

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,175 of 6th July, 2000



I ASSENT,

DAVID DURIE,

GOVERNOR.

6th July, 2000.



GIBRALTAR

No. 8 of 2000

AN ORDINANCE to transpose into the law of Gibraltar Council 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 on the rights of residence of nationals of Member States, members of their families, workers, self-employed persons, students and others.

ENACTED by the Legislature of Gibraltar.

Immigration Control (European Economic Area) Ordinance, 2000
[No. 8 of 2000]

Title and commencement.

1. This Ordinance may be cited as the Immigration Control (European Economic Area) Ordinance 2000 and shall come into operation on the day appointed by the Government by notice in the Gazette.

Amendment of Immigration Control Ordinance.

2.(1) For the heading “Special Provisions relating to Community Nationals”, appearing before section 39 of the Immigration Control Ordinance, there shall be substituted “EEA Nationals and Members of their Families”.

(2) For sections 39 to 51A of the Immigration Control Ordinance there shall be substituted the following—

“Interpretation of sections 39 to 50K.

39.(1) In sections 39 to 50K

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

“EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993;

“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) that national's spouse;

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- (b) a descendant of that national or his spouse who is under 21 years of age or is their dependant; and
- (c) a dependent relative 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;

“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.

Right of admission to Gibraltar of EEA nationals and family members.

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.

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

Right of Residence.

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

(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) A qualified person and the family member of such a person may reside and pursue economic activity in Gibraltar notwithstanding that his application for a residence permit or residence document (as the case may be) has not been determined by the Principal Immigration Officer.

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;

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- (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 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 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;

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- (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—
 - (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

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- (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–

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- (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.

(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) 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

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(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.

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.

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.

(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) 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.

Renewal of residence permit.

50.(1) Subject to sub-sections (2) and (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 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 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 (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

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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 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—

- (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.

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

- (a) to refuse an EEA national or the family member of such a person admission to Gibraltar pursuant to section 50F(1);
- (b) to require an EEA national or the family member of such a person to leave Gibraltar pursuant to section 50F(2);
- (c) to refuse an EEA national or the family member of such a person 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 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—

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- (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.

Minor and consequential amendments to Immigration Control Ordinance.

3.(1) The following consequential amendments to the Immigration Control Ordinance shall be made—

- (a) in section 2(1) (interpretation), the definitions of “Community national” and “family” shall be omitted;
- (b) in section 2(1), in the definition of “permit of residence” for the words “section 18 or 19”, there shall be substituted “section 18, 19, 42(1) or, as the case may be, 50D”;
- (c) for section 3 (application), there shall be substituted the following:

“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”;
- (d) in section 14 (exemption for certain non-Gibraltarians), after subsection (1) there shall be inserted—

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“(1A) A person shall not under the provisions of this Ordinance 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 Ordinance”;

- (e) in section 23(1) (no appeal to court), for the words “No court shall question”, there shall be substituted “Subject to section 50K no court shall question”;
- (f) in section 65 (offences by Community nationals), there shall be substituted –

“An EEA national within the meaning of section 39(1) 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.”.

(2) Schedule 1 and Schedule 2 of the Immigration Control Ordinance are repealed.

Passed by the Gibraltar House of Assembly on the 29th day of June, 2000.

D. J. REYES,

Clerk to the Assembly.

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