
EUROPEAN COMMUNITIES ORDINANCE
Principal Ordinance

Ord. 1972-18	<i>Commencement</i>	21.12.1972
	<i>Assent</i>	21.12.1972

	Amending enactments	Relevant current provisions	Commencement date
Ord.	1983-45	s.9	
	1985-02	s.2(1)	1.1.1981
		Part II	5.2.1985
	1985-21	s.2(1) and Part II	1.1.1986
	1986-12	ss.2(1), 6(1), 6(2), 6(3)	3.12.1987
	1992-12	ss.2(1), 3(1), 4, 6	31.12.1992
	1993-25	s. 2	9.12.1993
	1995-07	s.2(1)	30.3.1995
	1998-15	s.2(1)	29.1.1998
	1999-01	s.2(1)	25.3.1999
	2004-21	ss.2(1), 7 and Sch.3	1.5.2004

English source

European Communities Act 1972 (1972 c.68).

By virtue of section 3 of this Ordinance, subject to certain special exceptions, Community Law as a whole applies in Gibraltar. Community Law is set out in the Community Treaties (see section 1 of the Ordinance and Part I of Schedule 1), Regulations and other acts of the Community institutions, and the case law of the European Court of Justice. However, Gibraltar is omitted from the list of territories in the definition of the Community customs territory in Annex I, I, 4 to the Act of Accession annexed to the Treaty of Accession of 22 January 1972 (Cmnd. 7463) so that customs legislation and legislation applying to the customs territory do not apply to Gibraltar. In addition, by virtue of Article 28 of the Act of Accession, acts of the institutions of the Community to give effect to the common agricultural policy, as well as acts on the harmonisation of

turnover taxes (i.e. value added tax), do not apply to Gibraltar, unless the Council unanimously decides otherwise; no such decision has been taken.

RE-ARRANGEMENT OF SECTIONS

<i>Previous number</i>	<i>Comment</i>
1-6	Unchanged
7	<i>Omitted</i>
8	Transferred to Companies Ordinance as ss.20A, 24A, 90A and 281A
9	Repealed
10	Transferred to Statistics Ordinance as s.8(2)
Schs. 1 and 2	Unchanged
Sch. 3	Transferred to Interpretation and General Clauses Ordinance, as s.5, and the Financial Year Ordinance as a footnote.

EUROPEAN COMMUNITIES ORDINANCE.

ARRANGEMENT OF SECTIONS.

Section

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SCHEDULE 1.

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States Party to the EEA Agreement

AN ORDINANCE TO MAKE PROVISION IN CONNECTION WITH THE INCLUSION OF GIBRALTAR WITHIN THE EUROPEAN COMMUNITIES.

Short title.

1. This Ordinance may be cited as the European Communities Ordinance.

Interpretation.

2. (1) In this Ordinance,—

(1972 c.68, s.1).

“the Communities” means the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community;

“the Treaties” or “the Community Treaties” means, subject to subsection (2), the pre-accession treaties, that is to say, those described in Part I of Schedule I taken with—

- (a) the treaty relating to the accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on the 22nd day of January, 1972; and
- (b) the decision, of the same date, of the Council of the European Communities relating to the accession of the United Kingdom to the European Coal and Steel Community; and
- (c) the treaty relating to the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, signed at Athens on 28th May 1979; and
- (d) the decision, of the 24th May 1979, of the Council relating to the accession of the Hellenic Republic to the European Coal and Steel Community; and
- (e) the treaty relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and the European Atomic Energy Community, signed at Lisbon and Madrid on 12th June 1985; and
- (f) the decision, of the 11th June 1985, of the Council relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Coal and Steel Community; and

- (g) such of the provisions of the single European Act signed at Luxembourg and the Hague on the 17th and 28th February 1986 as are contained in Title II and, so far as they relate to any of the Communities or any Community institution, the preamble and Titles I and IV; and
- (h) the Agreement on the European Economic Area signed at Oporto on the 2nd May 1992 together with the protocol adjusting that agreement signed at Brussels on the 17th March 1993 ; and
- (j) the treaty concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden, signed at Corfu on 24th June, 1994, as modified by the Decision of the Council of the European Union of 1st January, 1995 adjusting the instruments concerning the accession of new Member States to the European Union; and
- (k) Titles (ii), (iii) and (iv) of the Treaty on European Union signed at Maastricht on 7th February 1992, together with the other provisions of the Treaty so far as they relate to those Titles, and the Protocols adopted at Maastricht on that date and annexed to the Treaty establishing the European Community with the exception of Protocol-14 on Social Polic;
- (l) the following provisions of the Treaty signed at Amsterdam on 2nd October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts–
 - (i) Articles 2 to 9,
 - (ii) Article 12, and
 - (iii) the other provisions of the Treaty so far as they relate to those Articles,and the Protocols adopted on that occasion other than the Protocol on Article J.7 of the Treaty on European Union; and
- (m) the treaty concerning 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, signed at Athens on 16 April 2003;

and any other Treaty entered into by any of the Communities with or without any of the member States, or entered into, as a treaty ancillary to any of the Treaties, by the United Kingdom;

and any expression defined in Schedule 1 to this Ordinance has the meaning there given to it.

(2) If pursuant to the provisions of section 1(1) of the European Communities Act, 1972, Her Majesty by Order in Council declares that a treaty specified in the Order is to be regarded as one of the Community Treaties as herein defined, the Order shall be conclusive for the purposes of this Ordinance that it is to be so regarded.

(3) For the purposes of subsections (1) and (2) “treaty” includes any international agreement, and any protocol or annex to a treaty or international agreement.

(4) References in this Ordinance to the date on which the agreement on the European Economic Area comes into force are references to the date on which (in accordance with the protocol signed at Brussels on the 17th March 1993) it comes into force otherwise than as regards Liechtenstein.

General implementation of Treaties.

3. (1) All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties, and all such remedies and procedures from time to time provided for by or under the Treaties, as in accordance with the Treaties are without further enactment to be given legal effect or used in Gibraltar, shall be recognised and available in law, and be enforced, allowed and followed accordingly; and the expression “enforceable community right” and similar expressions shall be read as referring to one to which this subsection applies :

*(1972 c.68,
s.21(1) and (6).)*

Provided that—

(a) where—

- (i) the operation of any relevant enactment is limited (expressly or by implication) by reference to the Communities or by reference to some connection with one of the Communities, and
- (ii) the enactment relates to a matter to which the Agreement on the European Economic Area (as it has effect on the date on which it comes into force) relates,

then unless the context otherwise requires, the enactment shall have effect on and after that date in relation to that matter with

the substitution as a corresponding limitation relating to the European Economic Area (or, where appropriate, to both the Communities and the European Economic Area);

- (b) paragraph (a) shall have effect subject to such exceptions and modifications as the Governor may, by notice in the Gazette, prescribe;
- (c) paragraph (a) shall not be regarded—
 - (i) as having an effect which is inconsistent with the operation, by virtue of the Agreement on the European Economic Area, of this subsection;
 - (ii) as prejudicing any power to make provision for the purpose of implementing any obligation of the United Kingdom created or arising by or under the Agreement on the European Economic Area or for any purpose mentioned in section 4(1) relating to that Agreement;

and any instrument made for such a purpose under section 4(1) or under any other enactment may exclude the operation of paragraph (a);

- (d) in this proviso “relevant enactment” means a provision of an Ordinance passed, or any subordinate legislation made, before the date on which the Agreement on the European Economic Area comes into force.

(2) In conformity with the provisions of section 2(6) of the European Communities Act, 1972, a colonial law (within the meaning of the Colonial Laws Validity Act, 1865) passed or made for Gibraltar, if expressed to be passed or made in the implementation of the Treaties and of the obligations of the United Kingdom in respect of Gibraltar thereunder, shall not be void or inoperative by reason of any inconsistency with or repugnancy to an Act of Parliament, passed or to be passed, that extends to Gibraltar or any provision having the force and effect of an Act in Gibraltar (but not including such section), nor by reason of its having some operation outside Gibraltar; and any such Act or provision that extends to Gibraltar shall be construed and have effect subject to the provisions of any such law.

General provision for implementation of Community obligations.

*(1972 c.68, s.2(2)
and (4).)*

4. (1) Subject to the provisions of Schedule 2, the Governor may by regulations make provision—

- (a) for the purpose of implementing any Community obligation of the United Kingdom in respect of Gibraltar or enabling any

such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom in respect of Gibraltar under or by virtue of the treaties to be exercised; or

- (b) for the purpose of dealing with matters arising out of or related to any such obligation or rights or the coming into force, or the operation from time to time, of section 3(1);

and in the exercise of any statutory power or duty (including any power to give directions or to legislate by means of orders, rules, regulations or other subsidiary legislation) the person, officer or authority entrusted with the power or duty may have regard to the objects of the Communities and to any such obligation or rights as aforesaid.

(2) The provision that may be made under subsection (1) includes, subject to Schedule 2, any such provision (of any such extent) as might be made by Ordinance, but does not include any such provision as may be made by Ordinance by virtue only of section 2(6) of the European Communities Act, 1972, and section 3(2) of this Ordinance, and any enactment (which expression shall be deemed to include an Act of Parliament or any instrument made thereunder other than the Constitution of Gibraltar, extending to Gibraltar and stated to be passed or made in implementation of the Treaties and of the obligations of the United Kingdom thereunder) passed or to be passed, other than one contained in this Ordinance, shall be construed and have effect subject to the foregoing provisions of this section and section 3; but except as may be provided by any law made under section 33 or 34 of the Constitution, Schedule 2 shall have effect in connection with the powers conferred by this section.

(3) Regulations made under subsection (1) of this section shall not come into force until such regulations have been approved by a resolution of the House of Assembly.

(4) In relation to matters to which the Agreement on the European Economic Area (as it has effect on the date on which it comes into force or subsequently) relates, the powers conferred by subsection (1) shall include power to make provision for the reduction or elimination of any difference between—

- (a) the application of an Ordinance or subordinate legislation made before the date on which the Agreement on the European Economic Area takes effect in cases having a connection with member States, and
- (b) its application in cases having a connection with other States within the European Economic Area,

and sub-paragraphs (a), (c) and (d) of paragraph 1 of Schedule 2 shall not apply to the exercise of the powers of subsection (1) for the purposes of this subsection.

(5) In relation to matters to which the Agreement on the European Economic Area (as it has effect on the date on which it comes into force or subsequently) relates, the powers conferred by subsection (1) shall include power to make provision for the avoidance, elimination or reduction of any difference between—

- (a) the application of an instrument made under that section on or after the date on which that Agreement comes into force in cases having a connection with member States, and
- (b) its application in cases having a connection with other States within the European Economic Area.

(6) Subject to the proviso to section 3(1), where, by virtue of the Agreement on the European Economic Area (as it has effect on the date on which it comes into force), it is necessary for a purpose mentioned in subsection (1) that any relevant provision should have effect with modifications which can be ascertained from that Agreement, then on and after that date the provision shall have effect with those modifications.

(7) The Governor may by order modify or exclude the operation of subsection (6) in relation to a relevant provision where it appears to him appropriate to do so because of the suspension of any part of the Agreement on the European Economic Area in accordance with the terms of that Agreement.

(8) Subsection (6) shall not be regarded—

- (a) as providing for modifications the effect of which is achieved through the operation, by virtue of the Agreement on the European Economic Area, of section 3(1);
- (b) as prejudicing any power to make provision for the purpose of implementing any obligation of the United Kingdom created or arising by or under the Agreement on the European Economic Area, or for any other purpose mentioned in subsection (1) relating to that Agreement;

and any instrument made under subsection (1) or any other enactment for such a purpose may exclude the operation of subsection (6).

(9) Subsection (6) shall not apply so as to require a modification if that modification, or a corresponding modification limited so as to relate only to the Communities,—

- (a) could have been made by an Ordinance passed before the date on which the Agreement on the European Economic Area comes into force, for a purpose mentioned in subsection (1), but
 - (b) was not made (by that or other means).
- (10) In this section “relevant provision” means–
- (a) a provision of an Ordinance passed, or any subordinate legislation made, before the date on which the Agreement on the European Economic Area comes into force;
 - (b) a provision of any other instrument made before that date by a person as against whom the effect of a directive issued by a Community institution (if such a directive were relevant) might be relied upon in proceedings to which he was a party.

Provision of funds to meet Community obligations.

5. There shall be charged on and issued out of the Consolidated Fund the amounts required to meet any Community obligation arising out or in respect of Gibraltar. *(1972 c.68, s.2(3))*

Decisions on, and proof of, Treaties and Community instruments, etc.

6. (1) For the purposes of all legal proceedings any question as to the meaning or effect of any of the Treaties or as to the validity meaning or effect of any Community instrument, shall be treated as a question of law (and, if not referred to the European Court, be for determination as such in accordance with the principles laid down by, and any relevant decision of the European Court or any court attached thereto). *(1972 c.68, s.3).*

(2) Judicial notice shall be taken of the Treaties, of the Official Journal of the Communities and of any decision of, or expression of opinion by, the European Court or any court attached thereto on any such questions as aforesaid: and the Official Journal shall be admissible as evidence of any instrument or other act thereby communicated of any of the Communities or of any Community institution.

(3) Evidence of any instrument issued by a Community institution, including any judgment or order of the European Court, or any court attached thereto or of any document in the custody of a Community institution, or any entry in or extract from such a document, may be given in any legal proceedings by production of a copy certified as a true copy by an official of that institution; and any document purporting to be such a copy

shall be received in evidence without proof of the official position or handwriting of the person signing the certificate.

(4) Evidence of any Community instrument may also be given in any legal proceedings—

- (a) by production of a copy purporting to be printed by the Queen's Printer;
- (b) where the instrument is in the custody of a department of the United Kingdom Government or the Government of Gibraltar, by production of a copy certified on behalf of the department to be a true copy by an officer of the department generally or specially authorized so to do,

and any document purporting to be such a copy as is mentioned in paragraph (b) of this subsection of an instrument in the custody of a department shall be received in evidence without proof of the official position or handwriting of the person signing the certificate, or of his authority to do so, or of the document being in the custody of the department.

(5) Subsections (2), (3) and (4) shall have effect—

- (a) in relation to the EFTA Court (to be established under Article 108 of the Agreement on the European Economic Area) as they have effect in relation to the European Court, and
- (b) in relation to the EFTA Surveillance Authority (also to be established under that Article) as they have effect in relation to a Community institution other than the European Court.

Member States of the European Economic Area

7. Schedule 3 sets out a list of States which are members of the European Economic Area.

SCHEDULE 1.

Section 2(1).

DEFINITIONS RELATING TO COMMUNITIES.

PART I.

THE PRE-ACCESSION TREATIES.

1. The “E.C.S.C. Treaty”, that is to say, the Treaty establishing the European Coal and Steel Community, signed at Paris on the 18th day of April, 1951.
2. The “E.E.C. Treaty”, that is to say, the Treaty establishing the European Economic Community, signed at Rome on the 25th day of March, 1957.
3. The “Euratom Treaty”, that is to say, the Treaty establishing the European Atomic Energy Community, signed at Rome on the 25th day of March, 1957.
4. The Convention on certain Institutions common to the European Communities, signed at Rome on the 25th day of March, 1957.
5. The Treaty establishing a single Council and a single Commission of the European Communities, signed at Brussels on the 8th day of April, 1965.
6. The Treaty amending certain Budgetary Provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities, signed at Luxembourg on the 22nd day of April, 1970.
7. Any treaty entered into before the 22nd day of January, 1972, by any of the Communities (with or without any of the member States) or, as a treaty ancillary to any treaty included in this Part of this Schedule, by the member States (with or without any other country).

PART II.

OTHER DEFINITIONS.

“Economic Community”, “Coal and Steel Community” and “Euratom” mean respectively the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community.

“Community customs duty” means, in relation to any goods, such duty of customs as may from time to time be fixed for those goods by directly applicable Community provision as the duty chargeable on importation into member States.

“Community institution” means any institution of any of the Communities or common to the Communities; and any reference to an institution of a particular Community shall include one common to the Communities when it acts for that Community, and similarly with references to a committee, officer or servant of a particular Community.

“Community instrument” means any instrument issued by a Community institution.

“Community obligation” means any obligation created or arising by or under the Treaties, whether an enforceable Community obligation or not.

“Enforceable Community right” and similar expressions shall be construed in accordance with section 3(1) of this Ordinance.

“Entry date” means the date on which the United Kingdom became a member of the Communities.

“European Court” means the Court of Justice of the European Communities.

“Member”, in the expression “member State”, refers to membership of the Communities.

SCHEDULE. 2.

Section 4(1).

PROVISIONS AS TO SUBORDINATE LEGISLATION.

1. The powers conferred by section 4(1) of this Ordinance to make provision for the purposes mentioned in paragraphs (a) and (b) of such subsection shall not include power—

- (a) to make any provision imposing or increasing taxation; or
- (b) to make any provision taking effect from a date earlier than that of the making of the instrument containing the provision; or
- (c) to confer any power to legislate by means of orders, rules, regulations or other subordinate instrument, other than rules of procedure for any court or tribunal; or
- (d) to create any new criminal offence punishable, with imprisonment for more than two years or punishable on summary conviction with imprisonment for more than three months or with a fine of more than £400 (if not calculated on a daily basis) or with a fine of more than £5 a day.

2. Sub-paragraph (c) of paragraph 1 of this Schedule shall not be taken to preclude the modification of a power to legislate conferred otherwise than under section 4(1), or the extension of any such power to purposes of the like nature as those for which it was conferred; and a power to give directions as to matters of administration is not to be regarded as a power to legislate within the meaning of sub-paragraph (c) of paragraph 1 of this Schedule.

SCHEDULE 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