

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,456 of 17 February, 2005



I ASSENT,
DAVID BLUNT,
ACTING GOVERNOR.

9th February, 2005.



GIBRALTAR

No. 6 of 2005

AN ORDINANCE to amend the Immigration Control Ordinance to further transpose into the law of Gibraltar Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and to transpose the Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Ordinance may be cited as the Immigration Control (Amendment) Ordinance 2005.

Amendment of the Immigration Control Ordinance.

2.(1) The Immigration Control Ordinance is amended in accordance with the provisions of this section.

(2) The following is inserted after section 63(5)–

“(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 Ordinance;
- (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.”.

(3) The following is substituted for section 63A–

“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 a Gibraltarian as defined by the Gibraltarian Status Ordinance;
- (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.”.

(4) The following is inserted after section 63A—

“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 Ordinance 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.”

(5) Schedule 3 is renumbered as “Schedule 2”.

Passed by the Gibraltar House of Assembly on the 24th day of January, 2005.

D. J. REYES,

Clerk to the Assembly.

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