

IMMIGRATION CONTROL ACT

Principal Act

Act. No. 1962-12	<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

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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 Act¹;

“certificate” means a certificate of permanent residence issued under this Act and includes a subsidiary certificate issued under section 35;

“Community national” means a national of a Member State of the European Economic Community being a State specified in Schedule 1 other than a person to whom the provisions of section 14 apply;

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

“family” in relation to a Community national means his children who are under the age of twenty one years and dependent on him, his spouse and the parents and grand parents of the national and his spouse who are certified by the competent authority of the State from which they come to be dependent on him or resident under his roof;

“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;

¹ 1962-13

“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 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 or 19;

“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 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 to 38 and 52 shall not apply to any person to whom for the time being the provisions of sections 39 to 51.

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.

Place of entry by land.

11. No person who seeks to enter Gibraltar overland shall enter otherwise than through the Immigration Control Station established by the Government at Four Corners or at such other locations as the Government shall, by notice in the Gazette, appoint.

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 Gibraltarian 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-Gibraltarian 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.

(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 Gibraltarian women.

15.(1) Subject to the provisions of this section, a man who is married to a Gibraltarian 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 Gibraltarian 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 Gibraltarian 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-Gibraltarian 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;
- (f) an annual permit of residence, which shall entitle the holder thereof to remain in Gibraltar for such period, not exceeding one year, as may be specified in the permit.

(2) The holding of a permit of residence shall not of itself entitle the holder thereof to undertake employment in Gibraltar.

(3) An annual 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) Act²;
- (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.

(3) Where the holder of a valid entry permit or permit of residence carries on in Gibraltar in contravention of the Trade Licensing Act³ any trade or business, or is employed in Gibraltar in contravention of the Employment Act⁴, his entry permit shall thereupon cease to have effect.

² 1948-28

³ 1978-35

⁴ 1932-16

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) 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 Gibraltar women.

25.(1) A child of a Gibraltar 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 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 Gibraltar 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 Gibraltar woman .

Grants to children of Gibraltar women.

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

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.

Special Provisions Relating to nationals of European Economic Community States.

Right to enter Gibraltar.

39.(1) Subject to the provisions of section 42 a Community national may enter Gibraltar on the production by such national of a valid identity card or a valid passport issued by the Member State of which he is a national proving his identity as a national of that State.

(2) A provisional permit shall be issued to every person entering Gibraltar under subsection (1).

Application for residence permit.

40. A Community national who has entered Gibraltar may at any time apply to the Principal Immigration Officer' for a residence permit.

Issue of residence permit.

41.(1) Subject to the provisions of Section 53 a Community National who has applied for a residence permit shall on production of the document under which he entered Gibraltar be issued with a residence permit in the form set out in the Second Schedule-

- (a) valid for a period of not less than 5 years if he satisfies the Principal Immigration Officer -
 - (i) that he is self employed; or
 - (ii) that he is employed and the period of his employment is expected to last at least 12 months from the date of his application for a residence permit;
- (b) valid for the period of his employment in any other case.

And Provided that the provisions of sub-paragraph (a) (ii) and (b) shall not apply to a national of the Kingdom of Spain until the expiration of the transitional periods provided for in Articles 55 to 58 of the Act annexed to the Treaty concerning the Accession of the Kingdom of Spain to the European Economic Community and the European Atomic Energy Community; And Provided that the provisions of sub-paragraph (a) (ii) and (b) shall not apply to a national of the Portuguese Republic until the expiration of the transitional periods provided for in Articles 215 to of the Act annexed to the Treaty concerning the Accession of the Portuguese Republic to the European Economic Community and the European Atomic Energy Community.

(2) A residence permit issued under the provisions of subsection (1) may be renewed and an application for renewal shall be treated as an original application.

Refusal of residence permit.

42.(1) In the interests of public policy, public security or public health, the Principal Immigration Officer may refuse to allow a Community national to enter Gibraltar or may refuse to issue a Community national who has entered Gibraltar with a residence permit or may cancel a residence permit.

(2) For the purpose of this section only the following diseases and disabilities shall be diseases and disabilities which in the interests of public health may justify the refusal of entry into Gibraltar or the issue or cancellation of a residence permit-

- (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 an 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.

(3) Notwithstanding anything contained in subsection (1) the Principal Immigration Officer shall not refuse to renew a residence permit or cancel a renewed residence permit in the interests of public health.

Certificate of permanent residence.

43.(1) A Community national who has been in wage paid employment or has pursued an activity as a self employed person shall on application be issued with a certificate of permanent residence and shall have the right to remain permanently in Gibraltar if—

- (a) at the time of ceasing his employment or self employed activity, as the case may be, he has reached the age prescribed by any law in force in Gibraltar for entitlement to an old age pension and he has been employed or has pursued an activity as a self employed person, in Gibraltar for at least the last 12 months and resided in Gibraltar continuously for more than 3 years;
- (b) having resided continuously in Gibraltar for more than 2 years he ceases employment or self employed activity, as the case may be, as a result of permanent incapacity to work:

Provided that if such incapacity is the result of an accident at work or of an occupational disease entitling him to a pension for which the Government of Gibraltar is entirely or partially liable the requirement as to length of residence shall not apply; or

- (c) after 3 years continuous employment or self employed activity, as the case may be, and residence in Gibraltar, he is in employment or is pursuing a self employed activity, as the case may be, in the territory of a Member State, while keeping his residence in Gibraltar to which he returns each day or at least once a week.

(2) The conditions as to residence and length of employment laid down in subsection (1)(a) and as to residence in subsection (1)(b) it shall not apply if the national's spouse is a Gibraltarian.

(3) A certificate of permanent residence shall entitle the person to whom it is so issued to remain permanently in Gibraltar.

Special permits.

44.(1) Subject to the provisions of subsection (2), the following may reside in Gibraltar—

- (a) a Community national who is employed or pursues an activity as a self employed person in another Member State if he has a place of residence in Gibraltar to which he returns at least once a week;
- (b) a seasonal worker who is a Community national who holds a work contract stamped by the competent authority of a Member State in which he is going to work.

(2) The Principal Immigration Officer may refuse to allow a Community national to whom the provisions of subsection (1) apply to enter or reside in Gibraltar for any of the reasons specified in section 42.

(3) A Community national coming within the categories specified in subsection (1)(a) or (b) who enters or remains in Gibraltar when he has been refused permission so to do is guilty of an offence and an unauthorized person for the purposes of section 59.

(4) Any Community national residing in Gibraltar under the provisions of this section shall be issued with a special permit but such permit may be cancelled for any of the reasons specified in section 42

Notice to leave.

45.(1) The Principal Immigration Officer may, by notice in writing, require a Community national to leave Gibraltar if—

- (a) within six months of his entry he has not applied for a residence permit;
- (b) within three months of the expiry of a residence permit he has not applied for a renewal of such permit;
- (c) he has applied for a residence permit or the renewal of a residence permit and such application has been refused;
- (d) his residence permit has been cancelled; or
- (e) notwithstanding that he has not applied for a residence permit or the renewal of a residence permit the Principal Immigration Officer would have grounds for refusing such application under section 42.

(2) A notice issued under subsection (1) shall specify the date by which the Community national shall leave Gibraltar. Except in cases of urgency the date shall not—

- (a) in cases where no residence permit has been issued be less than fifteen days after the service of such notice;
- (b) in cases where an application to renew a residence permit has been refused or a residence permit has been cancelled be less than thirty days after the service of such notice.

(3) A Community national aggrieved by a requirement to leave Gibraltar may appeal to the Governor within seven days of the notification to him of such refusal.

(4) This Section does not apply to Community Nationals pursuing or intending to pursue self employed activities.

Permission for families to enter.

46.(1) The family of a Community national may enter Gibraltar with him or at any time subsequent to his entry if the national satisfies the Principal Immigration Officer that he has available for his family accommodation considered normal for Gibraltarians employed in a similar capacity and

upon production of such evidence as the Principal Immigration Officer may require proving their relationship to the Community national.

(2) Notwithstanding that a Community national has satisfied the Principal Immigration Officer that he has accommodation available and produced evidence to prove the relationship as required by subsection (1), the Principal Immigration Officer may refuse to allow any member of his family to enter Gibraltar or may refuse to issue any member with a residence permit or cancel a residence permit already issued for any of the reasons specified in section 42.

(3) Where the Principal Immigration Officer has refused to issue a residence permit to a member of the family of a Community national or has cancelled a residence permit he may by notice in writing require such member to leave Gibraltar and the provisions of section 45(2) shall apply *mutatis mutandis*.

(4) The provisions of subsections (1) to (3) shall apply to a Community National who is pursuing activities as a self employed person except that such person shall not be required to satisfy the Principal Immigration Officer as to the availability of accommodation.

(5) The provisions of subsection (1) to (3) shall only apply to a National of the Hellenic Republic employed in Gibraltar if such National is in possession of a residence permit.

(6) The provisions of subsections (1) to (3) shall only apply to a national of the, Kingdom of Spain employed ,in Gibraltar if such national is in possession of a residence permit.

(7) The provisions of subsections (1) to (3) shall only apply to a national of the Portuguese Republic employed in Gibraltar if such national is in possession of a residence permit.

Employment of families.

47. A member of the family of a Community national who has been allowed to enter Gibraltar by virtue of his relationship with such national may take up employment in Gibraltar notwithstanding that such member is not himself a Community national..

Families to leave with nationals.

48.(1) If a Community national ceases to reside in Gibraltar his family may be required to leave Gibraltar and any permit by virtue of which any member of his family is lawfully in Gibraltar shall cease to be valid:

Provided that any member of his family may apply for a residence permit and the provisions of sections 40, 41 and 42 shall apply to such application.

(2) The provisions of section 65 shall apply to any member of the family of a Community national who fails to leave Gibraltar when required to do so.

Families of deceased nationals.

49. If a Community national in wage paid employment, or self employed activity, as the case may be, who has been issued with a residence permit dies during his working life and before having acquired the right to a certificate of permanent residence under section 43 the members of his family who are in Gibraltar shall be entitled to a certificate of permanent residence on application provided that-

- (a) such national at the date of his death had resided continuously in Gibraltar for at least two years; and
- (b) his death was due to the result of an accident at work or to an occupational disease; and
- (c) that the surviving spouse is a Gibraltarian.

Meaning of “continuous residence”.

50.(1) For the purposes of sections 43 and 49 continuous residence shall not be affected by-

- (a) temporary absence not exceeding three months in any year; or
- (b) absence due to compliance with military service obligations.

(2) For the purposes of section 43 of involuntary unemployment recorded by the Director of Labour and Social Security and absence from employment because of illness or accident shall be considered periods of employment and periods of inactivity as a self employed person due to circumstances outside the control of the person concerned or owing to illness or accident shall be considered as periods of activity as a self employed person for the purposes of Section 43.

50A. The provisions of Sections 49 to 63 (inclusive) shall apply to a Community National who is providing or intends to provide services in Gibraltar, or is, or intends to be, a recipient of services, as they apply to a person who is pursuing, or intends to pursue, activities in Gibraltar as a self employed person.

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;

- (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;

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

- (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 Principal 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.

(4) Any prohibited immigrant may be dealt with in the same manner as an unauthorized person may be dealt with under section 59.

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 Act¹ recommended deportation may be removed from 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.

¹ 1961-24

(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. 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.

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. A community nation who does not leave Gibraltar by the date specified under section 45(2), or, where the Governor has rejected his appeal, within fifteen days of the date of such 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 Gibraltar with another State in respect of matters falling within the provisions of this Act.

SCHEDULE 1

Section 49

MEMBER STATES

The Kingdom of Belgium
The Kingdom of Denmark
The Federal Republic of Germany
The Hellenic Republic
The Kingdom of Spain
The French Republic Ireland
The Italian Republic
The Grand Duchy of Luxembourg
The Kingdom of the Netherlands
The Portuguese Republic
The United Kingdom of Great Britain and
Northern Ireland.

1. Notwithstanding anything contained in
Part IX a person who is:

- (a) a national of the French Republic solely by birth in or other connection with a French Overseas dependent territory; or
- (b) a national of the Kingdom of the Netherlands solely by birth in or other connection with Surinam or the Antilles, shall not have any of the rights conferred by Part IX.

2. For the purposes of Part IX a national of the United Kingdom shall mean:

- (a) British citizens;
- (b) Persons who are British subjects by virtue of Part IV of the British Nationality Act, 1981 and who have the right of abode in the United Kingdom and are therefore exempt from United Kingdom immigration control;
- (c) British Dependent Territories citizens who acquire their citizenship from a connection with Gibraltar.

SCHEDULE 2

Section 41.

IMMIGRATION REPARTMENT, GIBRALTAR,
NO. EEC 00001.

RESITENCE PERMIT (COMMUNITY NATIONAL)
IMMIGRATION CONTROL ACT.

Mr/Mrs/Miss

Nationality Passport/Identity Card No

Is hereby permitted to reside in Gibraltar till

Included in this Permit are the following members of his/her family –

Surname Other Names Born on

Surname Other Names Born on

Surname Other Names Born on

Surname Other Names Born on

Surname Other Names Born on

Surname Other Names Born on

Surname Other Names Born on

Given at Gibraltar on day of 19

.....

(Principle Immigration Officer)

NOTE: This Permit shall be surrendered to the Immigration Office on leaving Gibraltar for a period exceeding three months.