

## IMMIGRATION CONTROL 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

**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 2002/90/EC

Decision 2002/946/JHA

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**SCHEDULE 1**

States Party to the EEA Agreement

**SCHEDULE 2**

Facilitating entry into or residence in another country

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

**Short title.**

1. This Act may be cited as the Immigration Control 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;

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

“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 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

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<sup>1</sup> 1962-13

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) or, as the case may be, 50D;

“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.

(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



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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.**

3. The provisions of sections 6, 12, 13, 14(1) & (2), 15 to 38 and 52 shall not apply to any person to whom for the time being the provisions of sections 39 to 50K apply.

## **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. 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.

## **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.

***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
- (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 Gibraltar 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-Gibraltar 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 Gibraltar women.**

15.(1) Subject to the provisions of this section, a man who is married to a Gibraltar 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 Gibraltarian 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-Gibraltar 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.

#### **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.

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<sup>2</sup> 1948-28



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(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 50K 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.**

25.(1) A child of a Gibraltarian 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

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<sup>3</sup> 1978-35

<sup>4</sup> 1932-16

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 Gibraltarian 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 Gibraltarian woman .

**Grants to children of Gibraltarian women.**

27. The Governor may, in his absolute discretion grant a certificate of permanent residence to the child of a Gibraltarian 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.**

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.**

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

*EEA Nationals and Members of their Families.*

**Interpretation of sections 39 to 50K.**

39.(1) In sections 39 to 50K

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“economic activity” means activity as a worker, self-employed person or provider or recipient of services;

“EEA Agreement” means the European Economic Area Agreement signed in Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993 and as amended or adjusted from time to time;

“EEA national” means a national of a State which is a Contracting Party to the EEA Agreement;

“EEA family permit” means an entry clearance issued, free of charge, to a family member who wishes to install himself in Gibraltar with a qualified person;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“family member” means in relation to an EEA national–

- (a) if the EEA national is a student, the persons set out in section 46;
- (b) if the EEA national has ceased to be a qualified person as a result of ceasing to reside in Gibraltar–
  - (i) that EEA national’s spouse or divorced spouse, provided that she is the primary carer of their dependant child who is under 19 and is attending an educational course in Gibraltar;
  - (ii) descendants of that EEA national or of his spouse who are under 21 or are their dependants, provided that they were attending an educational course in Gibraltar when the qualified person was residing in Gibraltar and are continuing to attend such a course;
- (c) for the purposes of paragraph (b) “educational course” means a course which is within the scope of Article 12 of Regulation (EEC) N0 1612/68 of the Council of the European Communities on freedom of movement for workers within the Community;
- (d) in any other case–

- (i) that EEA national's spouse;
- (ii) descendants of that EEA national or his spouse who are under the age of 21 or are dependant; and
- (iii) dependant relatives in the ascending line of the EEA national or his spouse;

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

“national of the United Kingdom of Great Britain and Northern Ireland” means–

- (a) a British citizen;
- (b) a person who is a British subject by virtue of Part IV of the British Nationality Act 1981 and who has the right of abode in the United Kingdom and is therefore exempt from United Kingdom immigration controls;

“posted worker” means a person who is not an EEA national and–

- (i) is the employee of a Swiss national or Swiss company that provides or seeks to provide services in Gibraltar;
- (ii) is posted to Gibraltar for the purposes of providing those services on behalf of his employer; and
- (iii) prior to the posting, is integrated into the regular labour market of an EEA State,

and, for the purpose of this definition, “services” has the same meaning as in Article 50 of the EC Treaty, and “Swiss company” means a company that has been formed in accordance with the law of Switzerland and has its registered office, central administration or principal place of business in Switzerland;

“posted worker authorisation” means a document issued to a person, in accordance with section 39B, in connection with his admission to Gibraltar;

“residence permit” and “residence document” mean a permit or document issued by the Principal Immigration Officer as proof of the holder's right of residence in Gibraltar;

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

(2) In sub-section (1) “spouse” does not include a party to a marriage of convenience.

(3) Schedule 1 sets out a list of States party to the EEA Agreement.

## **Position of Swiss nationals.**

39A. The provisions of sections 39 to 50K shall apply to Swiss nationals and to family members of Swiss nationals as if such nationals were EEA nationals and Switzerland an EEA state.

## **Posted Workers.**

39B.(1) Subject to this section and the further provisions of this Act, the provisions of sections 39 to 43, 47 to 50, and 50F to 50K shall apply to posted workers insofar as those provisions concern the rights of workers to enter and reside in Gibraltar, and the duration of such rights.

(2) A person shall enjoy rights by virtue of being a posted worker only when he holds a valid posted worker authorisation and the period of authorised entry and residence specified in that authorisation has not expired.

(3) A person may apply to the Principal Immigration Officer for a posted worker authorisation authorising him to enter and reside in Gibraltar in a calendar year if—

- (a) he is to be posted to Gibraltar by his employer during that calendar year;
- (b) he will be a posted worker on arrival in Gibraltar; and

he has not already been authorised to enter and reside in Gibraltar under this subsection for 90 days or more in that calendar year.

(4) A posted worker authorisation issued under sub-section (3) shall specify the period during which the posted worker is authorised to enter and reside in Gibraltar.

(5) A person who applies under sub-section (3) shall be entitled to be issued in relation to any calendar year with a single posted worker authorisation which individually, or with a number of authorisations which collectively, authorise him to enter and reside in Gibraltar for at least 90 days in that calendar year.

(6) Sub-section (5) shall not apply if the applicant falls to be excluded from Gibraltar on the grounds of public policy, public security or public health.

(7) Where the provisions of sections 39 to 43, 47 to 50, and 50F to 50K require a person to furnish proof of nationality and of him having rights under those sections, in the case of a posted worker such requirements shall be satisfied by the production of—

- (a) his passport;
- (b) his valid posted worker authorisation;
- (c) any further proof required by the provisions concerned; and
- (d) such further evidence of him enjoying rights under those provisions as the Principal Immigration Officer sees fit.

(8) Nothing in this section shall be construed as giving any person the right to enter or reside in Gibraltar by virtue of any family or other connection with a person who is or has been a posted worker.

**Right of admission to Gibraltar of EEA nationals and family members and posted workers.**

40.(1) Subject to section 50F(1), an EEA national shall be admitted to Gibraltar if he produces, on arrival, a valid national identity card or passport issued by an EEA State.

(2) Subject to section 50F(1) and sub-section (3), a family member of an EEA national shall be admitted to Gibraltar if he produces, on arrival, a valid national identity card issued by an EEA State or a valid passport and, if required, proof that he is such a family member.

(3) A family member who is not an EEA national must also hold, if he is a visa national, an EEA family permit.

(4) A posted worker shall be admitted to Gibraltar on producing such proof as may be required by the Immigration Officer pursuant to section 39B(7).

**Right of Residence.**

41.(1) A qualified person shall be entitled to reside in Gibraltar under this Act, for as long as he remains a qualified person.



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(2) A family member of a qualified person shall be entitled to reside in Gibraltar, for as long as he remains the family member of a qualified person.

(3) The following persons may reside and pursue economic activity in Gibraltar notwithstanding that their application for a residence permit or a residence document has not been determined by the Principal Immigration Officer–

- (a) a qualified person; or
- (b) any family member of a qualified person who is entitled by law to pursue that economic activity in Gibraltar.

## **Grant of Residence Permits.**

42.(1) Subject to sections 47 and 50G(1), the Principal Immigration Officer shall grant a residence permit to a qualified person on application and production of–

- (a) a valid identity card or passport issued by an EEA State;  
and
- (b) proof that he is a qualified person.

(2) Subject to section 47(1), the Principal Immigration Officer shall grant a residence permit or residence document to a family member of a qualified person on application and production of–

- (a) a valid identity card issued by an EEA State or a valid passport;
- (b) in the case of a family member who is not an EEA national and who required an EEA family permit for admission to Gibraltar, such a permit;
- (c) in the case of a person not falling within sub-section (b), proof that he is a family member of a qualified person; and
- (d) in the case of a family member of a person who is a qualified person by virtue of section 43(2)(f) or (g), that the family member is covered by a sickness insurance in respect of all risks in Gibraltar.

(3) In the case of a worker other than a posted worker the proof referred to in sub-section (1) may only be confirmation of the worker's engagement from his employer or a certificate of employment.

**Qualified Person.**

43.(1) In sections 39 to 50J “qualified person” means a posted worker holding a valid posted worker authorisation during the period of authorised entry and residence specified in that authorisation, and an EEA national who undertakes in Gibraltar the activities of–

- (a) a worker;
- (b) a self-employed person;
- (c) a provider of services;
- (d) a recipient of services;
- (e) a self-employed person who has ceased economic activity in Gibraltar;
- (f) a self-sufficient person;
- (g) a retired person; or
- (h) a student.

(2) For the purposes of sub-section (1)–

- (a) “a worker” means a worker within the meaning of Article 39 of the EC Treaty;
- (b) “a self-employed person” includes a person who seeks to pursue activity as a self-employed person;
- (c) “a provider of services” means a person who provides, or seeks to provide, services within the meaning of Article 50 of the EC Treaty;
- (d) “a recipient of services” means a person who receives, or seeks to receive, services within the meaning of Article 50 of the EC Treaty;
- (e) “a self-employed person who has ceased economic activity in Gibraltar” means–
  - (i) a person who–

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- (aa) on terminating his economic activity in a self-employed capacity has reached the age at which he is entitled to a state pension;
  - (bb) has pursued an activity in a self-employed capacity in Gibraltar for at least twelve months prior to the termination of that activity; and
  - (cc) has resided in Gibraltar for more than three years; or
- (ii) a person who–
- (aa) has resided in Gibraltar for more than two years; and
  - (bb) has terminated his activity in a self-employed capacity as a result of a permanent incapacity to work; or
- (iii) a person who–
- (aa) has been continuously resident and continuously active in a self-employed capacity in Gibraltar for three years; and
  - (bb) is active in a self-employed capacity in the territory of an EEA State but who resides in Gibraltar and returns to his residence at least once a week;
- (f) “a self sufficient person” means a person who–
- (i) does not enjoy a right of residence under any provision of Community law other than Council Directive 90/364/EEC;
  - (ii) has sufficient resources to avoid his becoming a burden on the social assistance system of Gibraltar; and
  - (iii) is covered by sickness insurance in respect of all risks in Gibraltar;
- (g) “a retired person” means a person who–

- (i) has pursued an activity as an employed or self-employed person; and
  - (ii) is in receipt of—
    - (aa) an invalidity or early retirement pension;
    - (bb) old age benefits;
    - (cc) survivor's benefits; or
    - (dd) a pension in respect of an industrial accident or disease,  

which is sufficient to avoid his becoming a burden on the social assistance system of Gibraltar; and
  - (iii) is covered by sickness insurance in respect of all risks in Gibraltar;
  - (h) “a student” means a person who—
    - (i) is enrolled at a recognised educational establishment in Gibraltar for the principal purpose of following a vocational training course;
    - (ii) assures the Principal Immigration Officer by means of a declaration or by such alternative means as he may choose which are at least equivalent, that he has sufficient resources to avoid his becoming a burden on the social assistance system of Gibraltar; and
    - (iii) is covered by sickness insurance in respect of all risks in Gibraltar.
- (3) For the purposes of sub-section 2 (e)—
- (a) periods of absence from Gibraltar which do not exceed three months in any year or periods of absence from Gibraltar on military service shall not be taken into account; and
  - (b) periods of inactivity caused by circumstances outside the control of the self-employed person and periods of inactivity caused by illness or accident shall be treated as periods of activity in a self-employed capacity.

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(4) For the purposes of sub-sections 2(f) and (g), resources or income shall be regarded as sufficient if they exceed the level in respect of which the recipient would qualify for social assistance.

## **Unemployment.**

44.(1) Subject to sub-section (3), a worker does not cease to be a qualified person on the ground of unemployment if—

- (a) he is temporarily incapable of work as a result of illness or accident; or
- (b) he is involuntarily unemployed and that fact is duly recorded by the relevant employment office.

(2) A self-employed person does not cease to be a qualified person if he is temporarily incapable of work as a result of illness or accident.

(3) A posted worker shall cease to be a posted worker by reason of any period of unemployment.

## **Family members of self-employed persons who have ceased economic activity.**

45. A family member of a person referred to in section 43(1)(e) is a qualified person notwithstanding the death of that person if—

- (a) the family member resided with him before his death; or
- (b) where death took place before retirement, the self-employed person had resided continuously in Gibraltar for at least two years or the death was the result of an accident at work or an occupational disease.

## **Family members of students.**

46. For the purposes of sections 39 to 50K, only the spouse and dependent children of a student are his family members.

## **Central and Eastern European States**

46A(1) This section applies during the transitional period and, for the purpose of this section, “the transitional period” is—

- (a) 1 May 2004 to 30 April 2009; or

- (b) such other date as the Government provides in rules made under this section.

(2) For the purpose of this section—

- (a) “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; and
- (b) “relevant accession state worker” means a citizen of a relevant accession state who is legally working in Gibraltar but is not a qualified person (as defined in section 43).

(3) During the transitional period “qualified person” (as defined in section 43)—

- (a) shall include a citizen of a relevant accession state who undertakes in Gibraltar an activity set out in section 43(1) (b) to (h);
- (b) shall not include a citizen of of a relevant accession state who undertakes in Gibraltar the activities of –
  - (i) a posted worker within the meaning of Article 1 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services; or
  - (ii) subject to subsection (4), a worker.

(4) During the transitional period a worker who is a citizen of a relevant accession state shall be a qualified person (as defined in section 43) if—

- (a) he has been in legal employment in Gibraltar for an uninterrupted period of at least 12 months; for the purposes of this paragraph a person shall be treated as having been in legal employment in Gibraltar without interruption for a period of 12 months if he was legally working in Gibraltar at the beginning and end of that period and any intervening periods in which he was not working in Gibraltar do not, in total, exceed 30 days; and
- (b) that period of legal employment commenced before or during the transitional period.

(5) Subsection (4) shall not apply if the person voluntarily leaves the labour market of Gibraltar during the transitional period.

(6) During the transitional period a family member of a relevant accession state worker shall have the right of residence in Gibraltar during the worker's legal residence in Gibraltar.

(7) The family member of a relevant accession state worker shall only be entitled to work in Gibraltar if the family member is an entitled worker as defined in the Employment Act.

(8) A relevant accession state worker and his family members—

- (a) shall be issued with a residence permit under section 18; and
- (b) shall not be issued with a residence permit under section 42.

## **No requirement to grant residence permit.**

47. The Principal Immigration Officer shall not be required to grant a residence permit to a person other than a qualified person nor to—

- (a) a worker whose employment in Gibraltar is limited to three months and who, unless he is a worker to whom Council Directive 68/360/EEC applies, holds a document from his employer certifying that his employment is so limited;
- (b) a worker who is employed in Gibraltar but who resides in the territory of an EEA state and who returns to his residence at least once a week;
- (c) a seasonal worker whose contract of employment has been approved by the Ministry of Employment; nor
- (d) a provider or recipient of services if the services are to be provided for no more than three months.

## **Form of residence permit and residence document.**

48.(1) The residence permit granted to a worker or a worker's family member who is an EEA national shall be in the form set out in Council Directive 68/360/EEC, or, in the case of posted worker, such form as the Chief Secretary may prescribe by notice published in the Gazette.

(2) A residence document issued to a family member who is not an EEA national may take the form of a stamp in that person's passport.

**Residence permits.**

49.(1) Subject to the following sub-sections, a residence permit shall be valid for at least five years.

(2) In the case of a worker who is to be employed in Gibraltar for less than twelve but more than three months, the validity of the residence permit may be limited to the duration of the employment.

(3) In the case of a seasonal worker who is to be employed for more than three months the validity of the residence permit may be limited to the duration of the employment if the duration is indicated in the document confirming the worker's engagement or in a certificate of employment.

(4) In the case of a provider or recipient of services the validity of the residence permit may be limited to the period during which the services are to be provided.

(5) In the case of a student the residence permit shall be valid for a period which does not exceed the duration of the course of study; but where the course lasts for more than one year the validity of the residence permit may be limited to one year.

(6) In the case of a retired person or a self-sufficient person, the residence permit may be renewed. However, the Principal Immigration Officer may, when he deems it to be necessary, require revalidation of that permit at the end of the first two years of residence.

(7) In the case of a posted worker the validity of the residence permit may be limited to the period of authorised entry and residence specified in his posted worker authorisation.

(8) The validity of a residence permit shall not be affected by absence from Gibraltar for no more than six consecutive months or absence from Gibraltar on military service.

(9) In the case of a family member falling under subparagraph (b) of the definition of family members in section 39(1), the residence permit may be limited to the period during which the family member is the primary carer of the dependent child who is under 19 and attending an educational course in Gibraltar.

**Renewal of residence permit.**



50.(1) Subject to sub-sections (2) and (3), section 44(3) and section 50G(1), a residence permit shall be renewed on application.

(2) On the occasion of the first renewal of a worker's residence permit the validity may be limited to one year if the worker has been involuntarily unemployed in Gibraltar for more than one year.

(3) In the case of a student whose residence permit is limited to one year by virtue of section 49(5), renewal may be for periods limited to one year.

### **Duration and renewal of residence permit or residence document granted to family members.**

50A. The family member of an EEA national shall be entitled to a residence permit or residence document of the same duration as the residence permit granted to the qualified person of whose family he is a member; and the family member's residence permit or residence document shall be subject to the same terms as to renewal.

### **Indefinite Residence.**

50B. The following persons shall be permitted to remain in Gibraltar indefinitely—

- (a) an EEA national who has been continuously resident in Gibraltar for at least 3 years, has been in employment in Gibraltar or any EEA State for the preceding 12 months and has reached the age of entitlement to a state retirement pension;
- (b) an EEA national who has ceased to be employed owing to a permanent incapacity for work arising out of an accident at work or an occupational disease entitling him to a state disablement pension;
- (c) an EEA national who has been continuously resident in Gibraltar for at least 2 years and who has ceased to be employed owing to a permanent incapacity for work;
- (d) a member of the family of an EEA national to whom paragraph (a), (b) or (c) applies;
- (e) a member of the family of an EEA national who dies during his working life after having resided continuously in Gibraltar for at least 2 years or whose death results from an accident at work or an occupational disease;

- (f) a self-employed EEA national who has a right to reside in Gibraltar by virtue of having ceased such activity in Gibraltar within the meaning of section 43(2)(e) and the family member of such a person.

**Requirement for the issue of an EEA family permit.**

50C. The requirements for the issue of an EEA family permit are that–

- (a) the applicant is the family member of an EEA national who is a qualified person in the terms of section 43; and
- (b) the applicant is coming to Gibraltar for a purpose provided for in the terms of sections 39 to 50E; and
- (c) the applicant is not a person who falls to be excluded on grounds of public policy, public security or public health.

**Issue of an EEA family permit.**

50D. An application for an EEA family permit shall be granted provided that the Principal Immigration Officer is satisfied that each of the requirements of the foregoing section is met.

**Refusal of an application for an EEA family permit.**

50E. An application for an EEA family permit shall be refused if the Principal Immigration Officer is not satisfied that each of the requirements of section 50C is met.

**Exclusion and requirement to leave Gibraltar.**

50F.(1) The Principal Immigration Officer may refuse to admit an EEA National or the family member of such a person, or a posted worker, to Gibraltar whose exclusion is justified on grounds of public policy, public security or public health.

(2) The Principal Immigration Officer may require an EEA national and the family member of such a person, or a posted worker, to leave Gibraltar–

- (a) on his ceasing to be a qualified person or the family member of such a person (as the case may be);
- (b) where his departure is justified on grounds of public policy, public security or public health; or

- (c) on his ceasing to meet the requirements of section 47(a), (b), (c) or (d).

**Refusal to grant, and revocation of, residence permit or residence document.**

50G.(1) The Principal Immigration Officer may refuse to grant a residence permit or residence document to a qualified person or the family member of such a person (as the case may be) if the refusal is justified on grounds of public policy, public security or public health.

(2) The Principal Immigration Officer may revoke the residence permit or residence document granted to an EEA national or the family member of such a person, or a posted worker, (as the case may be) if—

- (a) the revocation is justified on grounds of public policy, public security or public health; or
- (b) the person to whom the residence permit or residence document was issued has ceased to be a qualified person or the family member of a qualified person (as the case may be).

**Public policy, public security and public health.**

50H. Decisions taken on the grounds of public policy, public security or public health (the relevant grounds) shall be taken in accordance with the following principles—

- (a) the relevant grounds shall not be invoked to secure economic ends;
- (b) a decision taken on one or more of the relevant grounds shall be based exclusively on the personal conduct of the individual in respect of whom the decision is taken;
- (c) a person's previous criminal convictions shall not, in themselves, justify a decision on grounds of public policy or public security;
- (d) a decision to refuse admission to Gibraltar or to refuse to grant the first residence permit to a person on the grounds that he has a disease or disability shall be justified only if the disease or disability is of a type specified in Council Directive 64/221/EEC;

- (e) a disease or disability contracted after a person has been granted a first residence permit shall not justify a decision to refuse to renew his residence permit or a decision to remove him;
- (f) a person shall be informed of the grounds of public policy, public security or public health upon which the decision taken in his case is based unless it would be contrary to the interests of Gibraltar's security to do so.

**Application of section 12 (required permits and certificates).**

50I. An EEA national who is in Gibraltar and the family member of such a person, or a posted worker, shall be treated as if he were a person who requires a permit, or as the case may be, a certificate mentioned in section 12(1) to enter or remain in Gibraltar on his ceasing to be a qualified person or the family member of a qualified person (as the case may be).

**Appeals to the Supreme Court .**

50J.(1) An EEA National or the family member of such a person, or a posted worker,—

- (a) who is refused admission to Gibraltar pursuant to section 50F(1);
- (b) who is required to leave Gibraltar pursuant to section 50F(2);  
or
- (c) who is refused a residence permit or a residence document or whose residence permit or residence document is revoked pursuant to section 50G;

may appeal to the Supreme Court against the decision of the Principal Immigration Officer.

In the case of a person to whom paragraph (a) above applies, he may not appeal so long as he is in Gibraltar.

(2) The Chief Justice may make rules of court providing for the hearing of appeals under this section, and without prejudice to the generality of the foregoing, such rules may prescribe the form in which appeals to the Supreme Court are to be made.

**Notice of Appeal.**

50K.(1) Where the Principal Immigration Officer determines–

- (a) to refuse an EEA national or the family member of such a person, or a posted worker, admission to Gibraltar pursuant to section 50F(1);
- (b) to require an EEA national or the family member of such a person, or a posted worker, to leave Gibraltar pursuant to section 50F(2);
- (c) to refuse an EEA national or the family member of such a person, or a posted worker, a residence permit pursuant to section 50G; or
- (d) to revoke the residence permit or residence documents of an EEA national or the family member of such a person, or a posted worker, pursuant to section 50G;

he shall serve notice in writing of his determination on that person who may then appeal to the Supreme Court provided he gives notice to the court before the end of a period of 14 days beginning on the day on which the notice of the Principal Immigration Officer's determination was served on him.

(2) On an appeal under subsection (1)–

- (a) the appellant shall be entitled to appear or be represented;
- (b) the Principal Immigration Officer shall be entitled to appear, or be represented; and
- (c) the Supreme Court shall consider any written representations received from the appellant or the Principal Immigration Officer and may take into account any other matter that could be taken into account by the Principal Immigration Officer in reaching its determination.

(3) The Supreme Court shall–

- (a) allow the appeal if it considers–
  - (i) that the decision or action against which the appeal is called is not in accordance with the law, or

(ii) where the decision or action involves the exercise of a discretion by the Principal Immigration Officer, that the discretion should have been exercised differently, and

(b) in any other case, dismiss the appeal.

(4) Where an appeal is allowed the Supreme Court shall issue such directions for giving effect to the determination as it thinks requisite, and it shall be the duty of the Principal Immigration Officer to comply with these directions.

*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;

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- (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\*;
- (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 Principle 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.

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

- (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**

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.

*Political refugees.*

**Political refugees.**

55.(1) This section apply to any non-Gibraltarian refugee who claims or seeks asylum in Gibraltar to escape arrest by a foreign government for any political offence (hereinafter in this section referred to as "a political refugee").

(2) Where any political refugee seeks to enter or is present in Gibraltar, the Principle Immigration Officer shall seek the instructions of the Governor thereon.

- (3) The Governor may—
- (a) order the removal from Gibraltar of any political refugee;
  - (b) issue a permit authorizing him to remain in Gibraltar for such period as may be specified in such permit; or
  - (c) order that he be detained in such place and in such manner and for such period as the Governor may specify.

*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.

## *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

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<sup>1</sup> 1961-24

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.

(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 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 Community nationals.**

65. An EEA national within the meaning of section 39(1) , or a posted worker within the meaning of section 39B, who does not leave Gibraltar by the time specified in a notice issued by the Principal Immigration Officer requiring him to leave Gibraltar, or, where an appeal by him under section 50K has been rejected, is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale and shall be an unauthorised person for the purposes of section 59.

## **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;
- (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 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.

### *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 and for applying to any person specified in that Schedule by reference to his nationality, this Act or such parts of it as are specified to give effect to European Community law and the terms of any agreement entered into by or on behalf of

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This version is out of date

Gibraltar with another State in respect of matters falling within the provisions of this Act.

## SCHEDULE 1

s. 39(3)

**States Party to the EEA Agreement**

## 1. European Union States–

The Republic of Austria  
The Kingdom of Belgium  
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  
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.