in relation to premises at which commercial activities of the kind comprising the business are permitted to be carried out and are not designated as residential accommodation. This is similar to the old regime under which licences would not be granted to any premises which were residential government premises nor any non-governmental premises which, under its title deeds, restricted commercial activities.</p>

Fair Trading Act 2023 (New Regime)	Fair Trading Act 2015 (Old Regime)	Effect of Differences
		<p>Under the new Act, the OFT has discretion to grant a licence authorising a person to carry on business in or from multiple locations provided that the person has its own premises, and the business involves the provision of goods or services remotely.</p> <p>OFT may also, in its absolute discretion, allow more than one licence over the same premises should it believe that the business to which the licence relates, can be carried on compatibly in the same premises.</p>
<p style="text-align: center;">Section 28 Grounds on which the OFT may refuse a licence</p>	<p style="text-align: center;">Section 78 General principles affecting issue of licences</p>	<p>Grounds on which OFT may refuse a licence have been extended.</p> <p>This includes:</p> <ul style="list-style-type: none"> • Premises does not accord with the Official Address Register held by Land Property Services (“LPS”); • Applicant is a natural person who is not entitled to reside or work in Gibraltar; • The business is a Specified Business [3] and OFT has determined the person does not have the necessary competence to carry on the business safely; • Applicant fails to provide satisfactory information OFT requires; • Applicant or business to which application relates to involves phoenixing; • Public interest grounds. [4] <p><i>[3] Defined under section 28(2), Fair Trading Act 2023.</i></p> <p><i>[4] If OFT refuses a licence on this ground, it shall state this in its decision and set out reasons for its refusal.</i></p>
<p style="text-align: center;">Section 29 Grounds on which the OFT shall refuse a licence</p>	<p style="text-align: center;">Section 81 General restrictions on power to issue to licences</p>	<p>New regime sets out a fitness and propriety assessment conducted on persons to ensure that they have not been convicted of any offences within a period of 5 years preceding the date of application, bankruptcy, or offences under the Insolvency Act, rendering such persons as unfit and improper. The OFT also has regard to the provisions of the Proceeds of Crime Act (“POCA”).</p> <p>Under the old regime, the BLA would solely consider whether persons demonstrated suitable training and or qualifications in the business being applied for a licence in addition to bankruptcy and any offences under the Insolvency Act.</p>

Fair Trading Act 2023 (New Regime)	Fair Trading Act 2015 (Old Regime)	Effect of Differences
<p>Section 30 Money Laundering and Financing of Terrorism</p>		<p>AML/CFT measures implemented under the new regime. Applies to specific categories of persons who are applying for a new licence or the transfer of a licence to carry on business.</p> <p>A fit and proper assessment is conducted on those deemed as 'Relevant Persons'. Relevant Persons shall be deemed to be not fit and proper if that person has been convicted during the last five years of an offence under POCA or is an associate of such person.</p>
<p>Sections 31, 56 Principles in considering applications and Consideration of Applications</p>	<p>Sections 76, 77, 79 Consideration of applications, BLA Powers, No Discrimination</p>	<p>OFT has established principles under the new regime to consider applications. The OFT now consider additional factors when deciding to grant/refuse applications.</p> <p>The OFT shall favour the principle of freedom of establishment of business and freedom of trade in goods and provision of services in Gibraltar and shall adhere to the principles of non-discrimination and proportionality.</p>
<p>Section 33 Issue of licence subject to conditions and imposition of conditions on an existing licence</p>	<p>Section 82 Issue of licence subject to conditions</p>	<p>OFT now has power to impose such terms and conditions which it considers necessary on existing licences provided it has given the applicant prior written notice.</p>
<p>Section 34 Applications for removal or alteration of licence conditions</p>		<p>New Act provides opportunity for licence holders to make an application for the alteration or removal of a condition in respect of a licence by setting out the reasons why the condition should be altered/removed.</p>
<p>Section 35 Provisional approval of a new licence</p>	<p>Section 68 Provisional grant of a licence: start-ups</p>	<p>Under the old regime, provisional licences were granted for businesses which were starting up and the premises from which the business would operate from was being constructed or altered.</p> <p>Under new regime, provisional licences are granted for the same purposes, but not necessarily only for start-up businesses.</p>
<p>Section 37 Renewal of licence</p>	<p>Section 84 Renewal</p>	<p>Licences valid for one year, no changes.</p> <p>However, new regime sets out circumstances whereby OFT may refuse a licence renewal [5].</p> <p>OFT also now has powers to renew licences which have expired provided that the</p>

Fair Trading Act 2023 (New Regime)	Fair Trading Act 2015 (Old Regime)	Effect of Differences
		<p>application for renewal has been made within 6 months.</p> <p><i>[5] Before refusing a renewal, the OFT must issue to the licence holder a warning notice and a decision notice.</i></p>
<p>Section 38 No term or condition may be imposed on the renewal of a licence</p>		<p>There can be no conditions or terms attached to the renewal of an applicant's licence which restricts the type of goods which may be sold, or services delivered under the licence.</p> <p>(same under old regime pursuant to Section 82, but under a separate provision now).</p>
<p>Section 40 Display and production of licences</p>	<p>Section 86 Display of licences</p>	<p>New requirement to display business licence number on business website and any third party websites in addition to displaying licence number in premises.</p> <p>Business licences are allowed to be inspected during business hours by any member of the public and by any CP Officer.</p> <p>At request of a CP Officer, the person carrying out the business must produce the licence to the Officer for inspection.</p>
<p>Section 53 Applications</p>		<p>Application requirements are now specified under the new Act.</p> <p>These provisions specify what documentation and information is required when submitting applications and sets out the OFTs powers to request further documents/information as it deems necessary.</p> <p>There are no equivalent provisions under the old regime.</p>
<p>Section 54 Notices of Application</p>	<p>Section 73 Notice of Intention</p>	<p>OFT now issues notices of application on its website within five working days of receipt of an application, but it must have received a full and complete application prior to the commencement of the five working day time period.</p> <p>Under the old regime, the applicant had to give notice of their intention to apply for a new licence within seven days before the application was made and such notice had to be published in the Gazette and in at least one newspaper circulating in Gibraltar.</p>

Fair Trading Act 2023 (New Regime)	Fair Trading Act 2015 (Old Regime)	Effect of Differences
<p>Section 55 Objections</p>	<p>Section 73 Objections</p>	<p>The notice for objection has been changed from seven working days under the old Act, to five working days in the new Act.</p>
<p>Section 57 Temporary Licences</p>		<p>OFT has the necessary powers to issue a temporary licence subject to certain conditions.</p>
<p>Section 58 Occasional Licences</p>		<p>OFT can issue occasional licences where the applicant already holds a licence, and the business will be carried on from a premises other than those to which the existing licence relates to for a period not exceeding 14 days.</p>
<p>Section 61 Hearings</p> <p>Section 62 Proceedings at hearings</p>	<p>Section 75 Hearings</p>	<p>OFT now requests hearings if it deems it necessary for considering an application, has accepted a notice of objection in relation to an application or is proposing to refuse an application. Under the old regime, hearings would be initiated by the BLA where a notice of objection had been received.</p> <p>Hearings now take place before the Chief Executive of the OFT or any officer of the OFT appointed by the Chief Executive. The hearing procedure under the new regime is more streamlined.</p> <p>Under the old regime, hearings of the BLA were held at a minimum of fortnightly intervals. Under the new regime, this is no longer specified.</p> <p>No changes as to representations.</p>

Application Process Under New Act

Presumption to be able to carry on business in Gibraltar

Complete relevant application forms or relevant forms via the eGov portal for new licences	<ul style="list-style-type: none"> • BL1 Form for new business licence application (can also apply through HM GOC's eServices portal) • BL2 Form for altering an existing business licence application • BL3 Form for application for a duplicate licence
Within five working days of receipt of an application	OFT will give notice of the application to the public on the OFT's website
When the period of five working days starts to run	Once the OFT has received a full application form, supported by such information as is required
Notice made on OFT website	Persons who wish to object to the issue of a licence will give notice of objection via the website
Grounds for objection (if any)	Pursuant to section 55(2)(a), Fair Trading Act 2023
Hearings (if OFT deems it necessary)	Applicant and any objector and their representatives or advisors have the right to attend the hearing
Pay relevant fees	Pursuant to the Fair Trading (Fees) Regulations 2023

Fair Trading (Fees) Regulations 2023 (as from 1st October 2023)

On the issue of a new licence for a single business class (trade or service)	£175
On the issue of a new licence for a trade business class and a service business class	£250
On the issuance of a licence or renewal for businesses regulated by the OFT from a money laundering and financing of terrorism perspective	£60
On the extension of a licence by adding another business class or other activities to an existing licence	£110
On the renewal of an existing licence with a single business class (trade or service)	£110
On the renewal of an existing licence with a trade and service business class	£200
On the provisional approval for the grant of a new licence	£110
On the issue of a temporary licence	£250
On the issue of an occasional licence	£60
On the transfer of a licence to another person	£110
On the transfer of a licence to another premises	£110
On the removal or alteration of licence conditions	£110
On the issue of a duplicate licence	£45
On the filing of an objection to an application for a new licence, extension, transfer to another person, transfer to another premises	£100
On the registration of a business for cottage industries, artisans, and service providers with annual turnover below £20,000	No fee

If you need any help with applying for a new business licence, changing your current licence, or renewing your licence, the team is here to help. We invite you to reach out to the following practitioners who will be able to assist you.



Chloe Oppenheimer
Senior Associate
chloe.oppenheimer@hassans.gi



Jesse Monteverde
Associate
jesse.monteverde@hassans.gi



Tamara Freyone
Trainee Solicitor
tamara.freyone@hassans.gi



Hassans

www.gibraltarlaw.com

Hassans, Madison Building, Midtown, Queensway, Gibraltar, GX11 1AA.



+350 20079000



business@hassans.gi



www.gibraltarlaw.com



This document does not constitute legal advice and is intended only to highlight general issues which may be of interest to our clients. The views expressed are the author's own and do not necessarily represent the views of the firm. Specialist legal advice should always be sought in relation to any particular circumstances.

Hassans International Law Firm Limited trades as 'Hassans'. 'Partner' as used in this document is a job title and does not infer personal liability.