

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 2,701 of 3rd DECEMBER, 1992.

I ASSENT,
DEREK REFFELL
GOVERNOR.
3rd December, 1992.



GIBRALTAR. No. 12 of 1992.

AN ORDINANCE to amend the European Communities Ordinance.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Ordinance may be cited as the European Communities (Amendment) Ordinance 1992 and shall come into effect on the 31st day of December 1992.

Amendment to section 2.

2. Section 2 of the European Communities Ordinance (hereinafter called "the principal Ordinance") is amended in sub-section (1) by-

- (a) inserting after paragraphs (b), (f) and (g) the word "and";
- (b) inserting after paragraph (g) the following new paragraph-

"(h) the Agreement on the European Economic Area signed at Oporto on the 2nd of May 1992."

Amendment to section 3.

3. Section 3 of the principal Ordinance is amended in sub-section (i) by omitting the final fullstop and substituting therefor a colon and the following proviso-

"Provided that-

(a) where-

(i) the operation of any relevant enactment is limited (expressly or by implication) by reference to the Communities or by reference to some connection with one of the Communities, and

(ii) the enactment relates to a matter to which the Agreement on the European Economic Area (as it has effect on the date on which it comes into force) relates,

then unless the context otherwise requires, the enactment shall have effect on and after that date in relation to that matter with the substitution as a corresponding limitation relating to the European Economic Area.. (or, where appropriate, to both the Communities and the European Economic Area);

(b) paragraph (a) shall have effect subject to such exceptions and modifications as the Governor may, by notice in the Gazette, prescribe;

(c) paragraph (a) shall not be regarded-

(i) as having an effect which is inconsistent with the operation, by virtue of the Agreement on the European Economic Area, of this sub-section;

(ii) as prejudicing any power to make provision for the purpose of implementing any obligation of the United Kingdom created or arising by or under the Agreement on the European Economic

Area or for any purpose mentioned in section 4(1) relating to that Agreement;

and any instrument made for such a purpose under section 4(1) or under any other enactment may exclude the operation of paragraph (a);

(d) in this proviso "relevant enactment" means a provision of an Ordinance passed, or any subordinate legislation made, before the date on which the Agreement on the European Economic Area comes into force."

Amendment to section 4.

4. Section 4 of the principal Ordinance is amended by inserting after subsection (3) the following new sub-sections-

"(4) In relation to matters to which the Agreement on the European Economic Area (as it has effect on the date on which it comes into force or subsequently) relates, the powers conferred by subsection (1) shall include power to make provision for the reduction or elimination of any difference between-

(a) the application of an Ordinance or subordinate legislation made before the date on which the Agreement on the European Economic Area takes effect in cases having a connection with member States, and

(b) its application in cases having a connection with other States within the European Economic Area,

and sub-paragraphs (a), (c) and (d) of paragraph 1 of Schedule 2 shall not apply to the exercise of the powers of subsection (1) for the purposes of this sub-section.

(5) In relation to matters to which the Agreement on the European Economic Area (as it has effect on the date on which it comes into force or subsequently) relates, the powers conferred by subsection (1) shall include power to make provision for the avoidance, elimination or reduction of any difference between-

(a) the application of an instrument made under that section on or after the date on which that Agreement comes into force in cases having a connection with member States, and

(b) its application in cases having a connection with other States within the European Economic Area.

(6) Subject to the proviso to section 3(1), where, by virtue of the Agreement on the European Economic Area (as it has effect on the date on which it comes into force), it is necessary for a purpose mentioned in sub-section (1) that any relevant provision should have effect with modifications which can be ascertained from that Agreement, then on and after that date the provision shall have effect with those modifications.

(7) The Governor may by order modify or exclude the operation of sub-section (6) in relation to a relevant provision where it appears to him appropriate to do so because of the suspension of any part of the Agreement on the European Economic Area in accordance with the terms of that Agreement.

(8) Sub-section (6) shall not be regarded-

(a) as providing for modifications the effect of which is achieved through the operation, by virtue of the Agreement on the European Economic Area, of section 3(1);

(b) as prejudicing any power to make provision for the purpose of implementing any obligation of the United Kingdom created or arising by or under the Agreement on the European Economic Area, or for any other purpose mentioned in sub-section (1) relating to that Agreement;

and any instrument made under sub-section (1) or any other enactment for such a purpose may exclude the operation of subsection (6).

European Communities (Amendment) Ordinance, 1992.

(9) Sub-section (6) shall not apply so as to require a modification if that modification, or a corresponding modification limited so as to relate only to the Communities,-

(a) could have been made by an Ordinance passed before the date on which the Agreement on the European Economic Area comes into force, for a purpose mentioned in subsection (1), but

(b) was not made (by that or other means).

(10) In this section "relevant provision" means-

(a) a provision of an Ordinance passed, or any subordinate legislation made, before the date on which the Agreement on the European Economic Area comes into force;

(b) a provision of any other instrument made before that date by a person as against whom the effect of a directive issued by a Community institution (if such a directive were relevant) might be relied upon in proceedings to which he was a party."

Amendment to section 6.

5. Section 6 of the principal Ordinance is amended by inserting after sub-section (4) the following new sub-section-

"(5) Sub-sections (2), (3) and (4) shall have effect-

(a) in relation to the EFTA Court (to be established under Article 108 of the Agreement on the European Economic Area) as they have effect in relation to the European Court, and

(b) in relation to the EFTA Surveillance Authority (also to be established under that Article) as they have effect in relation to a Community institution other than the European Court."

Consequential amendments.

6. The Interpretation and General Clauses Ordinance is amended in section 23 by inserting after paragraph (f) the following new paragraphs-

"(g) Where in any Ordinance-

(i) there is provision giving effect by subsidiary legislation to obligations arising under the Treaties, (as defined by section 2 of the European Communities Ordinance) that provision shall be construed as providing the same power to give effect to obligations resulting from the Agreement on the European Economic Area (as it has effect on the date on which it comes into effect and subsequently);

(ii) which relates to matters in respect of which obligations referred to in sub-paragraph (i) arise or have arisen there is no such provision as is referred to in that sub-paragraph, that Ordinance may be amended, varied or added to by regulation made by the Government to give effect to such obligation, and such amendment or variation may include such repeal of the provisions of that Ordinance as is necessary to give such effect.

(h) Where, by virtue of the Agreement on the European Economic Area (as it has effect on the date on which it comes into force) it is necessary that subsidiary legislation made prior to that date by exercise of such a provision as is referred to in paragraph (g)(i), should have effect with modifications that can be ascertained from that Agreement, then on and after that date, such subsidiary legislation shall have effect with those modifications."

Passed by the Gibraltar House of Assembly on the 24th day of November, 1992.

D. FIGUERAS
Clerk to the Assembly.