

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3355 of 31st July, 2003



I ASSENT,
FRANCIS RICHARDS,
GOVERNOR.

31st July, 2003.



GIBRALTAR

No. 10 of 2003

AN ORDINANCE to transpose into the laws of Gibraltar the agreement between Switzerland and the European Union on the rights of residence of nationals of Switzerland, members of their families, workers, self-employed persons, students and others, and of posted workers.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Ordinance may be cited as the Immigration Control (Amendment) (Swiss Workers) Ordinance 2003.

Amendment of Immigration Control Ordinance.

2.(1) Section 39 of the Immigration Control Ordinance shall be amended by inserting after the definition of “national of the United Kingdom of Great Britain and Northern Ireland” the following definition–

““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;”

(2) After section 39, insert–

“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 Ordinance, 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.”.

(3) In the heading “Right of admission to Gibraltar of EEA nationals, family members.” after the words “family members” insert “and posted workers”.

(4) After section 40(3) insert—

“(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).”

(5) In section 42(3), after “In the case of a worker” insert “other than a posted worker”.

(6) In section 43(1), after ““qualified person” means” insert “a posted worker holding a valid posted worker authorisation during the period of authorised entry and residence specified in that authorisation, and”.

(7) Section 44 shall be amended as follows—

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(a) in subsection (1), replace “A worker does not cease” with “Subject to sub-section (3), a worker does not cease”.

(b) after sub-section (2) insert–

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

(8) In section 48(1), after “Council Directive 68/360/EEC” insert “, or, in the case of posted worker, such form as the Chief Secretary may prescribe by notice published in the Gazette”.

(9) Section 49 shall be amended as follows–

(a) After subsection (6) insert–

“(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.”

(b) The existing subsection (7) becomes subsection (8).

(10) In section 50(1), after “Subject to sub-sections (2) and (3)” insert “, section 44(3)”.

(11) Section 50(F) shall be amended as follows–

(a) in subsection (1) and (2), after each “an EEA National or the family member of such a person” insert “, or a posted worker.”.

(b) delete existing subsection 2(c) and replace with–

“(c) on his ceasing to meet the relevant requirements of section 47(a), (b), (c), (d) or (e).”

(12) In sections 50G(2), 50I, 50J, and 50K after “to an EEA national or the family member of such a person” insert “, or a posted worker.”.

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(13) In section 65 after “within the meaning of section 39(1)” insert “, or a posted worker within the meaning of section 39B,”.

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Passed by the Gibraltar House of Assembly on the 28th day of July, 2003.

D. J. REYES,
Clerk to the Assembly.