

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE  
No. 2,208 of 24<sup>th</sup> JANUARY, 1985.**

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I ASSENT,  
DAVID WILLIAMS,  
GOVERNOR.  
24<sup>th</sup> January, 1985.



**GIBRALTAR**

**No. 2 of 1985.**

**AN ORDINANCE** to make provision in connection with the inclusion of the Hellenic Republic within the European Communities and further to make provision for the application of Community rights in relation to the Kingdom of Spain its Nationals and Companies and other matters.

ENACTED by the Legislature of Gibraltar.

**Short title.**

1.(1) This Ordinance may be cited as the European Communities (Amendment) Ordinance.

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(2) This Ordinance shall be construed as one with the European Communities Ordinance, 1972.

### **Commencement of Part I.**

2.(1) Part I of this Ordinance shall be deemed to have come into operation on the 1<sup>st</sup> day of January, 1982.

### **Commencement of Part II.**

(2) Part II of this Ordinance shall come into operation on the appointed day.

### **Interpretation.**

3. In this Ordinance “the appointed day” means such day as may be prescribed by the Governor in Council, by notice published in the Gazette.

## **PART I.**

### **Extended meaning of “the Treaties” and “the Community Treaties” Ordinance 18 of 1972.**

4. As from the date of coming into operation of this Part of this Ordinance in section 2(1) of the European Communities Ordinance, 1972, in the definition of “the Treaties” and “the Community Treaties” there shall be inserted after paragraph (b) the words “and

- (c) the treaty relating to the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, signed at Athens on 28<sup>th</sup> May 1979; and
- (d) the decision, of 24<sup>th</sup> May 1979, of the Council relating to the accession of the Hellenic Republic to the European Coal and Steel Community;”

### **Amendment of existing laws First Schedule.**

5. The enactments specified in the First and Second columns of the First Schedule are amended in the manner and to the extent specified in the Third

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column of that Schedule and with effect from the date of the coming into operation of this Part of this Ordinance.

### **PART II.**

#### **Application of Ordinance 18 of 1972 and other laws to the Kingdom of Spain.**

6. As from the appointed day the European Communities Ordinance, 1972 and any other provision of the Law of Gibraltar which applies to a Member State of the European Communities or to a national of such a Member State or to a company incorporated under the laws of such a Member State shall, subject to the derogations, exceptions and modifications specified in the Second Schedule, apply in the like manner to the Kingdom of Spain, to a national of the Kingdom of Spain and to a company incorporated under the laws of the Kingdom of Spain.

#### **Amendment of existing laws. Third Schedule.**

7. Without prejudice to the generality of Section 6 the enactments specified in the first and Second columns of the Third Schedule are amended in the manner and to the extent specified in the Third column of that Schedule and with effect from the appointed day.

### **FIRST SCHEDULE.**

Section 5.

#### **AMENDMENT OF EXISTING LAW.**

NUMBER CHAPTER OF ORDINANCE	OR OF	SHORT TITLE	AMENDMENT
74		Immigration Control Ordinance	(a) Section 2(1) is amended by repealing the definitions of the terms "sunrise" and "sunset".  (b) Section 6(1) is amended by repealing the words "between the hours of sunrise an sunset only

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on any day”.

(c) Section 52 is amended by repealing subsection(1) and substituting the following new subsection:

“52.(1) Subject to the provisions of Section 53 a Community National who has applied for a residence permit shall on production of the document under which he entered Gibraltar be issued with a residence permit in the form set out in the Second Schedule-

(a) valid for a period of not less than 5 years if he satisfies the Principal Immigration Officer-

(i.) that he is self employed; or

(ii) that he is employed and the period of his employment is expected to last at least 12 months from the date of his application for a residence permit;

(b) valid for the period of his employment in any other case;

Provided that the provisions of subparagraph (a)(ii) and (b) shall not apply to a national of the Hellenic Republic until the expiration of the transitional periods provided for in Articles 44 to 48 of the Act annexed to the Treaty concerning the Accession of the Hellenic

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Republic to the European Economic Community and the European Atomic Energy Community”.

(d)

(d) Section 54 is amended by repealing subsection (1) and substituting the following new subsection:

“54.(1) A Community National who has been in wage paid employment or has pursued an activity as a self employed person shall on application be issued with a certificate of permanent residence and shall have the right to remain permanently in Gibraltar if-

(a) at the time of ceasing his employment or self employed activity, as the case may be, he has reached the age prescribed by any law in force in Gibraltar for entitlement to an old age pension and he has been employed or has pursued an activity as a self employed person, in Gibraltar for at least the last 12 months and resided in Gibraltar continuously for more than 3 years;

(b) having resided continuously in Gibraltar for more than 2 years he ceases employment or self employed activity, as the case may be, as a result of permanent incapacity to

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work:

Provided that if such incapacity is the result of an accident at work or of an occupational disease entitling him to a pension for which the Government of Gibraltar is entirely or partially liable the requirement as to length of residence shall not apply; or

(c) after 3 years continuous employment or self employed activity, as the case may be, and residence in Gibraltar, he is in employment or is pursuing a self employed activity, as the case may be, in the territory of a Member State, while keeping his residence in Gibraltar to which he returns each day or at least once a week.”

(e) Section 55 is amended by inserting, after the words “wage paid employment”, the words “, or self employed activity, as the case may be,”

(f) Section 56 is amended by repealing subsection (2) and substituting the following new subsection:  
“(2) For the purposes of Section 54 of involuntary unemployment recorded by the Director of Labour and Social Security and absence from employment because of illness or accident shall be

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considered periods of employment and periods of inactivity as a self employed person due to circumstances outside the control of the person concerned or owing to illness or accident shall be considered as periods of activity as a self employed person for the purposes of Section 54.”

(g) Section 57 is amended by adding, after subsection (3), the following new subsection:

“(4) This Section does not apply to Community Nationals pursuing or intending to pursue self employed activities.”

(h) Section 59 is amended by adding, after subsection (3), the following new subsections:

“94) The provisions of subsections (1) to (3) shall apply to a Community National who is pursuing activities as a self employed person except that such person shall not be required to satisfy the Principal Immigration Officer as to the availability of accommodation.

(5) The provisions of subsection (1) to (3) shall only apply to a National of the Hellenic Republic employed in Gibraltar if such National is in possession of a residence permit.”

(j) Section 62(1)(a) is

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amended by inserting, after the word “employed” the words “or pursues an activity as a self employed person”.

(j) The Immigration Control Ordinance is further amended by adding, after Section 63, the following new section:

“64. The provisions of Sections 49 to 63 (inclusive) shall apply to a Community National who is providing or intends to provide services in Gibraltar, or is, or intends to be, a recipient of services, as they apply to a person who is pursuing, or intends to pursue, activities in Gibraltar as a self employed person”.

(k) The Immigration Control Ordinance is further amended by repealing the First Schedule and substituting therefor the following new Schedule:

“FIRST SCHEDULE.

Section 49

MEMBER STATES.

The Kingdom of Belgium

The Kingdom of Denmark

The Federal Republic of

Germany

The Hellenic Republic

The French Republic

Ireland

The Italian Republic

The Grand Duchy of

Luxembourg

The Kingdom of the

Netherlands

The United Kingdom of



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Great Britain and Northern Ireland.

1. Notwithstanding anything contained in Part IX a person who is:

(a) a national of the French Republic solely by birth in or other connection with a French Overseas dependent territory; or

(b) a national of the Kingdom of the Netherlands solely by birth in or other connection with Surinam or the Antilles,

Shall not have any of the rights conferred by Part IX.

2. For the purposes of Part IX a national of the United Kingdom shall mean a person who has a right of abode in the United Kingdom and either-

(a) is a British Citizen, a British Dependent Territories Citizen or a British Overseas Citizen; or

(b) is a British subject and neither a person defined in sub-paragraph (a) hereof nor a citizen of any Commonwealth country or territory.”

Chapter 82 Land (Titles) Order.

Section 2A is repealed and the following new Section is substituted therefor:

“2A. The provisions of this Order shall apply to-

(a) a national of a Member State of the European Economic Community who has a valid residence permit issued under Part IX of the Immigration

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Control Ordinance;  
(b) a national of a Member State of the European Economic Community who has a right of establishment in Gibraltar and who has exercised or intends to exercise that right; and  
(c) a company incorporated under the law of a Member State of the European Economic Community which has a right of establishment in Gibraltar and has exercised that right,

As if such national or company were a British subject and for the purposes of such application any reference in this Order to a British subject shall be construed as a reference to such national or company.”

35 of 1978      Trade Licensing Ordinance,      The Second Schedule is repealed and the following new Schedule substituted therefor:

“SECOND SCHEDULE.  
Section 2(1).  
BUSINESSES.

BUILDING CONTRACTING  
CARPENTRY      )      In so  
DECORATING     )      Far as  
JOINERY          )      undertaken  
PAINTING         )      in the  
PLUMBING        )      context of  
WOODWORK       )      Building  
                         )      Contracting  
  
CATERING  
ELECTRICAL CONTRACTING  
HAIRDRESSING

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MANUFACTURING  
ROAD                      TRANSPORT  
CONTRACTING  
SHIPPING AGENT  
WELDING"

### **SECOND SCHEDULE.**

Section 6.

#### **DEROGATIONS, EXCEPTIONS AND MODIFICATIONS IN RELATION TO THE KINGDOM OF SPAIN.**

1. Articles 1 to 6 (inclusive) and Articles 13 to 23 (inclusive) of the Regulation (EEC) No. 1612/68 on the Freedom of Movement of Workers within the Community shall not apply in Gibraltar to nationals of the Kingdom of Spain until the expiration of the transitional period of 7 years from the date of accession of the Kingdom of Spain to the European Communities. Gibraltar may maintain in force with regard to Spanish Nationals, national provisions submitting to prior authorisation immigration undertaken with a view to pursuing an activity as an employed person and/or taking up and pursuit of paid employment.
2. Subject as hereinafter mentioned, Article 11 of Regulation No. 1612/68 shall not apply in Gibraltar to nationals of the Kingdom of Spain until the expiration of the transitional period suspending the operation of that Article in the Act concerning the Conditions of Accession for the Kingdom of Spain. The members of workers' families as defined in Article 10 of Regulation (EEC) No. 1612/68 shall have the right to be employed in Gibraltar if they have settled in Gibraltar with the worker and are resident in Gibraltar for a period of not less than 3 years. The said period of 3 years shall be reduced to a period of 18 months with effect from the expiration of the period of 3 years from the date of the accession of the Kingdom of Spain to the European Communities.
3. Insofar as certain provisions of Council Directive 68/360/EEC on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families may not be disassociated from those of Regulation (EEC) No. 1612/68 whose application is deferred pursuant to paragraphs 1 and 2 of this Schedule Gibraltar may derogate from the provisions of Council Directive 68/360/EEC insofar as is necessary for

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the application of the provisions for derogations specified in paragraphs 1 and 2 of this Schedule.

4. The Commission Decision of 8 December 1972 on the uniform system established pursuant to Article 15 of Council Regulation (EEC) No. 1612/68 known as SEDOC and the Commission Decision of 14 December 1972 on the "Community Plan" for the collection and circulation of information provided for in Article 14(3) of Council Regulation (EEC) No.1612/68 will apply in Gibraltar as regards the Kingdom of Spain from the date of accession of the Kingdom of Spain to the European communities and subject to the Act concerning the Conditions of Accession for the Kingdom of Spain.

### **SOCIAL SECURITY AND MEDICAL BENEFITS.**

5. (1) Regulation No. 1408/71 on the application of Social security Schemes to employed persons, to self employed persons and to members of their families moving within the Community, as amended, and Regulation No. 574/72, as amended, laying down the procedure for implementing Regulation 1408/71 shall apply to nationals of the Kingdom of Spain as from the date of the accession of the Kingdom of Spain to the European Communities and subject to the Act concerning the Conditions of Accession for the Kingdom of Spain.

(2) The following legislation of Gibraltar shall apply to nationals of the Kingdom of Spain who are either employed or self employed in Gibraltar:—

Employment Injuries Insurance Ordinance (Chapter 49)

Social Insurance Ordinance (Chapter 145)

Medical Health Ordinance, 1973 (Ordinance No. 14 of 1973)

And Regulations made under the foregoing Ordinances.

(3) A national of the Kingdom of Spain shall be entitled to family allowances in accordance with the provisions of the Family Allowance Ordinance (Chapter 58) in respect of members of his family who are residing with him in Gibraltar, except that the qualifying period of residence for such allowances shall be 6 months.

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(4) Emergency medical treatment shall be available to a national of the Kingdom of Spain who, during stay in Gibraltar, suffers from an accident or falls ill and requires emergency treatment which cannot be deferred until after his intended period of stay.

**RIGHTS OF ESTABLISHMENT**

6. Spanish Doctors qualified to practise dentistry shall not be entitled to practise dentistry in Gibraltar until the expiry of the derogation in the Act concerning the Conditions Accession for the Kingdom of Spain.

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NUMBER OR CHAPTER OF ORDINANCE	SHORT TITLE	AMENDMENT
		(c) Section 52 is amended by inserting the following further proviso:  "And provided that the provisions of subparagraph (a) (ii) and (b) shall not apply to a National of the Kingdom of Spain until the expiration of the transitional period referred to in paragraph 1 of the Second Schedule to the European Communities (Amendment) Ordinance, 1985."
		(d) Section 59 as inserted pursuant to the provisions of Section 5 of the First Schedule to this Ordinance is further amended by adding, after subsection (5), the following new subsection:  "6. The provision of subsections (1) to (3) shall only apply to a National of the Kingdom of Spain employed in Gibraltar is such National is in possession of a residence permit."
Chapter 82	Land (Titles) Order.	Section 2A as inserted pursuant to the provisions of Section 5 of and the First Schedule to this Ordinance is further

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		amended by inserting after the words "European Economic Community" appearing in paragraphs (a) (b) and (c) thereof the words "or the Kingdom of Spain."
Chapter 154	Traffic Ordinance	(a) Section 16 is amended by repealing subsection (3A) and substituting the following new subsection:  “(3A). Notwithstanding subsection (3), where during the period that a driving licence remains in force, the holder of the licence takes up normal residence outside of Gibraltar in a Member State of the European Communities or in Spain the driving licence shall, as long as he remains normally resident in that State or in Spain, continue in force until the expiry of the period of validity or until expiry of the period of one year immediately following the date on which the holder first takes up such residence, whichever period expires the later.”
		(a) by repealing subsection (1) and substituting the following new subsection:  “46A. (1) Where the holder of a valid national driving licence of any Member State of the European Economic Community or of the kingdom of Spain,

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				authorising the driving on any public roads in that State or in the Kingdom of Spain of any vehicle specified in subsection (2), takes up normal residence in Gibraltar, that licence shall for a period of one year immediately following the date on which he first takes up such residence, as long as the licence continues to be valid in the Member State or in the Kingdom of Spain and he continues to be normally resident in Gibraltar, have the same validity and effects as if it were a valid driving licence issued under this Ordinance in respect of that category of vehicle.
35 of 1978	Trade	Licensing	Ordinance,	(a) Section 13 is amended by repealing subsection (3), and substituting the following new subsection:  “(3) An application shall be made to the Licensing Authority not less than 3 months before it is desired that the licence be issued:  Provided that this subsection shall not apply if the applicant is— (a) a company incorporate din Gibraltar or under the laws of a Member State of the European Economic Community or the Kingdom of Spain;  (b) A National of a Member State of the



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European Economic Community or the Kingdom of Spain, who has a valid residence permit issued under Part IX of the Immigration Control Ordinance or who has a right of establishment in Gibraltar or a right to provide services and intends to exercise either of those rights;

(c) a person who either does not require a permit to reside in Gibraltar or who has a certificate of permanent residence issued under the Immigration Control Ordinance; or

(d) a person who under the provisions of this Ordinance is entitled as a right to a licence.”

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(b) Section 16 is amended by repealing subsection (2) and substituting the following new subsection:

2(2). In considering applications for licences the licensing authority shall not discriminate between persons who are nationals of the Kingdom of Spain or of Member States of the European Economic Community including persons who are British Dependant Territories citizens who acquired their citizenship from a connection with

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Gibraltar.”

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Passed by the Gibraltar House of Assembly on the 16<sup>th</sup> day of January, 1985.

P.A. GARBARINO,

Clerk to the Assembly.