

## IMMIGRATION, ASYLUM AND REFUGEE ACT

## Principal Act

<b>Act. No. 1962-12</b>	<i>Commencement</i>	1.6.1962
	<i>Assent</i>	31.5.1962
Amending enactments	Relevant current provisions	Commencement date
Act. 1963-20	s. 31	
1967-11	s. 11	
Regs.of 28.5.1970	s. 14(1)	
Act. 1972-19	ss. 3, 39-52, 66, Schs.1, 2	
1976-02	–	
1976-17	ss. 2(1), 15-16, 24-27, 29, 32-33	
1982-12	s. 59(2)-(4)	
1983-07	ss. 2(2)-(3), 13	
1983-12	ss. 14(1), 18(3), 35, 38(2)	
1983-42	ss. 12(2), 20(3)	
1985-02	ss. 2(1), 17(1), 41, 43, 49-50, 45(4), 46(4)-(5), 44(1)(a), 50A, Sch.1	5.2.1985
1985-21	ss. 2, 39(1), 39B, 46(6)-(7), Sch.1	1.1.1986
1986-04	s. 12(2)	27.3.1986
1990-28	s. 19	14.6.1990
1993-09	ss. 10-11, 17, marginal notes of 21 to 25, 26, 56-57, 59, 61-67, 24	8.3.1993
“	ss. 2, 39, 44,	1.7.1993
2000-08	ss. 2(1), 3, 14(1A), 23(1), 39-50K, 65, Schs.1, 2	27.7.2000
2000-16	s. 18(1), (3)	12.10.2000
2001-14	s. 11	7.6.2001
2002-14	ss. 61, 63(2)-(5), 63A(1)	16.12.2002
2003-10	ss. 39, 39A-B, 40(4), 42(3), 43(1), 44(1)-(2), 48(1), 49(7), 50(1), 50F(1)-(2), (c), 50G(2), 50I-50K, 65	31.7.2003
2004-31	ss. 39(1)-(2), 41(3), 46A, 49(9), Sch.1	4.11.2004
2004-33	ss. 63A(1), (3)-(4), Sch.3	4.12.2004
2005-06	ss. 63(6), 63A-63C, Sch.3	9.2.2005
2005-19	s. 3A	16.6.2005
2006-47	s. 11A	21.12.2006
2006-30	s. 46A, Sch.1	1.1.2007

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2008-12 ss. 1, 2(1), 3, 3A, 5, (2), 23, 39-50K,  
55, 55A-55X, 65, 66(1)(h), 67(c)-  
(d), 68, Sch.3

1.10.2008\*

**Transposing:**

Directive 64/221/EEC

Directive 68/360/EEC

Directive 72/194/EEC

Directive 73/148/EEC

Directive 75/34/EEC

Directive 75/35/EEC

Directive 90/364/EEC

Directive 90/365/EEC

Directive 93/96/EEC

Directive 2001/55/EC

Directive 2002/90/EC

Decision 2002/946/JHA

Directive 2004/38/EC

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\* *Notice of Commencement see LN. 2008/074*

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AN ACT TO MAKE PROVISION FOR THE CONTROL OF ENTRY AND IMMIGRATION INTO GIBRALTAR AND FOR MATTERS INCIDENTAL THERETO OR CONNECTED THEREWITH.

**PART I  
GENERAL**

**Short title.**

1. This Act may be cited as the Immigration, Asylum and Refugee Act.

**Interpretation.**

- 2.(1) In this Act, unless the context otherwise requires—

“Advisory Committee” means the Advisory Committee established under Part III of the Gibraltarian Status Act<sup>1</sup>;

“certificate” means a certificate of permanent residence issued under this Act and includes a subsidiary certificate issued under section 35;

“EEA State” has the meaning given in section 55A;

“EEA national” has the meaning given in section 55A;

“entry permit” means an entry permit issued under section 17 or 19;

“Gibraltarian” has the meaning given in the Gibraltarian Status Act;

“Gibraltarian by birth” has the same meaning as in the Gibraltarian Status Act;

“Gibraltarian woman” means a woman who is entitled to be registered in the Register of Gibraltarians established under section 11 of the Gibraltarian Status Act;

“immigration officer” means the Principal Immigration Officer and any person appointed to be an immigration officer under the provisions of section 4;

“passport” means any valid passport issued to a person by or on behalf of the Government of the state of which he is a subject or a valid passport or other travel document issued to a person by an authority

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<sup>1</sup> 1962-13



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recognised by Her Majesty's Government in the United Kingdom, such passport or document being complete and having endorsed upon it all particulars, endorsements, photographs and visas required from time to time by the Government or authority issuing such passport or document and by Her Majesty's Government in the United Kingdom and by any law:

Provided that where the Government or authority issuing such passport has exempted the holder from the requirement of attaching a photograph to that passport then such passport shall be valid without such photograph;

“permit” means any entry permit or permit of residence;

“permit of residence” means a permit of residence issued under section 18, 19 or 42(1);

“Principal Immigration Officer” means the person appointed to be the principal immigration officer under section 4;

“unlawful” means contrary to any provision of this Act;

“valid” means in force at the relevant time;

“visa requiring national” means a person who requires a visa to enter Gibraltar.

(2) For the purposes of this Act, a British Overseas Territories citizen has a connection with Gibraltar if, but only if, at least one of the following criteria is applicable to him and he fulfils all of the following criteria that are applicable to him:

- (a) where his birth in a overseas territory is a material qualification, that he was born or is deemed under the British Nationality Act, 1981, to have been born in Gibraltar;
- (b) where the citizenship of one of his parents at any time after commencement is a material qualification, that that parent is at that time or is deemed under the British Nationality Act, 1981, to have been at that time a British Overseas Territories citizen having a connection with Gibraltar;
- (c) where the fact that one of his parents has at any time settled in a overseas territory is a material qualification, that that parent is at that time settled, or is deemed under the British Nationality Act, 1981, at that time to have been settled, in Gibraltar;

- (d) where Crown service under the Government of a overseas territory is a material qualification, that the overseas territory is Gibraltar;
- (e) where the person is a British Overseas Territories citizen by virtue of registration, or by virtue of an adoption order, that he was so registered in Gibraltar or, as the case may be, that the adoption order was made in Gibraltar;
- (f) where the person is a British Overseas Territories citizen by virtue of naturalisation, that he was naturalised in Gibraltar and that Gibraltar was the relevant territory for the purposes of Schedule 1 to the British Nationality Act, 1981;
- (g) where the residence or presence of any person in a overseas territory is a material qualification, that the overseas territory is Gibraltar;
- (h) where the citizenship of a spouse is at any time after commencement a material qualification, that the spouse is at that time a British Overseas Territories citizen having a connection with Gibraltar;
- (i) where an appropriate qualifying connection with a overseas territory is, within the meaning of the British Nationality Act, 1981, a material qualification, that the overseas territory is Gibraltar;
- (j) in the case of a person who acquired British Overseas Territories citizenship on commencement of the British Nationality Act, 1981, where the birth, naturalisation or registration of the person or his parent or grandparent or any other relevant person in a overseas territory is a material qualification, that the overseas territory was Gibraltar.

(3) For the purpose of subsection (2), ‘material qualification’ means any matter that it is necessary for a person to establish in order to be entitled or eligible to be a British Overseas Territories citizen, whether or not it is the only such qualification.

**Application: EEA Nationals and their family members.**

3. The provisions of sections 6, 7(2), 12(1), 14(1) and (2), 15 to 38, 52, 53 and 64 shall not apply to any person to whom, for the time being, sections 55A to 55X apply.

## **Application: Persons enjoying temporary protection.**

3A. The provisions of sections 6, 18(2) and (3), 20, 21, 23, 52, 53, and 54 shall not apply to persons enjoying temporary protection in Gibraltar under the Temporary Protection Act 2005.

## **Appointment and powers of immigration officers.**

4.(1) The Governor shall, by notice in the Gazette, appoint a Principal Immigration Officer and such other immigration officers as he may consider necessary for the proper carrying out of the provisions of this Act.

(2) The Principal Immigration Officer, by writing under his hand, may delegate all or any of his powers under this Act to such other immigration officers or other persons as he may think fit.

## **General powers.**

5.(1) For the purposes of carrying out of the provisions of this Act, any immigration officer may—

- (a) without a search warrant, enter upon and search any vessel, aircraft or vehicle in Gibraltar;
- (b) interrogate and scrutinize the passport of any person who wishes to enter or leave Gibraltar;
- (c) interrogate and scrutinize the passport of any person whom he suspects of being a prohibited immigrant;
- (d) interrogate and scrutinize the passport of any person whom he believes can give information with regard to any infringement suspected to have been committed against this Act;
- (e) require any person who wishes to enter or leave Gibraltar to complete such form as may be specified by the Principal Immigration Officer;
- (f) require any person whom he reasonably suspects of being a non-Gibraltarian and who has entered Gibraltar or who wishes to enter or leave Gibraltar to submit to examination by a medical practitioner and to such medical treatment as may be advised by a medical practitioner;

- (g) require the master of any vessel or the captain of any aircraft or the person in charge of any vehicle entering or leaving Gibraltar to furnish a list of names of all persons, or persons of any class or category, in the vessel, aircraft or vehicle and such other information as the Principal Immigration Officer may specify;
- (h) arrest without a warrant any person whom he reasonably suspects of having contravened or of being about to contravene any provisions of this Act;
- (i) arrest without a warrant any person whom he reasonably suspects of being a prohibited immigrant or whose presence in Gibraltar he reasonably suspects of being unlawful;
- (j) require the production to him of any proof or evidence which he may consider necessary to substantiate any statement made for the purpose of obtaining any permit.

(2) In respect of a person to whom section 55J, 55L, 55M or 55N applies subsection (1)(f) is subject to section 55T(8).

**Power to require deposit or bond.**

6. The Principal Immigration Officer may require any person seeking any permit to deposit such sum as the Principal Immigration Officer may specify or to furnish security for such amount as the Principal Immigration Officer may deem sufficient.

**Power to require production of permits and certificates.**

7.(1) Any immigration officer or police officer may require any person whom he reasonably suspects of being a non-Gibraltarian present in, or seeking to enter, Gibraltar to produce the permit or certificate authorizing such person to enter or be within Gibraltar.

(2) Any non-Gibraltarian required by this Act to hold a permit or certificate who fails without reasonable excuse to produce his permit or certificate when required to do so shall be deemed to be a person unlawfully within Gibraltar.

**Power to photograph suspects, etc.**

8. Where any person reasonably suspected of being a non-Gibraltarian is in lawful custody under the provisions of this Act, the Principal Immigration officer may cause such steps to be taken, using such force as may be

reasonably necessary therefor, to photograph, measure, fingerprint and otherwise identify such person.

## **Power to enter and search aircraft.**

9. It shall be lawful for any immigration officer without a warrant to enter any aircraft, vehicle or vessel wherein he shall have reason to believe that any non-Gibraltarian may be harboured or concealed contrary to the provisions of this Act and to search for and to take into custody such non-Gibraltarian to be dealt with according to law.

## **Power to enter hotels, etc.**

10.(1) It shall be lawful for any immigration officer at any time to enter any hotel, lodging-house, rooms or apartment let or used as lodgings, for the purpose of ascertaining the names of all persons lodging therein, and whether such persons are non-Gibraltarians or claim to be Gibraltarians.

(2) A person who refuses to permit such entry, and a person who gives false information, are guilty of offences and are liable, on summary conviction, to a fine at level 2 on the standard scale.

## **Entry into and exit from Gibraltar.**

11. No person who seeks to enter or exit Gibraltar overland shall enter or exit other than—

- (a) through the pedestrian or vehicular gates at the frontier, or
- (b) through the commercial gates at the frontier at a time when it is open for authorized commercial traffic under the supervision and control of an immigration officer.

11A.(1) The Government may direct the Principal Immigration Officer to waive the carrying out in circumstances described in such directions of any controls, powers and functions required or permitted under this Act on any persons or category of persons who enter or leave Gibraltar or who are in transit by land or air through the airport to any other country specified in such direction.

(2) A direction under sub-section (1) may include a waiver of the requirement to be in possession of a valid entry permit under section 12(1) and upon the issue of any such direction, the provisions of section 12(1) shall not apply to any person to whom the direction relates to the extent that it requires such person to be in possession of a valid entry permit.

(3) Any direction issued under sub-section (1) may be revoked or modified by the Government at any time and from time to time.

(4) The Principal Immigration Officer shall be bound by, and shall implement, any direction issued under sub-section (1).

(5) The Government may by regulations make such further or different provisions as it may think necessary or desirable to give effect to the arrangements set out in the Ministerial Statement on Gibraltar Airport made at Cordoba on the 18<sup>th</sup> September 2006, inter alia by the Chief Minister and any such regulations may have retrospective effect to the date on which this section comes into operation.

## PART II

### GIBRALTAR IMMIGRATION LAW

#### *Requirement of permits and certificates.*

#### **Restriction on entry or residence without permit or certificate.**

12.(1) Subject to the provisions of section 14, no non-Gibraltarian shall enter or remain in Gibraltar unless he is in possession of—

- (a) a valid entry permit;
- (b) a valid permit of residence ; or
- (c) a valid certificate.

(2) Where the Governor is satisfied that any person who would, but for his inability to comply with the requirements of paragraphs 5(2)(c) or 7(c) of Schedule 1 to the British Nationality Act 1981, be otherwise eligible to apply for naturalisation as a British Overseas Territories citizen under the provisions of section 18 of the British Nationality Act 1981 the Governor may, in his absolute discretion, by order exempt any such person from compliance with the requirements of subsection (1) of this section:

Provided that any order made under this subsection may be revoked by the Governor, acting in his absolute discretion, if –

- (a) the person exempted by such order fails to apply for naturalisation as a British Overseas Territories citizen under section 18 of the British Nationality Act 1981 within three months of the date of the making of the order; or

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- (b) any such application for naturalisation as a British Overseas Territories citizen under section 18 of the British Nationality Act 1981 is refused.

## **No permit or certificate required by Gibraltarians.**

13. Nothing in this Act shall require any Gibraltarian or British Overseas Territories citizen having a connection with Gibraltar to obtain or hold any permit or certificate, which may be issued under this Act.

## **Exemption for certain non-Gibraltarians.**

14.(1) Nothing in this Act shall require any non-Gibraltarian who is—

- (a) a British subject employed in Gibraltar in Her Majesty's service or in the service of the Government of Gibraltar whilst so employed; or
- (b) the wife, any unmarried male child under eighteen and any female child of any such person residing with him in Gibraltar,

to obtain or hold any permit or certificate which may be issued under this Act, and any such person shall for the purposes of this Act be deemed to hold a valid permit during the period of such employment.

(1A) A person shall not under the provisions of this Act require leave to enter or remain in Gibraltar in any case where he is entitled to do so by virtue of an enforceable Community right or any provision made under section 4(1) of the European Communities Act.

(2) The Governor may, from time to time, by notice in the Gazette, declare that the provisions of subsection (1) shall not apply to any class or category of British subject and any reference in this Act to section 14 shall be construed as a reference to subsection (1) as varied in its effect by any such notice.

## ***Entitlement to permits of residence.***

### **Right of residence of men married to Gibraltarian women.**

15.(1) Subject to the provisions of this section, a man who is married to a Gibraltarian woman shall have the right to a permit of residence if his wife is living in Gibraltar.

(2) Notwithstanding anything contained in subsection (1), the Principal Immigration Officer may refuse a permit of residence to a man married to a Gibraltar woman –

- (a) on grounds of public policy, public security or public health;
- (b) if the parties are legally separated; or
- (c) if he is satisfied that, notwithstanding that the parties are not legally separated, they are not living together.

(3) A permit of residence issued under the provisions of this section may be cancelled at any time by the Principal Immigration Officer–

- (a) on grounds of public policy, public security or public health;
- (b) if the marriage is ended by divorce;
- (c) if the parties become legally separated;
- (d) if the woman dies; or
- (e) if the parties cease to live together.

(4) Only the following diseases and disabilities shall be diseases and disabilities, which in the interests of public health may justify the refusal or cancellation of a permit of residence–

- (a) diseases which constitute a potential danger to public health, namely–
  - (i) infectious diseases subject to quarantine referred to in International Health Regulation No. 2 of the 25th day of May, 1951, of the World Health Organisation;
  - (ii) tuberculosis of the respiratory system in active state or showing a tendency to develop;
  - (iii) syphilis;
  - (iv) other infectious or parasitic contagious diseases in as far as they are the subject of provisions for the protection of the nationals of Gibraltar;
- (b) diseases and disabilities constituting a potential danger to public interest or public safety–



- (i) toxicomania;
- (ii) profound mental disturbance, manifest conditions of psychotic disturbance with agitation, delirium, hallucinations or confusion.

## **Right of residence of children of Gibraltar women.**

16.(1) The child under the age of eighteen of a Gibraltar woman shall have a right to reside within Gibraltar if his mother resides within Gibraltar and he is residing with her.

(2) A child who is residing in Gibraltar by virtue of the provisions of subsection (1) shall, on attaining the age of eighteen, have the right to a permit of residence so long as his mother is residing in Gibraltar.

(3) In this section the expression “child” includes an illegitimate child

## ***Issue of frontier worker certificates and permits of residence.***

### **Issue of frontier worker certificates**

17. Provision may be made by rule for the issue to frontier workers of registration certificates in accordance with the provisions of rules made under this section and such rules may make different provision in respect of frontier workers of different categories.

### **Issue of permits of residence.**

18.(1) The Principal Immigration Officer may issue to any non-Gibraltarian a permit of residence of one of the following kinds—

- (a) a two day permit of residence, which shall entitle the holder thereof to remain in Gibraltar for two days and one night as specified in the permit;
- (b) a weekly permit of residence, which shall entitle the holder thereof to remain in Gibraltar for such period, not exceeding one week, as may be specified in the permit;
- (c) a fortnightly permit of residence, which shall entitle the holder thereof to remain in Gibraltar for such period, not exceeding two weeks, as may be specified in the permit;

- (d) a monthly permit of residence, which shall entitle the holder thereof to remain in Gibraltar for such period, not exceeding one month, as may be specified in the permit;
- (e) a quarterly permit of residence, which shall entitle the holder to remain in Gibraltar for such period, not exceeding three months, as may be specified in the permit;
- (ee) a permit of residence entitling the holder to remain in Gibraltar for a period of time not exceeding 6 months;
- (f) a permit of residence entitling the holder to remain in Gibraltar for a period of time exceeding 6 months but not exceeding 5 years.

(2) The holding of a permit of residence shall not of itself entitle the holder thereof to undertake employment in Gibraltar.

(3) A permit of residence shall only be issued under the provisions of paragraph (f) of subsection (1) if the Principal Immigration Officer is satisfied that the applicant thereof, or the parent of an applicant under the age of eighteen or the spouse of the applicant, holds a valid certificate of employment issued under the provisions of section 25 of the Employment Act and is employed in Gibraltar.

#### **Governor's power to order issue of permits.**

19. The Governor may order the Principal Immigration Officer to issue a permit of residence valid for such period as the Governor may specify in any particular case—

- (a) to any person entitled to privileges and immunities under the Diplomatic Privileges (International Organisations) Act<sup>2</sup>;
- (b) to any person entitled to consular privileges and immunities in Gibraltar by any other law or otherwise; or
- (c) to any person who, in the opinion of the Governor—
  - (i) is of good character ; and
  - (ii) it is in the interest of Gibraltar should be issued with such permit.

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<sup>2</sup> 1948-28

## **Cancellation of permits.**

20.(1) (1) The Principle Immigration Officer may at any time cancel any permit issued under this Act.

(2) The Governor may at any time cancel any permit issued under this Act.

(3) Where the holder of a valid entry permit or permit of residence carries on in Gibraltar in contravention of the Trade Licensing Act<sup>3</sup> any trade or business, or is employed in Gibraltar in contravention of the Employment Act<sup>4</sup>, his entry permit shall thereupon cease to have effect.

## **Appeal from refusal or cancellation of permit.**

21.(1) Any person aggrieved by the refusal of the Principal Immigration Officer to issue a permit or by the cancellation of a permit by the Principal Immigration Officer may appeal against such decision to the Governor, within seven days of such refusal or cancellation, but shall not during such seven days, or while the appeal is being considered by the Governor, be entitled to enter or remain within Gibraltar.

(2) The Governor may affirm, vary or reverse any decision of the Principal Immigration Officer to refuse to issue a permit or to cancel a permit.

## **Renewal of permits.**

22. Where any permit may be issued under this Act, either a new permit may be issued or the validity of an existing permit may be extended.

## **No appeal to court.**

23.(1) Subject to section 55V no court shall question and no appeal shall lie to any court from any decision of the Principal Immigration Officer under this Act or from any decision of the Governor hereunder.

(2) In this section “decision” means any grant, renewal, refusal or cancellation of an entry permit which may be issued under this Act.

## ***Entitlement to certificates of permanent residence.***

## **Rights of children of Gibraltarian women.**

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<sup>3</sup> 1978-35

<sup>4</sup> 1932-16

25.(1) A child of a Gibraltar woman, if he has resided in Gibraltar for a period of not less than five years commencing at any time on or after the 1st day of January, 1976, shall be entitled to a certificate of permanent residence:

Provided that no child shall be granted a certificate of permanent residence by reason of the fact that he has resided in Gibraltar for five years unless and until he reaches the age of eighteen and is residing in Gibraltar on attaining that age.

(2) In this section the expression “child” includes an illegitimate child.

*Discretionary grants of certificates of permanent residence*

**Grants to men married to Gibraltar women.**

26. The Governor may, in his absolute discretion, grant a certificate of permanent residence to any man who is or has been married to a Gibraltar woman .

**Grants to children of Gibraltar women.**

27. The Governor may, in his absolute discretion grant a certificate of permanent residence to the child of a Gibraltar woman notwithstanding that such child is not entitled to a certificate of permanent residence under section 25.

**Grants to other non-Gibraltarian.**

28. The Governor may, in his absolute discretion, grant a certificate of permanent residence to any person who—

- (a) satisfies the Governor that Great Britain is his country of origin; and
- (b) in the opinion of the Governor, is of good character and is likely to be an asset to the community.

**Application for discretionary grants.**

29. Any person seeking a certificate under the provisions of section 26, 27 or 28 shall make application to the Governor through the Deputy Governor.

**Conditions attached to certificates.**

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30. The Governor may attach to a certificate issued under section 26, 27 or 28 such conditions as to place of residence, as to the employment which may or may not be taken by the holder thereof and such other conditions as the Governor may think fit to impose in any particular case.

### **Grant in lieu of registration.**

31. The Governor may, in his absolute discretion, grant a certificate of permanent residence to any person on the advice of the Advisory Committee pursuant to the power contained in section 10 of the Gibraltar Status Act.

### **Function of Advisory Committee.**

32. The Advisory Committee shall deal with any application for a certificate of permanent residence under section 26 or 27 in the same manner as if it were an application under Part II of the Gibraltar Status Act, for an order for registration by the Governor thereunder and the provisions of that Act governing such applications and orders shall apply to an application under section 29.

### **Quota of certificates.**

33. The maximum number of certificates which may be issued in any calendar year under the provisions of section 26, 27 or 28 and the maximum number of certificates which may be in force at any time under section 26, 27 or 28 shall be such as the Governor may from time to time specify.

### **No appeal to court.**

34. No report of the Advisory Committee submitted to the Governor under section 31 or 32 and no decision of the Governor under section 26, 27, 28, 30 or 31 shall be subject to appeal or shall be questioned in any court.

### *Subsidiary certificates.*

### **Issue of certificates to grantee's spouse and children.**

35. Where a certificate is issued to any person, a subsidiary certificate shall be issued to—

- (a) the spouse of such holder;
- (b) any male unmarried child under the age of eighteen of such person; and
- (c) any unmarried female child of such person.

*Effect of certificates***Certificate not to confer status of Gibraltarian.**

36. The granting of a certificate to a person shall not confer upon that person any right to have his name entered in the Register of Gibraltarians established under the Gibraltarian Status Act, nor shall it confer upon him any rights or privileges conferred by law upon Gibraltarians and such person shall, for all purposes other than as set out in this Act, be considered to be a non-Gibraltarian.

*Cancellation and duration of certificates.***Cancellation of certificates.**

37. The Governor may at any time cancel a certificate of permanent residence issued under this Part if he is satisfied that the holder thereof—

- (a) has shown himself by act or speech to be disloyal or disaffected towards Her Majesty;
- (b) has at any time been sentenced in any country to imprisonment for a term of not less than six months; or
- (c) has failed to comply with any of the conditions to which the certificate is subject.

**Duration of certificates.**

38.(1) A certificate shall remain in force until cancelled under the provisions of section 37 or until the death of the holder thereof whichever is the sooner and shall thereupon determine.

(2) A subsidiary certificate issued under the provisions of section 35 shall lapse—

- (a) upon the death or the cancellation of the certificate of the person by virtue of whose holding of a certificate such subsidiary certificate was issued;
- (b) in the case of a person included therein by virtue of paragraph (b) of section 35, upon his reaching the age of eighteen or marrying;

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- (c) in the case of a person included therein by virtue of paragraph (c) of section 35, upon her marriage.

*Sections 39-50K Repealed.*

*Section 51 Repealed*

## ***Prohibited immigrants***

### **Power to declare prohibited immigrants.**

52. (1) The Principal Immigration Officer may declare to be a prohibited immigrant any non-Gibraltarian who seeks to enter, enters or has entered Gibraltar and at the time of his so seeking to enter, or of his entry, is or, if he has already entered, was—

- (a) a destitute person;
- (b) a person of unsound mind;
- (c) a person who refuses to submit to examination by a medical practitioner or to medical treatment when required to do so under the provisions of paragraph (f) of section 5;
- (d) a person who is certified by a medical practitioner to be suffering from a contagious or infectious disease which makes his presence in Gibraltar potentially dangerous to members of the public;
- (e) a person who has been convicted in any place of any offence for which a sentence of imprisonment has been passed upon him and who, by reason of the circumstances connected therewith, is deemed by the Principal Immigration Officer to be an undesirable immigrant:

Provided that this paragraph shall not apply to offences, which, in the opinion of the Principal Immigration Officer, are of a political character;

- (f) a person who, in consequence of any information received from any source considered by the Principal Immigration Officer to be reliable or from any government, is deemed to be an undesirable immigrant\*;

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\* Note: names in Notice of Declaration of Prohibited Immigrants LN. 2002/072;

- (g) a person against whom there is in force any order for his removal from Gibraltar under any law;
- (h) a dependent of any person to whom any of the preceding paragraphs of this subsection refers;
- (i) a person whose presence in or entry into Gibraltar is or, at the time of his entry, was unlawful under this Act or any other law; or
- (j) a person who has no passport in his possession at the time of his entry into Gibraltar.

(2) Any person declared a prohibited immigrant under the provisions of this section may appeal to the Governor, who may confirm or cancel such declaration and whose decision shall be final.

(3) A prohibited immigrant shall not be entitled to enter or remain in Gibraltar while his appeal to the Governor under subsection (2) is being considered.

#### **Effect of declaration.**

53.(1) The entry into and presence within Gibraltar of any prohibited immigrant is unlawful:

Provided that the Principal Immigration Officer may grant a permit to a prohibited immigrant permitting him to enter and remain in Gibraltar for such period and subject to such conditions as the Principal Immigration Officer may direct.

(2) The burden of proof that a person is not a prohibited immigrant shall be upon that person.

(3) Any prohibited immigrant found in Gibraltar may be detained by order of the Principal Immigration Officer, for not more than forty-eight hours, in such place and manner as he may specify.

(2) Any prohibited immigrant may be dealt with in the same manner as an unauthorized person may be dealt with under section 71.

#### ***Fugitive offenders***

#### **Fugitive offenders**



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54. Notwithstanding any other provisions of this Act, any person who is a fugitive criminal of a foreign state within the meaning of the Extradition Acts, 1870 to 1932, or a fugitive from a part of Her Majesty's dominions within the meaning of the Fugitive Offenders Act, 1881, shall not be ordered to be removed from and shall not be removed from Gibraltar under this Act save—

- (a) under an order in that behalf issued by the Governor under his hand; or
- (b) in such manner as to enable him to be arrested by or by the order of the government of the foreign state or of Her Majesty's dominions, as the case may be.

### **PART III ASYLUM, REFUGEES AND PERSONS SEEKING INTERNATIONAL PROTECTION**

#### **Asylum, Refugees and Persons seeking International Protection.**

55.(1) The Government may make regulations under this section for the purpose of establishing rules and standards concerning asylum, refugees and persons seeking international protection.

(2) Without prejudice to the generality of subsection (1), regulations may be made under this section to give effect in the law of Gibraltar, including by amending primary legislation, to the law of the European Union or to any provision of a relevant international agreement or convention which applies to Gibraltar relating to asylum, refugees or persons seeking international protection and any amendment to primary legislation made by such regulations shall be deemed to be an amendment made pursuant to this section.

### **PART IV EEA NATIONALS AND FAMILY MEMBERS, SWISS POSTED WORKERS”**

#### **Interpretation.**

55A.(1) In this Part, unless the context otherwise requires—

“the Authority” means the Head of the Civil Status and Registration Office and includes such persons to whom he delegates his authority under this Act;

“Directive 2004/38” means Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC;

“EC-Switzerland Agreement” means the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons;

“EEA decision” means a decision under this Part that concerns a person’s—

- (a) entitlement to enter Gibraltar;
- (b) entitlement to reside in Gibraltar;
- (c) entitlement to be issued with, have renewed, or not have revoked, a registration certificate, residence card, document certifying permanent residence, or permanent residence card; or
- (d) requirement to leave Gibraltar or removal from Gibraltar;

“EEA family permit” means an entry clearance issued to a non-EEA national family member of an EEA national;

“EEA national” means a national of an EEA State;

“EEA State” means—

- (a) a State, which is a Contracting Party to the European Economic Area Agreement signed in Oporto on 2 May 1992 as amended or adjusted from time to time (for the purposes of clarity a list of these States is set out in Schedule 1);
- (b) Switzerland;

“extended family member” has the meaning given in section 55G;

“family member” has the meaning given in section 55F;

“family member who has retained the right of residence” means a person who meets the criteria in section 55H;

“military service” means service in the armed forces of an EEA state;

“non-EEA national” means a person who is not a national of an EEA state;

“non-EEA national family member” means a family member who is a non- EEA national;

“permanent residence card” means a card issued under section 55Q(2)(b);

“Regulation 1612/68” means Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;

“relevant EEA national”, in relation to an extended family member, has the meaning given in section 55G(6);

“residence card” means a card issued under section 55P;

“spouse” does not include a party to a marriage of convenience.

(2) Any term used, but not defined, shall be construed in accordance with the provisions of the relevant European Union measure as interpreted by the European Court of Justice.

## **Continuity of Residence.**

55B.(1) This section applies for the purpose of calculating periods of continuous residence in Gibraltar under sections 55D (worker or self-employed person who has ceased economic activity) and 55N (permanent residence).

(2) Continuity of residence is not affected by–

- (a) periods of absence from Gibraltar which do not exceed six months in total in any year;
- (b) periods of absence from Gibraltar on military service; or
- (c) any one absence from Gibraltar not exceeding twelve months for an important reason such as pregnancy, childbirth, serious illness, study or vocational training or an overseas posting.

(3) But continuity of residence is broken if a person is removed from Gibraltar under section 55R(2).

**Definition of worker, job seeker, self employed person, self-sufficient person and student.**

55C.(1) In this Part, "worker" means a worker within the meaning of Article 39 of the Treaty establishing the European Community and includes a job seeker.

(2) In this Part, "job seeker" means a person who enters Gibraltar in order to seek employment and can provide evidence that he is seeking employment and has a genuine chance of being engaged.

(3) In this Part, "self-employed person" means a person who establishes himself in order to pursue activity as a self-employed person in accordance with Article 43 of the Treaty establishing the European Community.

(4) In this Part, "self-sufficient person" means a person who has—

- (a) sufficient resources not to become a burden on the social assistance system of Gibraltar during his period of residence; and
- (b) comprehensive sickness insurance cover in Gibraltar.

(5) In this Part, "student" means a person who—

- (a) is enrolled at a private or public establishment, included on the Department for Education and Training Register of Education and Training Providers or financed from public funds, for the principal purpose of following a course of study, including vocational training;
- (b) has comprehensive sickness insurance cover in Gibraltar; and
- (c) assures the Authority by means of a declaration, or by such equivalent means as the person may choose, that he has sufficient resources not to become a burden on the social assistance system of Gibraltar during his period of residence.

(6) For the purposes of subsection (4) (self-sufficient persons), where family members of the person concerned reside in Gibraltar and their right to reside is dependent upon their being family members of that person—

- (a) the requirement for that person to have sufficient resources not to become a burden on the social assistance system of Gibraltar during his period of residence shall only be satisfied if his

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resources and those of the family members are sufficient to avoid him and the family members becoming such a burden;

- (b) the requirement for that person to have comprehensive sickness insurance cover in respect of his period of residence in Gibraltar shall only be satisfied if he and his family members have such cover.

(7) For the purposes of subsection (5) (students), where family members of the person concerned reside in Gibraltar and their right to reside is dependent upon their being family members of that person, the requirement for that person to assure the Authority that he has sufficient resources not to become a burden on the social assistance system of Gibraltar during his period of residence shall only be satisfied if he assures the Authority that his resources and those of the family members are sufficient to avoid him and the family members becoming such a burden.

(8) For the purposes of subsections (4) and (5) and subsections (6) and (7), the resources of the person concerned and, where applicable, any family members, are to be regarded as sufficient if they exceed the maximum level of resources which a Gibraltarian and his family members may possess in order to be eligible for social assistance in Gibraltar.

## **Definition of worker or self-employed person who has ceased economic activity.**

55D.(1) In this Part, "worker or self-employed person who has ceased economic activity" means an EEA national who satisfies a condition in subsection (2), (3), (4) or (5).

(2) A person satisfies the condition in this subsection if he—

- (a) terminates his activity as a worker or self-employed person and—
  - (i) on the date on which he terminates his activity, he has reached the age at which state old age pension is payable in Gibraltar; or
  - (ii) in the case of a worker, ceases working to take early retirement;
- (b) pursued his activity as a worker or self-employed person in Gibraltar for at least twelve months prior to the termination; and

- (c) resided in Gibraltar continuously for more than three years prior to the termination.

(3) A person satisfies the condition in this subsection if–

- (a) he terminates his activity in Gibraltar as a worker or self-employed person as a result of a permanent incapacity to work; and
- (b) either–
  - (i) he resided in Gibraltar continuously for more than two years prior to the termination; or
  - (ii) the incapacity is the result of an accident at work or an occupational disease that entitles him to a pension payable in full or in part by a body in Gibraltar.

(4) A person satisfies the condition in this subsection if–

- (a) he is active as a worker or self-employed person in an EEA State but retains his place of residence in Gibraltar, to which he returns as a rule at least once a week; and
- (b) prior to becoming so active in that EEA State, he had been continuously resident and continuously active as a worker or self-employed person in Gibraltar for at least three years.

(5) A person who satisfies the provisions of subsection (4)(a) but not the provisions of subsection (4)(b) shall, for the purposes of subsections (2) and (3), be treated as being active and resident in Gibraltar during any period in which he is working or self-employed in the EEA State.

(6) The conditions in subsections (2) and (3) as to length of residence and activity as a worker or self-employed person shall not apply in relation to a person whose spouse is Gibraltarian or has lost his Gibraltarian status by marriage to that worker or self-employed person.

(7) For the purposes of this section, the following shall be treated as periods of activity as a worker or self-employed person, as the case may be–

- (a) periods of inactivity for reasons not of the person's own making;
- (b) periods of inactivity due to illness or accident; and

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- (c) in the case of a worker, periods of involuntary unemployment duly recorded by the employment office of the Ministry of Employment.

## **Definition of Qualified person.**

55E.(1) In this Part, “qualified person” means a person who is an EEA national and is in Gibraltar as–

- (a) a job seeker;
- (b) a worker;
- (c) a self-employed person;
- (d) a self-sufficient person; or
- (e) a student.

(2) An EEA national shall not cease to be treated as a worker or self-employed person for the purpose of subsection (1) if–

- (a) he is temporarily unable to work or engage in self-employment as the result of an illness or accident;
- (b) he is registered with the Department of Employment for the purposes of seeking employment and–
  - (i) he was employed in Gibraltar for 12 months before becoming unemployed;
  - (ii) he was employed in Gibraltar for under 12 months before becoming unemployed and he has been unemployed for no more than 6 months; or
  - (iii) he can provide evidence that he is seeking employment in Gibraltar and has a genuine chance of being engaged;
- (c) he is involuntarily unemployed and has embarked on vocational training; or
- (d) he has voluntarily ceased working and embarked on vocational training that is related to his previous employment.

## **Definition of Family Member.**

55F.(1) Subject to subsection (2), for the purposes of this Part the following persons shall be treated as the family members of another person—

- (a) his spouse;
- (b) direct descendants of his, or his spouse, who are—
  - (i) under 21; or
  - (ii) dependent on him or his spouse;
- (c) dependent direct relatives in his ascending line or that of his spouse; or
- (d) a person who is treated as the family member of that other person under subsection (3).

(2) A person shall not be treated as the family member of a student residing in Gibraltar after the period of three months beginning on the date on which the student is admitted to Gibraltar unless—

- (a) the person is the spouse or dependent child of the student or of his spouse; or
- (b) the student is also a worker, self employed or self-sufficient person who has a right of residence in Gibraltar under section 55M.

(3) Subject to subsection (4), a person who is an extended family member and has been issued with an EEA family permit, a registration certificate or a residence card shall be treated as the family member of the relevant EEA national for as long as—

- (a) he continues to satisfy a condition in section 55G(2), (3), (4) or (5) in relation to that EEA national; and
- (b) the permit, certificate or card has not ceased to be valid or been revoked.

(4) Where the relevant EEA national is a student, the extended family member shall only be treated as the family member of that national under subsection (3) if—

- (a) the EEA family permit was issued or its issue authorised under section 55K(2);



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- (b) the registration certificate was issued under section 55O(4); or
- (c) the residence card was issued under section 55P(5).

## **Definition of Extended Family Member.**

55G.(1) In this Part "extended family member" means a person who—

- (a) is not a family member of an EEA national under section 55F(1)(a), (b) or (c); and
- (b) satisfies a condition set out in subsection (2), (3), (4) or (5).

(2) A person satisfies the condition in this subsection if the person is a relative of an EEA national or his spouse and—

- (a) the person is residing in an EEA State in which the EEA national also resides and is dependent upon the EEA national or is a member of his household;
- (b) the person satisfied the condition in paragraph (a) and is accompanying the EEA national to Gibraltar or wishes to join him there; or
- (c) the person satisfied the condition in paragraph (a), has joined the EEA national in Gibraltar and continues to be dependent upon him or to be a member of his household.

(3) A person satisfies the condition in this subsection if the person is a relative of an EEA national or his spouse and, on serious health grounds, strictly requires the personal care of the EEA national or his spouse.

(4) A person satisfies the condition in this subsection if the person is a relative of an EEA national and, in the country from which they have come, is dependent upon the EEA national or is a member of his household and, on entry to Gibraltar will continue to be dependent upon the EEA national or a member of his household.

(5) A person satisfies the condition in this subsection if the person is the partner of an EEA national and proves that he is in a durable relationship with the EEA national.

(6) In this Part “relevant EEA national” means, in relation to an extended family member—

- (a) the EEA national who is or whose spouse is the relative of the extended family member for the purpose of subsection (2), (3) or (4); or
- (b) the EEA national who is the partner of the extended family member for the purpose of subsection (5).

**Definition of “family member who has retained the right of residence”.**

55H.(1) In this Part, “family member who has retained the right of residence” means, subject to subsection (7), a person who satisfies a condition in subsection (2), (3), (4) or (5).

(2) A person satisfies the condition of this subsection if–

- (a) he was a family member of a qualified person when the qualified person died;
- (b) he resided in Gibraltar in accordance with this Part for at least twelve months immediately before the death of that qualified person; and
- (c) he satisfies the condition in subsection (6).

(3) A person satisfies the condition in this subsection if–

- (a) he is the direct descendant of–
  - (i) a qualified person who has died;
  - (ii) an EEA national who was a qualified person, but has ceased to reside in Gibraltar; or
  - (iii) the person who was the spouse of the qualified person mentioned in paragraph (i) when he died or is the spouse of the EEA national mentioned in sub-paragraph (ii); and
- (b) he was attending an educational course within the meaning of Article 12 of Regulation 1612/68 in Gibraltar immediately before the qualified person died or the EEA national ceased to reside in Gibraltar and continues to attend such a course.

(4) A person satisfies the condition in this subsection if the person is the parent with actual custody of a child who satisfies the condition in subsection (3).

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- (5) A person satisfies the condition in this subsection if–
- (a) he ceased to be a family member of a qualified person on the termination of his marriage with that EEA national;
  - (b) he was residing in Gibraltar in accordance with this Part at the date of the termination;
  - (c) he satisfies the condition in subsection (6); and
  - (d) either–
    - (i) prior to the initiation of proceedings for the termination of the marriage the marriage had lasted for at least three years and the parties to the marriage had resided in Gibraltar for at least one year during its duration;
    - (ii) the former spouse of the qualified person has custody of a child of that EEA national;
    - (iii) the former spouse of the qualified person has the right of access to a child under the age of 18 of that qualified person and a court has ordered that such access shall take place in Gibraltar; or
    - (iv) the continued right of residence in Gibraltar of the person is warranted by particularly difficult circumstances, such as he, or another family member, having been a victim of domestic violence while the marriage was subsisting.
- (6) The condition in this subsection is that the person–
- (a) is not an EEA national but would, if he were an EEA national, be a worker, a self-employed person or a self-sufficient person; or
  - (b) is the family member of a person who falls within paragraph (a).
- (7) A person–
- (a) who has a right to reside permanently in Gibraltar under section 55N shall not become a family member who has retained the right of residence on the death or departure from Gibraltar of the EEA national or the termination of the marriage;

- (b) who is a family member who has retained the right of residence shall cease to have that status on acquiring a right of permanent residence under section 55N.

#### **Family members of Gibraltarians.**

55I.(1) If the conditions in subsection (2) are satisfied, this Part applies to a person who is the family member of a Gibraltarian as if the Gibraltarian were an EEA national.

(2) The conditions are that–

- (a) the Gibraltarian is residing in an EEA State as a worker or self-employed person before returning to Gibraltar;
- (b) if the family member of the Gibraltarian is his spouse, the parties are living together in the EEA State or had entered into the marriage and were living together in that State before the Gibraltarian returned to Gibraltar.

(3) Where this Part applies to the family member of a Gibraltarian the Gibraltarian shall be treated as holding a valid passport issued by an EEA State for the purpose of the application of section 55L to that family member.

#### ***EEA Rights – Entry and Residence.***

#### **Right of Entry to Gibraltar.**

55J.(1) An EEA national shall be allowed to enter Gibraltar if he produces on arrival a valid passport or identity card issued by an EEA state.

(2) A non-EEA national shall be allowed to enter Gibraltar if he is the family member of an EEA national, a family member who has retained the right of residence or a person with a permanent right of residence under section 55N if he produces on arrival–

- (a) a valid passport; and
- (b) an EEA family permit, a residence card or a permanent residence card.

(3) An entry or exit stamp shall not be placed in the passport of a person allowed to enter Gibraltar under this section if–

- (a) he is an EEA national; or

- (b) he is a non-EEA national who produces a residence card or permanent residence card.

(4) Before a person is refused entry to Gibraltar on the ground that he does not produce on arrival a document mentioned in subsection (1) or (2), that person shall be given every reasonable opportunity to—

- (a) obtain the document or have it brought to him within a reasonable period of time; or
- (b) to prove by other means that he is—
  - (i) an EEA national;
  - (ii) a family member of an EEA national with a right to accompany that national or join him in Gibraltar;
  - (iii) a family member who has retained the right of residence or a person with a permanent right of residence under section 55N; or
  - (iv) an extended family member, who has not been treated as a family member under section 55F, of an EEA national who satisfies the criteria set out in section 55K(2) (recommendations for issue of an EEA family permit).

(5) The Authority—

- (a) shall facilitate the person's entry to Gibraltar if one of the criteria in subsection (4)(b)(i) to (iii) applies;
- (b) may facilitate the person's entry to Gibraltar if the criteria in subsection (4)(b)(iv) applies.

(6) This section is subject to section 55R(1) (exclusion and removal).

## **Issue and authorisation to issue EEA Family Permits.**

55K.(1) The Authority shall, subject to subsection (5), issue or authorise the issue of an EEA family permit to a person who applies for it if the person is a family member of an EEA national and—

- (a) the EEA national—
  - (i) is residing in Gibraltar in accordance with this Part;

- (ii) will be travelling to Gibraltar within six months of the date of the application and will be an EEA national residing in Gibraltar in accordance with this Part on arrival; or
  - (iii) will be travelling to Gibraltar within six months of the date of the application and is otherwise entitled to enter Gibraltar under this Part; and
- (b) the family member will be accompanying the EEA national to Gibraltar or joining him there.

(2) The Authority may, subject to subsection (5), issue or authorise the issue of an EEA family permit to an extended family member of an EEA national who applies for one if—

- (a) the relevant EEA national satisfies a condition in subsection (1)(a);
- (b) the extended family member wishes to accompany the relevant EEA national to Gibraltar or to join him there; and
- (c) in all the circumstances, it appears appropriate to issue the EEA family permit.

(3) Before issuing, or authorising the issue of, an EEA family permit under subsection (2) the Authority shall undertake an extensive examination of the personal circumstances of the applicant and, if he refuses to issue, or to authorise the issue of, an EEA permit, shall give reasons in writing justifying the refusal unless this is contrary to the interests of national security.

(4) A decision to issue, authorise the issue, refuse to issue or refuse to authorise the issue of an EEA family permit under this section shall be made as soon as possible and no fee shall be charged for the decision.

(5) The Authority shall not issue or authorise the issue of an EEA family permit under this section if the applicant or the EEA national concerned falls to be excluded from Gibraltar on grounds of public policy, public security or public health in accordance with section 55T.

#### **Entitlement to reside in Gibraltar for three months.**

55L.(1) The following persons are entitled to reside in Gibraltar for a period not exceeding three months from the date of entry into Gibraltar—

- (a) an EEA national who holds a valid passport or identity card issued by an EEA state;
- (b) a non-EEA national who—
  - (i) is a family member of an EEA national residing in Gibraltar under paragraph (a); and
  - (ii) holds a valid passport.

(2) But—

- (a) subsection (1) is subject to section 55R(2)(b) (removal on grounds of public policy etc); and
- (b) an EEA national or his family member who becomes an unreasonable burden on the social assistance system of Gibraltar shall cease to have the right to reside under this section.

## **Extended right of Residence in Gibraltar.**

55M.(1) An EEA national is entitled to reside in Gibraltar for as long as he is a qualified person.

(2) A family member of a qualified person residing in Gibraltar under subsection (1) or an EEA national with a permanent right of residence under section 55N is entitled to reside in Gibraltar for so long as he remains the family member of the qualified person or EEA national.

(3) A family member who has retained the right of residence is entitled to reside in Gibraltar for so long as he remains a family member who has retained the right of residence.

(4) A right to reside under this section is in addition to any right of residence which a person may have under section 55L (initial right of residence) or section 55N (permanent residence).

(5) This section is subject to section 55R(2)(b) (removal on grounds of public policy etc).

## **Right of Permanent Residence.**

55N.(1) The following persons are entitled to reside permanently in Gibraltar—

- (a) an EEA national who has resided in Gibraltar in accordance with this Part for a continuous period of five years;
- (b) a non-EEA family member of an EEA national, who has resided in Gibraltar with the EEA national in accordance with this Part for a continuous period of five years;
- (c) a person who—
  - (i) has resided in Gibraltar in accordance with this Part for a continuous period of five years; and
  - (ii) was, at the end of that period, a family member who has retained the right of residence.

(2) The following persons are entitled to reside permanently in Gibraltar notwithstanding that they have not resided in Gibraltar for a continuous period of five years—

- (a) a worker or self-employed person who has ceased economic activity;
- (b) the family members of a worker or self-employed person who has ceased economic activity;
- (c) a person who was the family member of a worker or self-employed person where—
  - (i) the worker or self-employed person has died;
  - (ii) the family member resided with him immediately before his death; and
  - (iii) the worker or self-employed person had resided continuously in Gibraltar for at least the two years immediately before his death or his death was the result of an accident at work or an occupational disease or the surviving spouse lost his Gibraltar status following marriage to the worker or self-employed person.

(3) Once acquired, permanent residence in Gibraltar may be lost only through absence from Gibraltar for a period exceeding two consecutive years.

(4) This section is subject to section 55R(2)(b).



## *Residence Documentation.*

### **Registration Certificates for EEA Nationals.**

55O.(1) An EEA national residing in Gibraltar,—

- (a) may register with the Authority at any time after entry into Gibraltar;
- (b) shall register with the Authority if he has resided in Gibraltar for over three months;
- (c) shall, after registration, notify the Authority in writing of any change of residential address including notifying the Authority if he ceases to reside in Gibraltar;
- (d) who fails to comply with a requirement under paragraph (b) or (c) is liable to a civil fine of £100.

(2) The Authority shall issue a registration certificate to an EEA national immediately on—

- (a) written application on such form as the Authority may require, or as is prescribed by rules, giving their name and residential address in Gibraltar; and
- (b) production of a valid identity card or passport issued by an EEA State; and in respect of—
  - (i) a worker, confirmation of engagement from an employer or a certificate of employment;
  - (ii) a self-employed person, evidence that he is a self-employed person within the definition in section 55C(3);
  - (iii) a self-sufficient person, evidence that he satisfies the definition of a self-sufficient person in section 55C(4);
  - (iv) a student, evidence that he satisfies the definition of a student in section 55C(5);
  - (v) an EEA national who is the family member of an EEA national residing in Gibraltar under section 55L or 55M or of an EEA national with a permanent right of

residence under section 55N, evidence that the applicant is such a family member; or

- (vi) an EEA national who is a family member who has retained the right of residence, evidence that the applicant is a family member who has retained the right of residence.

(3) The Authority may issue a registration certificate to an extended family member not falling within section 55F(3) who is an EEA national on application made in accordance with subsection (2)(a) if–

- (a) the relevant EEA national in relation to the extended family member is residing in Gibraltar under section 55L or section 55M or an EEA national with a permanent right of residence under section 55N; and
- (b) in all the circumstances it appears appropriate to issue the registration certificate.

(4) Where an application is received under subsection (3) the Authority –

- (a) shall undertake an extensive examination of the personal circumstances of the applicant;
- (b) may–
  - (i) in respect of an extended family member falling within section 55G(2)(a) or (4), require a document issued by the relevant authority in the country of origin or country from which they are arriving certifying that they are dependants or members of the household of the EEA national;
  - (ii) in respect of an extended family member falling within section 55G(3), require proof of the health grounds which require the care of the EEA national or his spouse;
  - (iii) in respect of an extended family member falling within section 55G(5), require proof of the existence of a durable relationship; and
- (c) shall, if he refuses the application, give reasons justifying the refusal unless this is contrary to the interests of the security of Gibraltar.

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- (5) A registration certificate issued under this section shall—
- (a) state the name and address of the person registering and the date of registration; and
  - (b) be issued free of charge.
- (6) Subsections (1) to (5) are subject to section 55S(1).
- (7) The holding of a registration certificate issued under this section shall not be a pre-condition for the exercise of an enforceable Community right.

## **Residence Cards for Non-EEA Family Members.**

55P.(1) A non-EEA national family member—

- (a) may apply to the Authority for a residence card at any time after entry into Gibraltar;
- (b) shall apply to the Authority for a residence card if he has resided in Gibraltar for over three months;
- (c) shall, after application, notify the Authority in writing of any change of residential address including notifying the Authority if he ceases to reside in Gibraltar;
- (d) who fails to comply with a requirement under paragraph (b) or (c) is liable to a civil fine of £100.

(2) The Authority—

- (a) may issue a residence card to a non-EEA family member of an EEA national, if the EEA national is entitled to reside in Gibraltar under section 55L, on production of the documents listed in subsection (3);
- (b) shall, on production of the documents listed in subsection (3), issue a residence card to a non-EEA national—
  - (i) who is a family member of a qualified person;
  - (ii) who is the family member of an EEA national with permanent residence under section 55N; or
  - (iii) who is a family member who has retained the right of residence in Gibraltar.

(3) The documents listed in this subsection are a valid passport, a written application on such form as the Authority may require or as is prescribed by rules and, in respect of–

- (a) a family member of an EEA national residing in Gibraltar under section 55L–
  - (i) evidence that he is such a family member; and
  - (ii) the registration certificate of the EEA national or other evidence that the EEA national is residing in Gibraltar under section 55L;
- (b) a family member of a qualified person or of an EEA national with permanent residence under section 55N–
  - (i) evidence that he is such a family member; and
  - (ii) the registration certificate of the EEA national or other evidence that the EEA national is a qualified person or a national with permanent residence under section 55N; or
- (c) a family member who has retained the right of residence, evidence that he is a family member who has retained the right of residence in Gibraltar.

(4) The Authority may issue a residence card to an extended family member not falling within section 55F(3) who is not an EEA national on application if–

- (a) the relevant EEA national in relation to the extended family member is–
  - (i) a qualified person or has a right of permanent residence in Gibraltar under section 55N; or
  - (ii) is residing in Gibraltar under section 55L;
- (b) in all the circumstances it appears appropriate to issue the residence card; and
- (c) the application is made on such form as the Authority may require or as is prescribed by rules.

(5) Where an application is received under subsection (4) the Authority–

- (a) shall undertake an extensive examination of the personal circumstances of the applicant;
- (b) may require the evidence set out in section 55O(4)(b); and
- (c) shall, if he refuses the application, give reasons justifying the refusal unless this is contrary to the interests of the security of Gibraltar.

(6) On receipt of an application under subsection (1) and the documents that are required to accompany the application the Authority shall immediately issue the applicant with a certificate of application for a residence card and the residence card shall be issued no later than six months after the date on which the application and documents are received.

(7) A residence card issued under this section—

- (a) shall state the period during which it is valid;
- (b) may take the form of a stamp in the applicant's passport;
- (c) shall be entitled "Residence card of a family member of an EEA national"; and
- (d) shall be issued free of charge.

(8) A residence card issued under this section shall be valid for—

- (a) five years from the date of issue; or
- (b) in the case of a residence card issued to the family member or extended family member of a qualified person, the envisaged period of residence in Gibraltar of the qualified person if this is less than five years; or
- (c) if issued to the family member or extended family member of an EEA national who only has a right to reside in Gibraltar under section 55L, for a period no longer than three months, and

absences from Gibraltar for the reasons set out in section 55B(2) shall not affect the validity of the residence card.

(9) Subsections (1) to (8) are subject to section 55S (refusal to issue or renew permit and revocation of permits).

(10) The holding of a registration certificate issued under this section shall not be a pre-condition for the exercise of an enforceable Community right.

**Documents Certifying Permanent Residence and Permanent Residence Cards.**

55Q.(1) An—

- (a) EEA national entitled to reside permanently in Gibraltar under section 55N may apply in writing to the Authority for a document certifying permanent residence in Gibraltar;
- (b) non-EEA national entitled to reside permanently in Gibraltar under section 55N shall apply in writing to the Authority for a permanent residence card and -
  - (i) the application shall be made before the expiry of the applicant's residence card; and
  - (ii) failure to apply for a permanent residence card will make the applicant liable to a civil fine of £100.

(2) The Authority shall—

- (a) issue an EEA national entitled to reside permanently in Gibraltar under section 55N with a document certifying permanent residence in Gibraltar as soon as possible after receipt of an application and submission that evidence the EEA national has such a right;
- (b) issue a non-EEA national who is entitled to reside permanently in Gibraltar under section 55N with a permanent residence card as soon as possible after receipt of an application and submission of evidence that the applicant has such a right and, at latest, within six months of the application.

(3) Subject to subsection (4)(a) a permanent residence card shall be valid for ten years from the date of issue and shall be automatically renewable on application.

(4) A document certifying permanent residence and a permanent residence card shall—

- (a) cease to be valid if the holder ceases to have a right of permanent residence under section 55N;

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(b) be issued free of charge.

(5) This section is subject to section 55S.

(6) The holding of a document certifying permanent residence or a permanent residence card issued under this section shall not be a precondition for the exercise of an enforceable Community right.

### *Restrictions on the right of entry and residence.*

#### **Exclusion and removal from Gibraltar.**

55R.(1) Notwithstanding section 55J (right of entry)–

- (a) a person may be refused entry to Gibraltar if his exclusion is justified on the grounds of public policy, public security or public health in accordance with section 55T;
- (b) a person may be refused entry to Gibraltar as a non-EEA family member of an EEA national if, at the time of his arrival–
  - (i) he is not accompanying the EEA national or joining him in Gibraltar; or
  - (ii) the EEA national does not have a right to reside in Gibraltar under this Act.

(2) Subject to subsection (3) a person who has been admitted to, or acquired a right to reside in, Gibraltar may be required to leave Gibraltar by the Authority if–

- (a) he does not have, or ceases to have, the right to reside in Gibraltar under this Act; or
- (b) he would otherwise be entitled to reside in Gibraltar, but the Authority decided that his removal is justified on the grounds of public policy, public security or public health in accordance with section 55T.

(3) A person shall not be required to leave Gibraltar under subsection (2)–

- (a) as the automatic consequence of having recourse to the social assistance system of Gibraltar; or
- (b) before the end of one month from the date of sending of the notification in section 55U, except –

- (i) in duly substantiated cases of urgency; or
- (ii) where the person is detained in Gibraltar pursuant to the sentence or order of a court.

(4) A decision taken under subsection (1) to refuse a person entry or under subsection (2) to require a person to leave Gibraltar must be notified to the person in accordance with section 55U (notification of EEA decisions).

(5) A person to whom subsection (2) applies and who does not leave Gibraltar within the time notified to him under section 55U(2) may, subject to section 55V (right of appeal), be treated as an unauthorised person under section 59, or where the court has recommended deportation under section 183 of the Criminal Procedure Act, as a person to whom section 59(2) applies save that—

- (a) removal may not be ordered, or effected, on the grounds of public policy, public security or public health except in accordance with section 55T;
- (b) removal may not be ordered, or effected—
  - (i) unless the person has been notified in accordance with section 55U; or
  - (ii) before the day after the date which the person has been notified under section 55U that he must leave Gibraltar;
- (c) where a removal order is made under section 59, but the person concerned does not leave Gibraltar and has not been removed from Gibraltar within two years from the date of the making of the removal order, it shall not be enforced unless—
  - (i) the Authority has considered whether there has been any material change in the circumstances since the order or recommendation was made; and
  - (ii) the individual concerned is, at the date of enforcement, a threat to public policy or public security.

**Refusal to issue or renew and revocation of residence documentation.**

55S.(1) The Authority may refuse to issue, revoke or refuse to renew a registration certificate, a residence card, a document certifying permanent



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residence or a permanent residence card if the refusal or revocation is justified on grounds of public policy, public security or public health.

(2) The Authority may revoke a registration certificate or a residence card, or refuse to renew a residence card if the holder of the certificate or card has ceased to have a right to reside in Gibraltar under this Part.

(3) The Authority may revoke a document certifying permanent residence or a permanent residence card, or refuse to renew a residence card if the holder of the certificate or card has ceased to have a right to reside permanently in Gibraltar under section 55N.

(4) The Authority may, at the time of a person's arrival in Gibraltar, revoke that person's—

- (a) residence card if he is not at that time the family member of a qualified person or of an EEA national who has a right of permanent residence under section 55N, a family member who has retained the right of residence or a person with a right of permanent residence under section 55N; or
- (b) permanent residence card if he is not at that time a person with a right of permanent residence under section 55N.

(5) The Authority may, at the time of a person's arrival in Gibraltar, revoke that person's EEA family permit if—

- (a) the revocation is justified on grounds of public policy, public security or public health; or
- (b) the person—
  - (i) is not at that time the family member of an EEA national with the right to enter Gibraltar under this Part;
  - (ii) is not accompanying that EEA national or joining him in Gibraltar; or
  - (iii) where entry is for the purpose of residing in Gibraltar, the EEA national does not have a right to reside in Gibraltar under this Part.

(6) Any action taken under this section on grounds of public policy, public security or public health shall be in accordance with section 55T.

**Decisions taken on the grounds of public policy, public security or public health.**

55T.(1) In this section “relevant decision” means an EEA decision taken on the grounds of public policy, public security or public health.

(2) A relevant decision may not be taken to serve economic ends.

(3) A relevant decision may not be taken in respect of a person with a permanent right of residence under section 55N except on serious grounds of public policy or public security.

(4) A relevant decision may not be taken except on imperative grounds of public security in respect of an EEA national who—

- (a) has resided in Gibraltar for a continuous period of at least ten years prior to the relevant decision; or
- (b) is under the age of 18, unless the relevant decision is necessary in his best interests, as provided for in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

(5) Where a relevant decision is taken on grounds of public policy or public security it shall, in addition to complying with the preceding subsections of this section, be taken in accordance with the following principles—

- (a) the decision shall comply with the principle of proportionality;
- (b) the decision shall be based exclusively on the personal conduct of the person concerned;
- (c) the personal conduct of the person concerned shall represent a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society;
- (d) matters isolated from the particulars of the case or which relate to considerations of general prevention cannot justify the decision;
- (e) a person's previous criminal convictions cannot in themselves justify the decision.

(6) In making a relevant decision on the grounds of public policy or public security in relation to a person who is resident in Gibraltar account shall be

taken of considerations such as the age, state of health, family and economic situation of the person, the person's length of residence in Gibraltar, the person's social and cultural integration into Gibraltar and the extent of the person's links with his country of origin.

- (7) In the case of a relevant decision taken on grounds of public health—
- (a) a disease that does not have epidemic potential as defined by the relevant instruments of the World Health Organisation, or is not a notifiable disease to which section 174 of the Public Health Act applies or tuberculosis of a nature to which section 171 of the Public Health Act applies, shall not constitute grounds for the decision; and
  - (b) if the person concerned is in Gibraltar, diseases occurring after the three month period beginning on the date on which he arrived in Gibraltar shall not constitute grounds for the decision.
- (8) In order to ascertain whether the person concerned represents—
- (a) a danger to public policy or public security, the Authority may request, or require the Commissioner of Police to request, the EEA state of which the person is a national, and if need be, other EEA States to provide information concerning any police record which the person concerned may have, but such request may only be made where essential and only be made at the time—
    - (i) that the registration certificate is to be issued, or within three months of the date of the person's arrival in Gibraltar; or
    - (ii) that the residence card is issued; or
  - (b) a danger to public health, section 5(1)(f) shall apply save that—
    - (i) section 5(1)(f) shall not be applied as a matter of routine and may only be applied where there are serious grounds that it is necessary for the purposes of ascertaining whether the person is suffering from a disease referred to in subsection (7);
    - (ii) section 5(1)(f) only applies within three months of the person's arrival in Gibraltar;

- (iii) the person shall not be charged a fee for the medical examination; and
- (iv) the person shall not be required to submit to medical treatment.

**Notification of EEA decisions.**

55U.(1) This section shall apply in respect of any EEA decision which has the effect of—

- (a) refusing a person entry to Gibraltar;
- (b) refusing a person permission to reside in Gibraltar;
- (c) refusing to issue a person with a registration certificate, residence card, document certifying permanent residence or residence card; or
- (d) removing, deporting or otherwise requiring a person to leave Gibraltar.

(2) The person in respect of whom the EEA decision is taken shall be informed in writing of—

- (a) the decision;
- (b) the full reasons for the decision (unless this is contrary to the interests of the security of Gibraltar);
- (c) their right to appeal to the Supreme Court against the decision;
- (d) the time limits for lodging an appeal to the Supreme Court; and
- (e) where applicable, the date by which they are required to leave Gibraltar.

(3) A date notified under subsection (2)(e) will be invalid unless compliant with section 55R(3)(b).

(4) A notice under subsection (2)—

- (a) shall be written in such a way that the person concerned is able to understand its contents and the implications for him;

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- (b) shall be accompanied with an application for leave to appeal form in the form set out in Schedule 3; and
- (d) shall be served on the person concerned by personal service or other means as may be provided by the Government in Rules made under this section.

## *Appeals.*

### **Appeals.**

55V.(1) A person who is aggrieved by an EEA decision may appeal to the Supreme Court against that decision.

(2) An appeal under this section shall be brought as soon as reasonably practicable and in any event not later than 28 days from the date on which notice of the EEA decision was given in accordance with section 55U.

(3) No appeal under this section shall be brought unless the leave of the Supreme Court has been obtained and, for the purpose of obtaining such leave, the form set out in Schedule 3 may be used.

(4) The appellant shall be entitled to appear and be represented at the hearing of an appeal or application for leave to appeal save—

- (a) that a person who appeals against a refusal to allow him to enter Gibraltar shall not be entitled to enter Gibraltar for the purpose of the appeal unless he possesses a document listed in subsection (5);
- (b) if he is a person who has been removed from or left Gibraltar in accordance with subsection (7) and his appearance may cause serious troubles to public policy or public security.

(5) A person may not, while in Gibraltar, appeal under subsection (1) against a decision to refuse him entry to Gibraltar unless—

- (a) he holds an EEA family permit;
- (b) he holds a valid registration certificate, a valid residence card, a valid document certifying permanent residence or a valid permanent residence card or can otherwise prove that he is resident in Gibraltar.

(6) Subject to subsection (7), if a person in Gibraltar appeals against an EEA decision to remove him from Gibraltar or require him to leave Gibraltar, while the appeal or application for leave to appeal is pending–

- (a) he may not be removed from Gibraltar pursuant to any removal order given under section 59, or required to leave Gibraltar under section 55R(2); and
- (b) he may not be placed in a vessel or aircraft under section 59(5).

(7) Subsection (6) shall not apply if–

- (a) the decision to remove has been taken on imperative grounds of public security; or
- (b) the removal order under section 59 or the requirement to leave under section 55R was made subsequent to a decision by the Supreme Court to refuse an appeal or leave to appeal against the decision to remove, or requirement to leave.

(8) The Supreme Court determining an appeal of the nature referred to in subsection (1) may–

- (a) dismiss the appeal; or
- (b) quash the EEA decision and remit it to the Authority with a direction to reconsider the EEA decision.

(9) Where an appeal against a requirement to leave Gibraltar is dismissed by the Supreme Court section 55R(5) shall apply.

(10) A decision of the Supreme Court under this section shall be final as to any question of fact, but an appeal shall lie to the Court of Appeal on any question of law.

(11) If by reason of any default on the part of the person who has instituted an appeal in accordance with this section, the appeal has not been determined by the Supreme Court within three months of the date of the notice of appeal or application by which the appeal was instituted–

- (a) the Authority may apply to the Supreme Court, by a summons served on the person who has instituted the appeal in accordance with this section, to show cause why the appeal should not be dismissed for want of prosecution; and

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- (b) upon the making of an application under paragraph (a) the Supreme Court may dismiss the appeal or make such other order as it considers just.

## *Special Cases - Swiss Posted Workers & Central and European Accession State Nationals.*

### **Swiss Posted Workers.**

55W.(1) For the purposes of this section, “Swiss posted worker” means a person who is not an EEA national and—

- (a) is the employee of a Swiss company or Swiss national providing services in Gibraltar under Article 5 of the EC-Switzerland Agreement;
- (b) is integrated into the labour market of Switzerland or the EEA; and
- (c) is posted by the Swiss company or Swiss national to Gibraltar for the purpose of providing those services in Gibraltar.

(2) A Swiss posted worker shall be allowed to enter Gibraltar if he produces on arrival—

- (a) a valid identity card or passport; and
- (b) if he is a visa requiring national, a visa to enter Gibraltar.

(3) The Authority shall recommend the issue of a visa to a Swiss posted worker who produces evidence from a Swiss national or Swiss company that he is, or will be, a Swiss posted worker for a specified period of time.

(4) A Swiss posted worker—

- (a) shall not require a residence permit or other authorisation to reside in Gibraltar for a period not exceeding 90 days;
- (b) shall require a residence permit under Part II of this Act in order to remain in Gibraltar for a period exceeding 90 days.

(5) On application, the Authority shall issue written confirmation that the person is a Swiss posted worker on production of—

- (a) the valid passport or identity card and visa, if any, with which the person entered Gibraltar; and

- (b) evidence from the Swiss company or Swiss national by whom the person is employed–
  - (i) that the company is a Swiss company, or that the national is Swiss; and
  - (ii) that the Swiss posted worker is employed by it, or him.

(6) The Authority may issue a residence permit to a Swiss posted worker under section 18 on written application and production of–

- (a) the valid passport or identity card and visa with which they entered Gibraltar; and
- (b) evidence from the Swiss company or Swiss national by whom they are employed–
  - (i) that the company is a Swiss company, or that the national is Swiss;
  - (ii) that the Swiss posted worker is employed by it or him; and
  - (iii) as to the period of time for which the Swiss posted worker’s posting in Gibraltar is required.

(7) This section is subject to section 55R (exclusion and removal etc).

**Nationals of Central and Eastern European States.**

55X.(1) This section applies in relation to–

- (a) nationals of a relevant accession State;
- (b) nationals of Bulgaria and nationals of Romania.

(2) This section applies only during the transitional period, and, for the purposes of this section, “the transitional period” is–

- (a) in respect of nationals of a relevant accession State–
  - (i) 1 May 2004 to 30 April 2009; or
  - (ii) such other date as the Government may provide in rules made under this section;



- (b) in respect of nationals of Bulgaria or Romania–
  - (i) 1 January 2007 to 31 December 2011; or
  - (ii) such other date as the Government may provide in rules made under this section.

(3) For the purpose of this section–

- (a) “legal employment” means employment under a work permit issued under the Employment Regulations 2004; and
- (b) “relevant accession State” means the Czech Republic, the Republic of Estonia, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the Slovak Republic, or the Republic of Slovenia.

(4) During the transitional period a person to whom this section applies shall not be a “worker” or a “job seeker” (as defined in section 55C) unless–

- (a) he has been in legal employment in Gibraltar for an uninterrupted period of at least 12 months; and
- (b) that period of legal employment commenced before or during the transitional period.

(5) For the purpose of subsection (4)(a) a person shall be treated as having been in employment in Gibraltar without interruption for a period of 12 months if–

- (a) he was in legal employment in Gibraltar at the beginning and end of that period; and
- (b) any intervening periods in which he was not working in Gibraltar do not, in total, exceed 30 days.

(6) During the transitional period, any period of legal employment in Gibraltar shall not apply for the purposes of subsection (4)(a) if the person voluntarily left the labour market of Gibraltar.

(7) Notwithstanding subsection (4) and subject to section 55R (exclusion and removal), family members of a person to whom this section applies who is in legal employment in Gibraltar are entitled to reside in Gibraltar during the person’s legal residence in Gibraltar.

(8) During the transitional period a national of a relevant accession State, Bulgaria or Romania who is not a qualified person (as defined in section 55E) and his family members—

- (a) may be issued with a residence permit under section 18; and
- (b) shall not be issued with a registration certificate or residence card under this Part.

#### **PART V**

##### **HOTELS AND LODGING HOUSES**

##### ***Provisions relating to hotels and lodging-houses***

#### **Duty to keep registers of lodges.**

56. (1) The manager or owner of every hotel or lodging-house in Gibraltar shall keep a registry book and shall enter therein the name of every person lodging at such hotel or lodging-house, and such other particulars relating to such person and in such manner as may be prescribed, within two hours after the first arrival of such person at such hotel or lodging-house. Such registry book shall be open at all times, between nine o'clock in the morning and nine o'clock in the evening, to the inspection of any immigration officer.

(2) A person who fails to comply with the provisions of this section is guilty of an offence and is liable, on summary conviction, to a fine at level 2 on the standard scale.

#### **Registration of lodging-houses.**

57. The keeper of any house or part of any house, or of an apartment or room in any house where non-Gibraltarians are received as lodgers, shall register free of any charge such house, part of a house, apartment or room, at the Central Police Station once at least in every six months and in default is guilty of an offence and is liable, on summary conviction, to a fine at level 2 on the standard scale.

#### **PART VII**

##### **ARRESTS, DETENTION, REMOVAL AND OFFENCES**

##### ***Arrest, detention and removal***

#### **Lawful custody.**

58. Any person arrested or detained under any provision of this Act shall, whilst so arrested or detained, be deemed to be in lawful custody.

## **Detention and removal of unauthorized persons.**

59. (1) Any person found in Gibraltar or attempting to enter Gibraltar contrary to the provisions of this Act and any person unlawfully within Gibraltar (hereinafter in this section called “an unauthorized person”) may, in addition to any fine or imprisonment authorized hereunder, be removed from Gibraltar by order of the Governor or of the magistrates’ court and may be detained in such manner as may be directed by the Governor or such court until so removed.

(2) A person in respect of whom a court has under section 183 of the Criminal Procedure Act<sup>1</sup> recommended deportation may be removed from Gibraltar by order of the Governor and may be detained in such manner as may be directed by the Governor until so removed.

(3) An order shall not be made under subsection (2) by the Governor so long as any appeal is pending against the recommendation of the court or against the conviction on which the recommendation of the court was made.

(4) An order of the Governor or of the magistrates’ court under subsection (1) or subsection (2) shall not authorize the detention of an unauthorized person for a period exceeding twenty-eight days, but such an order may be renewed from time to time.

(5) An unauthorized person may be placed in any vessel or aircraft about to leave Gibraltar and shall be deemed to be in lawful custody until such vessel or aircraft finally leaves Gibraltar.

(6) The master of any vessel or the captain of any aircraft about to call at any place other than Gibraltar shall, if so required by the Governor or by the Principal Immigration Officer, receive an unauthorized person and his dependants, if any, on board such vessel or aircraft, and afford him and them a passage to that place and proper accommodation and maintenance during the voyage or flight.

(7) The Principal Immigration Officer or the Governor may, if he thinks fit, apply any money or property of an unauthorized person in payment of the whole or any part of the expenses of or incidental to the voyage or flight from Gibraltar and the maintenance until departure of that person and his dependants; except in so far as they are so defrayed any such expenses shall be payable out of the Consolidated Fund, but without prejudice to any right of the Government to recover any sums so paid from any person liable to repay them.

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<sup>1</sup> 1961-24

(8) If the master of any vessel or the captain of any aircraft refuses to comply with any requirement under subsection (6), he is guilty of an offence against this section and may be arrested forthwith without a warrant.

(9) A person guilty of an offence against this section is liable, on summary conviction, to a fine at level 5 on the standard scale .

#### **Detention of deportees.**

60. The Governor may, by warrant under his hand, if he is satisfied that any person entering Gibraltar has been the subject of an order of deportation by the government of any other state or territory and is in transit to the country to which he is to be deported, order that such person shall be detained in custody in such manner and place as may be specified in the warrant until such time as arrangements can be made for the continuation of his journey.

#### **Maritime lien.**

61. If any person lands in Gibraltar from any vessel contrary to the provisions of this Act, such vessel shall be subject to a maritime lien in favour of the Government for a sum of an amount equivalent to the amount at level 5 on the standard scale in respect of each person who so lands, and the amount so charged may be sued for and recovered in the Supreme Court in its Admiralty jurisdiction, and pending arrest under process of the Supreme Court, or payment or bail given of the amount charged upon the vessel, the Captain of the Port may detain such vessel, if necessary by force:

Provided that the master of the vessel may apply to a justice of the peace, who shall grant such application, for a warrant to arrest and convey back on board the vessel such person, and any person arresting and conveying such person under the authority of such warrant shall incur no liability by so doing. On the execution of the warrant and upon payment of all expenses of and incidental thereto the maritime lien arising under this section shall cease to exist.

### *Offences*

#### **Unlawful presence in Gibraltar.**

62. A non-Gibraltarian who—

- (a) being a person required by this Act to hold a permit or certificate, is found in Gibraltar without a valid permit or certificate; or
- (b) being a prohibited immigrant is found in Gibraltar,

is guilty of an offence and is liable, on summary conviction, to imprisonment for three months or to a fine at level 2 on the standard scale and on a second or subsequent conviction to imprisonment for six months and to a fine an amount which is twice the amount at level 2 on the standard scale.

## **Harbouring persons unlawfully.**

63.(1) A person who unlawfully–

- (a) aids, abets, counsels, procures or assists any non-Gibraltarian who is not the holder of a valid permit or certificate to enter or remain within Gibraltar; or
- (b) harbours, conceals or comforts within Gibraltar any non-Gibraltarian who is not the holder of a valid permit or certificate,

is guilty of an offence and is liable, on summary conviction, to imprisonment for three months or to a fine at level 3 on the standard scale.

(2) Nothing in subsection (1)(b) applies to anything done in relation to a person who–

- (a) has been detained under any provisions of law; or
- (b) has been granted temporary admission to remain in Gibraltar prior to the determination of their application for a permit or certificate to remain within Gibraltar.

(3) Nothing in subsection (1)(b) applies to anything done by a person otherwise than for gain.

(4) Nothing in subsection (1)(b) applies to anything done to assist an asylum claimant by a person in the course of his employment by a bona fide organisation, if the purpose of that organisation include assistance to persons in the position of the asylum claimant.

(5) “Asylum claimant” means a person who intends to make a claim that it would be contrary to Gibraltar’s obligations under any international agreement or treaty extended to Gibraltar for him to be removed from, or required to leave, Gibraltar.

(6) Subsection (1) applies to anything done–

- (a) in Gibraltar;
- (b) outside Gibraltar by an individual who is Gibraltarian as defined by the Gibraltarian Status Act;
- (c) outside Gibraltar by a body incorporated under the law of Gibraltar; or
- (d) outside Gibraltar by an individual who is a British person ordinarily residing in Gibraltar.

**Assisting illegal immigration into another state.**

63A.(1) The following persons are guilty of an offence and liable on summary conviction to imprisonment for up to 6 months or a fine up to level 5 on the standard scale or both and on conviction on indictment to imprisonment for up to 1 year or a fine or both—

- (a) a person who, intentionally, assists a person who is not a national of a Member State of the European Union to enter, or to transit across the territory of a State listed in Schedule 2 in breach of the immigration law of that State;
- (b) a person who attempts, aids, abets, counsels or procures the commission of an offence under paragraph (a).

(2) The following persons are guilty of an offence and liable on summary conviction to imprisonment for up to 6 months or a fine up to level 5 on the standard scale or both and on conviction on indictment to imprisonment for up to 8 years or a fine or both—

- (a) a person who, intentionally, for financial gain, assists a person who is not a national of a Member State of the European Union to enter, or to transit across the territory of a state listed in Schedule 2 in breach of the immigration law of that state; and either—
  - (i) the offence was committed as part of the activities of a criminal organisation; or
  - (ii) when the offence was committed, the lives of the persons the subject of the offence were endangered;
- (b) a person who, for financial gain, intentionally assists a person who is not a national of a Member State of the European Union

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to reside within the territory of a State listed in Schedule 2 in breach of that state's immigration law;

- (c) a person who attempts, aids, abets, counsels or procures the commission of an offence under paragraph (a) or (b).

(3) For the purposes of subsection (2)(a)(i) "a criminal organisation" means a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by imprisonment of 4 years or more.

(4) In subsection (1) and subsection (2) "immigration law" means a law which has effect in the relevant State and which controls, in respect of some or all persons who are not nationals of that State, entitlement to—

- (a) enter the State;
- (b) transit across the State; or
- (c) be in the State.

(5) A document issued by the government of a state specified in Schedule 2 certifying a matter of law in that state—

- (a) shall be admissible in proceedings for an offence under this section; and
- (b) shall be conclusive as to the matter certified.

(6) Subsection (1) and subsection (2) apply to anything done—

- (a) in Gibraltar;
- (b) outside Gibraltar by an individual who is Gibraltarian as defined by the Gibraltarian Status Act;
- (c) outside Gibraltar by a body incorporated under the law of Gibraltar; or
- (d) outside Gibraltar by an individual who is a British person ordinarily residing in Gibraltar.

## **Foreiture of vehicle, ship or aircraft.**

63B.(1) This section applies where a person is convicted on indictment of an offence under section 63 or 63A.

(2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—

- (a) owned the vehicle at the time the offence was committed;
- (b) was at that time a director, secretary or manager of a company which owned the vehicle;
- (c) was at that time in possession of the vehicle under a hire-purchase agreement;
- (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement; or
- (e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

- (a) owned the ship or aircraft at the time the offence was committed;
- (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft;
- (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement;
- (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement;
- (e) was at that time a charterer of the ship or aircraft; or
- (f) committed the offence while acting as captain of the ship or aircraft.

(4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—

- (a) in the case of a ship, if subsection (5) or (6) applies;
- (b) in the case of an aircraft, if subsection (5) or (7) applies.



(5) This subsection applies where—

- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants; and
- (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 63 or 63A.

(6) This subsection applies where a ship's gross tonnage is less than 500 tons.

(7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.

(8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.

(9) In the case of an offence under section 63A, the reference in subsection (5)(a) to an illegal entrant shall mean an individual who seeks to enter a Schedule 2 State in breach of immigration law (within the meaning of section 63A).

(10) In the case of an offence under section 63, the reference in subsection (5)(a) to an illegal entrant shall be taken to mean any person who—

- (a) is not a national of a European Economic Area state;
- (b) is required by this Act to hold a permit or certificate to enter Gibraltar; and
- (c) does not hold such a permit or certificate—

## **Definition of British person.**

63C. For the purposes of section 63(6) and 63A(6) a “British person” means a—

- (a) British citizen;

- (b) British Overseas territory citizen;
- (c) British National (Overseas);
- (d) British Overseas citizen;
- (e) a person who is a British subject under the British Nationality Act 1981; and
- (f) a British protected person within the meaning of that Act.

**Landing without permit or certificate.**

64. A non-Gibraltarian who unlawfully lands or attempts to land at any place in Gibraltar from any vessel or aircraft without a valid permit or certificate is guilty of an offence and is liable, on summary conviction, to imprisonment for six months and to a fine at level 3 on the standard scale.

**Offences by EEA nationals and family members.**

65. A person to whom Part IV applies is guilty of an offence and liable on summary conviction to a fine at level 2 on the standard scale if he—

- (a) has, pursuant to an EEA decision, received a notice under section 55U requiring him to leave Gibraltar by a specified date; and
- (b) has not left Gibraltar by the date specified in the notice and has either—
  - (i) not appealed against the EEA decision; or
  - (ii) his appeal against the EEA decision has been rejected and he has failed to comply with a further requirement to leave Gibraltar.

**Other offences.**

66.(1) A person who commits any of the following acts or omissions is guilty of an offence against this Act, that is to say, who—

- (a) fails or refuses to answer any lawful and reasonable question put to him by any immigration officer, or knowingly answers such question untruthfully;

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- (b) whether within or without Gibraltar knowingly makes any false declaration, return or statement for the purpose of obtaining or assisting another person to obtain any permit or certificate under this Act;
- (c) alters any permit, certificate, endorsement or other document issued or made in pursuance of this Act or any copy thereof;
- (d) obstructs or impedes any immigration officer in the exercise of his duty;
- (e) misleads or attempts to mislead any immigration officer seeking, in the exercise of his duty, information in relation to any material matter;
- (f) knowingly uses or has in his possession any forged or irregular passport, permit, certificate or other document, or any passport or document on which any visa or endorsement has been forged, or any passport, certificate, pass, permit or other document which has been altered or issued without lawful authority;
- (g) fails to furnish any list or information required to be furnished by him under section 5;
- (h) remains in Gibraltar after the expiration or cancellation of any permit, certificate or other authority issued to him under Part II of this Act;
- (i) being a prohibited immigrant, fails to comply with a lawful requirement by the Principal Immigration Officer to leave Gibraltar;
- (j) fails to comply with any term or condition imposed by any permit or certificate issued to him under the provisions of this Act with which he is required to comply;
- (k) aids or abets any person in committing any of the foregoing offences.

(2) A person who contravenes any provision of this Act or commits an offence against this Act is, where no other penalty is specially provided, liable, on summary conviction, to imprisonment for three months or to a fine at level 3 on the standard scale.

## PART VII

## RULES AND RULES OF COURT

*Rules***Rules.**

67. The Government may make rules for the better carrying out of the provisions and objects of this Act and in particular, but without prejudice to the generality hereof, may make rules—

- (a) prescribing the manner in which applications for permits and certificates shall be made;
- (b) prescribing the fees to be charged for the issue of permits and certificates ;
- (c) amending, varying, adding to or deleting from the provisions of Schedule 1;
- (d) to give effect in the law of Gibraltar to the law of the European Union or to any provision of a relevant international agreement or convention which applies to Gibraltar relating to any of the matters contained in or dealt with under this Act and this power shall include the power for the provision to come into operation although the law, agreement or convention, as the case may be, has not yet come into operation.

**Rules of Court.**

68. The Chief Justice may make such rules of court as are necessary or expedient for the purpose of appeals under this Act.

## SCHEDULE 1

s. 39(3)

### States Party to the EEA Agreement

States Party to the EEA Agreement include those states listed in this schedule as European Union States and those listed as European Free Trade Area (“EFTA”) States.

#### 1. European Union States–

The Republic of Austria  
The Kingdom of Belgium  
The Republic of Bulgaria  
The Republic of Cyprus  
The Czech Republic  
The Kingdom of Denmark  
The Republic of Estonia  
The Republic of Finland  
The French Republic  
The Federal Republic of Germany  
The Hellenic Republic  
The Republic of Hungary  
Ireland  
The Italian Republic  
The Republic of Latvia  
The Republic of Lithuania  
The Grand Duchy of Luxembourg  
The Republic of Malta  
The Kingdom of the Netherlands  
The Republic of Poland  
The Portuguese Republic  
Romania  
The Slovak Republic  
The Republic of Slovenia  
The Kingdom of Spain  
The Kingdom of Sweden  
The United Kingdom of Great Britain and Northern Ireland.

#### 2. European Free Trade Association States–

The Kingdom of Norway  
The Republic of Iceland  
The Principality of Liechtenstein

**SCHEDULE 2**

Facilitating entry into or residence in another country

Section 63A

1. For the purpose of this Schedule “Member State of the European Union” means a state or territory which is part of the European Union.
2. The countries referred to in section 63A are—
  - (a) Member State of the European Union;
  - (b) Iceland; and
  - (c) Norway.

## SCHEDULE 3

Sections 55U, 55V

### Notice of Application for Leave to Appeal to the Supreme Court

#### Appeal Against an EEA Decision

Immigration, Asylum, Refugees and Persons Seeking International Protection Act Part IV

Complete this form if you wish to appeal against–

- a decision to refuse permission to enter Gibraltar,
- a decision to refuse permission to stay in Gibraltar,
- a decision regarding a residence document or a registration document,
- a decision regarding a document certifying permanent residence or a permanent residence card,
- a decision requiring you to leave Gibraltar.

*You must appeal within 28 days from the date of service of the decision on you. The Supreme Court must receive your appeal form within this time.*

You have a right to appeal to the Supreme Court using this form if you are–

- a national of a State which is a member of the European Economic Area or Switzerland,
- a family member of a national of a State which is a member of the European Economic Area or Switzerland,
- otherwise have a right to appeal to the Supreme Court under Part IV of the Immigration, Asylum, Refugee and Persons Seeking International Protection Act.

About you	
Your full name	
Your address <i>You must inform the Supreme Court if you change your address.</i>	
Your daytime telephone number	

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<p>Your nationality <i>If you have more than one nationality please give all nationalities.</i></p>	
<p>If you are appealing as the family member of an EEA national, please give –</p> <ul style="list-style-type: none"> <li>• the name and nationality of that EEA national, and</li> <li>• their relationship to you</li> </ul>	

Do you have a lawyer?	Yes	No
<i>If you have a lawyer, please give the information requested below.</i>		
Name of your lawyer		
Address of your lawyer		
Telephone number of your lawyer		

<b>About the EEA Decision</b>
Please give full details of the decision you are appealing against.
<b>Grounds of Appeal</b>
In this section you must set out the grounds for your appeal and the reasons you consider the decision was wrong. <i>Please give as much detail as possible – use additional paper if you need to.</i>



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<b>Late appeal and application for extension of time</b>
<i>Your appeal must be received within 28 days of service. If you know that your appeal is late you must apply for an extension of time to appeal.</i>
Why is your appeal late? (please give your reasons and attach any evidence to this form).

<b>Declaration by appellant</b>	
<i>If you are the appellant and are completing the form yourself, you must complete this section.</i>	
<b>I, the appellant, believe that the facts stated in this Notice are true.</b>	
Appellant's signature	
Appellant's full name (in block capitals)	
Date of signature	

<b>Declaration by lawyer</b>	
<i>If you have a lawyer, he or she must complete this section.</i>	
<b>The facts stated in this Notice are true to the best of my knowledge and belief.</b>	
Lawyer's signature	

**1962-12**

## Immigration, Asylum and Refugee

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Lawyer's name (in block capitals) and address	
Date of signature	

**Please send or deliver this form to—**

**The Supreme Court  
277 Main Street  
Gibraltar**