

ORDINANCE 17 OF 2004

**AN ORDINANCE
TO AMEND THE CONTROL (ENTRY, SETTLEMENT AND
COMMERCIAL ENTERPRISES) ORDINANCE 1960 ON
FACILITATION OF ILLEGAL ENTRY FOR GAIN AND ON
DETENTION AND FORFEITURE OF SHIPS, AIRCRAFT
AND VEHICLES**

**P. T. C. Pearson CBE
ADMINISTRATOR**

23rd July 2004.

BE it enacted by the Administrator of the Sovereign Base Areas of Akrotiri and Dhekelia as follows:—

1. This Ordinance may be cited as the Control (Entry, Settlement and Commercial Enterprises) (Amendment) Ordinance 2004. Short title.

2. The Control (Entry, Settlement and Commercial Enterprises) Ordinance 1960 is amended by inserting after section 22 new sections numbered 22A to 22C as follows—

Offence of
facilitating for
gain the arrival in
the Areas of an
unlawful entrant
or asylum-seeker

“22A. (1) A person commits an offence if—

- (a) he knowingly and for gain facilitates the arrival in the Areas of an individual, and
- (b) he knows or has reasonable cause to believe that the individual is a person
 - (i) whose entry into the Areas contravenes this Ordinance, or
 - (ii) who intends to apply for asylum in the Areas under the Refugees Ordinance 2004 or in respect of whom another person intends to make such an application on his behalf or to suggest to him that he should make such an application on his own behalf.

Amendment of
6/60.

(2) Subsection (1) does not apply to anything done to assist an asylum-seeker by a person acting on behalf of an organisation which—

- (a) aims to assist asylum-seekers, and
 - (b) does not charge for its services.
- (3) Subsection (1) applies to anything done—
- (a) in the Areas,
 - (b) outside the Areas by a body incorporated under the law of the Areas, or
 - (c) outside the Areas by an individual who is—
 - (i) a British citizen,
 - (ii) a person who is a British overseas territories citizen by virtue of a connection with the Areas,
 - (iii) a recognised resident,
 - (iv) a person who is ordinarily resident in the Areas.

(4) A person guilty of an offence under this section shall be liable on conviction to imprisonment for a term not exceeding 3 years, to a fine or to both.

Forfeiture of
vehicle, ship or
aircraft

22B. (1) This section applies where a person is convicted of an offence under section 22A.

(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 of the individuals mentioned in section 22A(1)(b), 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 22A.
- (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.

Detention of
ship, aircraft
or vehicle

22C (1) If a person has been arrested for an offence under section 22A a control officer or a constable may detain a relevant ship, aircraft or vehicle—

- (a) until a decision is taken as to whether or not to charge the arrested person with that offence; or
- (b) if the arrested person has been charged—
 - (i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or
 - (ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle.

(2) A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the control officer or constable concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 22B.

(3) A person (other than the arrested person) may apply to the court for the release of a ship, aircraft or vehicle on the grounds that—

- (a) he owns the ship, aircraft or vehicle,
- (b) he was, immediately before the detention of the ship, aircraft or vehicle, in possession of it under a hire-purchase agreement, or
- (c) he is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if—

- (a) the arrested person is convicted; and
- (b) an order for its forfeiture is made under section 22B.”

Commencement.

3. This Ordinance shall come into force on the day of its publication in the Gazette.

23rd July 2004
(128/276)

J. E. Stainton,
Acting Chief Officer
