

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3437 of 4th November , 2004



I ASSENT,
FRANCIS RICHARDS,
GOVERNOR.

2nd November, 2004.



GIBRALTAR

No. 31 of 2004

AN ORDINANCE to amend the Immigration Control Ordinance in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union and to amend the definition of family member.

ENACTED by the Legislature of Gibraltar.

Immigration Control (Amendment) (EU Accession Countries)
Ordinance 2004 [No. 31 of 2004]

Title and commencement.

1.(1) This Ordinance may be cited as the Immigration Control (Amendment) (EU Accession Countries) Ordinance 2004.

(2) This Ordinance comes into operation on the day of publication.

Amendment of the Immigration Control Ordinance.

2. The Immigration Control Ordinance is amended as follows–

(a) in section 39 (1)–

(i) substituting the definition of “EEA Agreement” with the following–

“ “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.”.

(ii) substituting for the definition of “family member” the following–

“ “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

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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;”;

(b) inserting a new subsection after section 39(2) as follows—

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

(c) amending section 41(3) by substituting for the existing subsection the following—

“(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.”;

(d) inserting after section 46 the following new section—

“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 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

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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 Ordinance.

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

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- (a) shall be issued with a residence permit under section 18; and
 - (b) shall not be issued with a residence permit under section 42.”;
- (e) amending section 49 by adding a new subsection as follows–
- “ (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.”;
- (f) inserting a new Schedule 1 as follows–

“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” .

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Passed by the Gibraltar House of Assembly on the 18th day of October,
2004.

D. J. REYES,
Clerk to the Assembly.