

Rules made under ss.12, 15, 20 and 86.

EMPLOYMENT REGULATIONS, 1994

(LN. 1994/023)

14.2.1994

Amending enactments	Relevant current provisions	Commencement date
LN. 1994/073	rr. 2, 4, 11, Sch.7	14.2.1994
1994/100	rr. 2, 15A, Schs. 2-3, 7	22.9.1994
1994/104	r. 15A(1)	22.9.1994
Act. 1999-13	r. 26	12.8.1999
LN. 1999/096	r. 3	12.8.1999
2001/066	r. 3	7.6.2001
2004/094	rr. 5(1), 6(4)(a), (c)-(d), 7A,	30.9.2004
2005/047	Sch.7	1.4.2005
2005/095	r. 6(4)(d)-(e)	16.6.2005
2006/127	r. 7A	1.1.2007
2008/078	rr. 6(4)(a), (d)-(g), 7A(1)(a)-(b), (2), (4)	2.10.2008
2014/236	r. 7(5)	4.12.2014
2015/021	r. 7(3)(h)-(i)	19.2.2015
2016/065	r. 4(1), (8), Schs. 1, 7	1.4.2016
2016/138	r. 15A(3), (3A)-(3C)	18.6.2016
2016/158	r. 7(3)	21.7.2016
Act. 2016-20	rr. 8(1)-(2), (6)-(7), (9)-(10), 16(1), (3)-(5), 17(1), (3)(a), (c), (5)	13.10.2016
LN. 2019/239	Sch. 7	1.4.2017

Transposing:

Directive 91/533/ECC
Regulation 1612/68
Directive 2001/55/EC
Directive 2003/9/EC
Directive 2004/83/EC
Directive 2014/67/EU

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Title and commencement.

1. These Regulations may be cited as the Employment Regulations 1994, and shall come into effect on the 14th day of February, 1994.

Interpretation.

2. In these Regulations, unless the context otherwise requires,—

“employer” means any person required by the Business Trades and Professions (Registration) Act, 1989 to register under that Act:

Provided that the Crown shall be deemed to be an employer for the purposes of these Regulations.

“engagement” means the contractual relationship between an employer and a worker undertaking work of whatever nature for or on behalf of that employer and shall include the contractual relationship, between a director and a company except where the only work carried out by the director on behalf of that company is in fulfilment of his statutory role as a member of the board of the company, but shall not include the contractual relationship between principal and agent, and—

(a) “engage” shall be construed in like manner;

(b) “employment” and “employed” in sections 15, 18, 20, 24 and 26 of the Act shall be given the same meaning;

“detached worker” means a person who—

(a) is not ordinarily resident in Gibraltar, and

(b) is in employment in a country outside Gibraltar,

and is required by his employer to whom the provisions of paragraphs (a) and (b) also apply to perform work of a temporary nature in Gibraltar in the course of his employment.

“inspector” means an inspector appointed under section 16 of the Act or under regulation 4 of the Gibraltar Development Corporation (Employer’s Insolvency) Regulations 1991, and in the latter case an inspector shall have powers under subregulations (3), (4) and (5) of that regulation subject to the conditions on the exercise of those

powers in subregulations (6), (7) and (9) thereof and with the substitution throughout of “Director” for “Administrator”;

“operative date” means the date on which these Regulations are signed;

“registration number” means the registration number issued by the Director in accordance with regulation 14;

“worker” has the meaning given to it in section 18 of the Act and for the avoidance of doubt, shall include a person engaged under a contract of service or a contract for services unless the Director is satisfied that such person is in business on his own account and for the purposes of so satisfying himself, the Director may—

- (a) require such information as is in his view necessary for this purpose to be furnished to him; and
- (b) take account of such matters as the payment or non-payment of tax, social insurance contributions and any other factor which, in the opinion of the Director, is relevant to establishing whether a person is in business on his own account.

Confidentiality.

3.(1) Every person being employed in the administration of these regulations shall, subject to subregulation (3) regard information obtained in the exercise of the powers contained in these regulations as confidential.

(2) No person employed in carrying out the provisions of these regulations, shall be required to produce in any court any document or to divulge or communicate to any court any matter or thing coming under these regulations except as may be necessary for the purpose of carrying into effect the provisions of these regulations or any Act or in order to institute a prosecution or in the course of a prosecution for any offence committed in relation to these regulations or any Act.

(3) Notwithstanding anything contained in these regulations, a person employed in the administration of these regulations shall, at the request of the Minister, provide to him such information relating to any matter referred to in this regulation as the Government may require for the purposes of formulating the economic and fiscal policies of the Government.

(4) Forms used in the administration of these regulation shall contain a reference to this regulation and to the obligation of confidentiality in this regulation.

Registration of vacancies.

4. (1) An employer who proposes to engage a worker shall, before seeking to engage any person as a worker, notify the Director of that intention at least 10 working days prior to the commencement date of that worker, or such other time period as the Director may determine at his discretion in writing to the Employer, providing to the Director with such notification the information specified in Schedule 1, and the Director shall register that vacancy and give to that vacancy a vacancy registration number.

(2) Where a vacancy existed and—

- (a) an employer has not notified the Director of that vacancy in accordance with subregulation (1), and
- (b) the employer has filled the vacancy, the provisions of subregulation (1) shall nonetheless apply in respect of the notification of that vacancy.

(3) Where the Director ascertains that a vacancy existed and that the employer had not notified the Director prior to filling the vacancy in accordance with subregulation (1), the Director shall immediately on ascertaining, register that vacancy, and that registration shall be deemed to be notification of the vacancy by the employer in accordance with subregulation (1).

(4) An inspector, where he has reason to believe that an engagement has been entered into in contravention of subregulation (1), may exercise the powers of an inspector to ascertain whether or not such contravention occurred.

(5) The provisions of regulation 4(8) of the Gibraltar Development Corporation (Employer's Insolvency) Regulation, 1991 shall apply in respect of the exercise of the powers of an inspector under this regulation.

(6) A failure to comply with the provisions of subregulation (1) shall be an offence punishable on summary conviction by a fine at level 3 on the standard scale.

(7) A contravention of the provisions of subregulation (3) shall be an offence punishable on summary conviction by a fine at level 2 on the standard scale.

(8) The fees prescribed in Part I of Schedule 7 shall be payable to the Director in respect of the registration of a vacancy unless waived or reduced at the Director's discretion for reasonable cause.

Prohibition on engagement without a permit.

5. (1) It is an offence to engage or attempt to engage a worker other than an entitled worker without having first obtained a permit in respect of that worker in accordance with regulation 7 or regulation 7A.

(2) It shall be an offence to have in engagement in any week a worker in respect of whom a permit is required and has not been obtained.

(3) The provisions of this regulation shall not apply to an engagement which has commenced prior to the operative date and in respect of which—

- (a) the provisions of Part III of the Act in effect prior to the operative date have been complied with, and any permit issued under those provisions is still valid, and does not require an extension on or after the operative date to be valid, and
- (b) the information required to be furnished by the Employment (Workers Contractual Terms) (Information) Regulations, 1991 had been furnished.

(4) A person summarily convicted of an offence under this regulation shall be liable to a fine at level 3 on the standard scale and to 3 months imprisonment in respect of each such offence and each week in which a worker continues to be engaged in contravention of subregulation (2) shall constitute a separate offence.

Entitled worker.

6. (1) Where an employer proposes to engage an entitled worker to fill a vacancy, he shall notify the Director of his intention in respect of that worker, and such notification shall include the information specified in Schedule 2 and be in the form specified in that Schedule.

(2) Where an employer makes a notification under this regulation, the Director, subject to the provisions of Regulation 1612/68 of the European Community (and where the worker is a national of the European Economic Area, the application of that Regulation to that Area) may require to be furnished to him such further particulars and documentation as, in his opinion, are necessary for the purpose of establishing whether the worker is an entitled worker, and in particular, where entitlement may be determined by the previous employment and residence of the worker, the provisions of this subregulation shall apply for the purposes of establishing that employment and residence.

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(3) The notification required by subregulation (1) shall be made no later than the day on which the engagement commences.

(4) For the purposes of these Regulations “entitled worker” means a worker who,—

- (a) is—
 - (i) by virtue of his nationality or residence entitled to seek and take up employment in Gibraltar;
 - (ii) subject to regulation 7A, an EEA national as defined in the Immigration, Asylum and Refugee Act;
 - (iii) subject to regulation 7A(4), a family member of an EEA national as defined in the Immigration, Asylum and Refugee Act; or
 - (iv) otherwise entitled by the law of the European Union or of the European Economic Area to seek and take up employment in Gibraltar;
- (b) was engaged in Gibraltar on 1st July 1993 and in respect of whom the provisions of the Employment (Workers Contractual Terms) (Information) Regulations, 1991 have been complied with and to whom Part III of the Act did not apply prior to that date, and for the avoidance of doubt such person shall be and continue to be an entitled person notwithstanding that their engagement at that date terminates or has terminated; or
- (c) falls within section 14(1) of the Immigration, Asylum and Refugee Act¹;
- (d) falls within regulation 7A(4); or
- (e) falls within the Temporary Protection Act 2005²; or
- (f) is an applicant or a dependant family member of the applicant as defined in regulation 2(1) of the Asylum Regulations 2008 and
 - (i) regulation 18(1)(a) of those Regulations applies;
 - (ii) regulation 18(1)(b) of those Regulations applies; or

¹ **1962-12** *Title of Act amended by Act 2008-12 as from 1.10.2008*

² **2005-18**

- (ii) regulation 18(1)(c) of those Regulations applies; or
- (g) is—
 - (i) a person with refugee status or subsidiary protection status as defined in the Asylum Regulations 2008; or
 - (ii) a dependant family member, as defined in the Asylum Regulations 2008, of a person listed in paragraph (i).

Non-entitled worker.

7. (1) Where an employer proposes to engage a worker who is not an entitled worker in accordance with regulation 6 to fill a vacancy, he shall apply to the Director for a permit in respect of that worker, and such application shall include the information specified in Schedule 2 and be in the form specified in that Schedule.

(2) Where an employer makes an application under subregulation (1), the Director may require the employer to furnish to him such other particulars and documentation as, in the opinion of the Director, are necessary for the purposes of satisfying himself that the provisions of this regulation are satisfied.

(3) Subject to subregulation (5), the Director shall have a discretion to issue a permit for the engagement of a worker to whom this regulation applies, provided he is satisfied that one or more of the following requirements have been fulfilled—

- (a) that there is no entitled worker who, in the opinion of the Director, is capable of undertaking and suitable for the particular engagement in respect of which the permit is sought (hereinafter in this regulation called “the particular engagement”);
- (b) that the terms and conditions of the particular engagement are not less favourable than those prescribed by law or generally observed by good employers;
- (c) the employer has made adequate efforts to find an entitled worker who is capable of undertaking and suitable for the particular engagement and where these have been unsuccessful, that no suitable entitled worker who, in the opinion of the Director is capable of undertaking and suitable for the particular engagement, is available;

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- (d) that the employer genuinely intends to engage the worker in the particular engagement;
 - (e) that a valid written contract of engagement which shall include the matters set out in Schedule 2, has been entered into by the employer and the worker (which requirement may be satisfied if a copy of the form prescribed in Schedule 2 is signed by the worker and by the employer and is endorsed to the effect that it shall be the terms of the contract if the permit is granted);
 - (f) that any accommodation required to be provided by the employer for the worker whether by virtue of a contract or otherwise—
 - (i) is available;
 - (ii) has been recently inspected and approved for the purpose by health authorities acting on behalf of the Government within the immediately preceding two weeks; and
 - (iii) a certificate of inspection and approval under subparagraph (ii) of this paragraph has been furnished by those authorities to the Director;
 - (g) that a deposit of money has been made by the employer with the Director sufficient, in the opinion of the Director, for the repatriation of the worker on termination of the engagement;
 - (h) that the worker is in possession of a valid passport as defined in section 2 of the Immigration, Asylum and Refugee Act and that this passport will continue to be valid for a period not less than the duration of the contract;
 - (i) any other condition that in the opinion of the Director is warranted.
- (4) A permit granted under this regulation may be made subject to either or both of the following conditions—
- (a) that the employer shall ensure that an entitled worker is trained for that engagement within a reasonable time;
 - (b) that the worker shall not cease to reside at the accommodation referred to in subregulation (3)(f) without the written permission of the Director.

(5) Notwithstanding that the Director is satisfied as to the matters specified in sub-regulation (3), he may, in his discretion, refuse to grant or to renew a permit or may revoke a permit -

- (a) for the engagement of a worker who fails to satisfy the Director that he has reached the age of 18 years;
- (b) for the engagement of a worker to fill a vacancy which, in the opinion of the Director, has occurred as a result of a trade dispute or as a result of the dismissal which has caused a trade dispute, whilst such trade dispute, in his opinion, continues to exist;
- (c) for the engagement of a worker who has entered Gibraltar before the requirements of paragraph (e), (f) or (g) of subregulation (3) have been satisfied; or
- (d) for the employment of a worker where, in the opinion of the Director, such exercise of his discretion is warranted by the situation in the labour market;
- (e) where he is not satisfied that the employer by whom the application has been made is in compliance with his obligations under the Employment or any other Act in respect of that or any other worker (whether or not such worker's engagement has terminated) engaged by him.

(6) Where the Director grants a permit under this regulation, such permit shall be valid for the period stated therein which shall not, in any case, exceed 12 months.

(7) Subject to the provisions of these Regulations and to an application being made by the employer in accordance with subregulation (1) no later than 14 days prior to the date on which a permit expires, the Director may renew a permit granted under this regulation for a further period or periods not exceeding 12 months at any one time.

(8) A permit granted under this regulation by the Director may be revoked by him at any time after the expiration of one month's notice of his intention so to do given by him to the employer to whom, and to the worker in respect of whom, it was granted—

- (a) if the Director is satisfied that there is an entitled worker who is capable of undertaking and suitable for the engagement in respect of which the permit was granted under this regulation;

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- (b) there has been a breach of any of the conditions in the contract of engagement provided for in subregulation (3)(e), whether on the part of the employer or of the worker;
- (c) there has been a breach of a condition imposed by the Director;
- (d) if the Director is satisfied as a result of a test which he has caused to be made, that the worker does not possess the degree of skill needed for that engagement; or
- (e) if the Director has exercised his discretion under subregulation (5).

(9) An application for a permit under this regulation, or for the renewal of the validity of a permit granted under this regulation, shall be accompanied by the fee specified for the purpose in Part II of Schedule 7.

(10) The provisions of this regulation shall apply in respect of any application for a permit outstanding at the operative date and to the renewal of any permit thereafter, whether or not that permit was issued before or after the operative date.

(11) For the avoidance of doubt, the provisions of Part III of the Act in effect prior to the operative date shall apply to a permit issued under those provisions in existence at that date until the period specified in such permit in accordance with section 22 before it was repealed by section 9 of the Employment (Amendment) (No. 2) Act, 1993, and now subregulations (6) and (7) expires.

Workers from Central and Eastern European States (including Bulgaria and Romania).

7A.(1) This regulation shall apply—

- (a) in respect of relevant accession State workers, during the transitional period as defined in section 55X(2) of the Immigration, Asylum and Refugee Act;
- (b) in respect of Bulgarian or Romanian transitional period workers, during the transitional period as defined in section 55X(2) of the Immigration, Asylum and Refugee Act.

(2) For the purposes of this regulation—

“Bulgarian or Romanian transitional period worker” means a citizen of Bulgaria or Romania who is legally employed in Gibraltar, but, by virtue of section 55X(4) of the Immigration, Asylum and Refugee

Act is not a “worker” or “job seeker” for the purposes of section 55C of the Immigration, Asylum and Refugee Act;

“legally employed” means employed under a work permit issued under regulation 7;

“relevant accession state” means the Czech Republic, the Republic of Estonia, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the Slovak Republic, or the Republic of Slovenia; and

“relevant accession state worker” means a citizen of a relevant accession state who is legally employed in Gibraltar but, by virtue of section 55X(4) of the Immigration, Asylum and Refugee Act is not a “worker” or “job seeker” for the purposes of section 55C of the Immigration, Asylum and Refugee Act.

(3) Regulation 7, and all references to regulation 7 in regulations 8, 9, 11 and 16, shall apply to a relevant accession state worker and to a Bulgarian or Romanian transitional period worker to the same extent as to a non-entitled worker except that—

- (a) in regulation 7(3)(h) the words “valid passport” shall, for the purposes of relevant accession state workers or Bulgarian or Romanian transitional period workers, be construed to mean valid passport or valid identity card issued by the government of the relevant accession state, Bulgaria or Romania; and
- (b) regulation 7(5)(c) shall not apply to a relevant accession state worker or to a Bulgarian or Romanian transitional period worker.

(4) A family member (as defined in section 55F of the Immigration, Asylum and Refugee Act of a relevant accession state worker shall be an entitled worker if—

- (a) the relevant accession state worker concerned is in legal employment in Gibraltar; and
- (b) the family member—
 - (i) was lawfully resident in Gibraltar on 1 May 2004 with the worker and the worker holds a work permit of at least 12 months duration; or

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- (ii) commenced lawful residence in Gibraltar with the worker during the transitional period and has been lawfully resident in Gibraltar for 18 months or is legally resident in Gibraltar on 1 May 2007 whichever is earlier; for the purpose of this subparagraph a family member shall be treated as having been lawfully resident in Gibraltar for 18 months if he was lawfully resident in Gibraltar at the beginning and end of that period and any intervening periods in which he was not resident in Gibraltar do not, in total, exceed 45 days.

(5) The spouse and dependants under the age of 21 of a worker who is a citizen of Bulgaria or Romania shall be entitled workers if—

- (a) the worker concerned is in legal employment in Gibraltar; and
- (b) he is the spouse or dependant under the age of 21 of the worker and—
 - (i) was lawfully resident in Gibraltar on 1 January 2007 with the worker and the worker holds a work permit of at least 12 months duration; or
 - (ii) commenced lawful residence in Gibraltar with the worker during the transitional period and has been lawfully resident in Gibraltar for 18 months, or is legally resident in Gibraltar on 31 December 2009, whichever is earlier, and, for the purpose of this sub-paragraph, a person shall be treated as having been lawfully resident in Gibraltar for 18 months if he was lawfully resident in Gibraltar at the beginning and end of that period and any intervening periods in which he was not resident in Gibraltar do not, in total, exceed 45 days.

Appeals in respect of a permit.

8. (1) Where the Director—

- (a) refuses to grant a permit or to renew a permit; or
- (b) makes a permit issued under regulation 7 subject to any condition; or
- (c) gives notice under regulation 7(8) of his intention to revoke a permit—

he shall notify the employer in any such case, and also the worker in the case specified in paragraph (c), of his decision in writing together with the reasons therefor and shall inform the employer and, in the case specified in paragraph (c), the worker, of any right of complaint to the Employment Tribunal:

Provided that where the Director has exercised his discretion under regulation 7(5), the requirement to give reasons for the decision shall be satisfied by a reference to the paragraph of that regulation by virtue of which the discretion has been exercised.

(2) Subject to subregulation (2) an employer or a worker notified in accordance with subregulation (1) may complain against the decision of the Director to the Employment Tribunal within 7 days of being so notified.

(3) No complaint shall lie against any exercise by the Director of the discretion vested in him by regulation 7(5).

(4) The provisions of sections 12 and 13 of the Act shall apply in respect of any complaint made under this regulation, and rules made thereunder shall govern as nearly as possible the presentation, hearing and determination of complaints presented under this regulation.

(5) On a complaint under subregulation (2), the Director shall be entitled to appear and be heard either by counsel or in person.

(6) Where the Employment Tribunal is satisfied that a permit should have been issued, renewed or not revoked or a condition should not have been imposed, the tribunal shall make a declaration to that effect and the Director shall deal with the matter in accordance with these Regulations and that declaration, but in any other case the tribunal shall confirm the decision of the Director.

(7) A person aggrieved by any declaration made by the Employment Tribunal under subregulation (6) or by the dismissal by the Employment Tribunal of a complaint presented to it under subregulation (2), may appeal to the Supreme Court on any question of law.

(8) An appeal under subregulation (7) shall be in writing in such form as may be prescribed, if any, and shall be lodged within 14 days of the date on which the decision, against which the appeal is brought, was communicated to the appellant and to the Director, or such further time as the court may, for sufficient reason, allow.

(9) On appeal, the Supreme Court may make any declaration which the Employment Tribunal could make under subregulation (6) and the

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provisions of that subregulation shall apply mutatis mutandis to such declaration.

(10) The Employment Tribunal (Appeals) Rules made under section 88 of the Employment Act shall, subject to the provisions of this regulation apply as nearly as possible to any appeal brought under this regulation.

General provisions in respect of notification and permits.

9. (1) A notification under regulation 6 or a permit issued or renewed under regulation 7 shall cease to be valid if the worker in respect of whom it has been made, issued or renewed, as the case may be, has not been engaged by the employer within 2 months of the date of issue of the permit.

(2) A permit issued under regulation 7 shall be in the form specified in Schedule 5.

Certificate of employment.

10. (1) A certificate of employment under section 25 of the Act shall be in the form set out in Schedule 6.

(2) A certificate shall be valid for the period of the permit to which it refers.

(3) On payment of the fee specified in Part III of Schedule 7, the Director may issue a duplicate certificate to any person who satisfies him that his certificate has been lost, destroyed or so damaged by him other than by fair wear or tear as to be unsuitable for further use.

Information in respect of workers and worker's contractual terms.

11. (1) Where—

- (a) notification has been made under regulation 6; or
- (b) a permit has been issued under regulation 7, and a certificate has been issued under section 25,

the employer shall, on engaging the worker, provide to the Director confirmation in writing that the notification which was supplied to the Director in accordance with regulation 6 or the information in the application made under regulation 7(1), as the case may be, constituted the terms of the engagement (and if it does not, shall supply an amended notification or information in the form specified in Schedule 2) and shall

furnish to the worker within the prescribed time a copy of that notification or information in substance and form in accordance with Schedule 2.

(2) Subject to subregulation (3), the time prescribed for the purposes of subregulation (1) shall be 14 days from the commencement of the worker's engagement with the employer.

(3) Where, at the operative date the information specified in Schedule 2 had been furnished to the Employment and Training Board in accordance with the provisions of the Employment (Workers Contractual Terms) (Information) Regulations 1991, it shall be furnished in the same form to the worker within 14 days of the operative date.

(4) Where—

(a) at the operative date the employer had, in accordance with the Employment (Workers Contractual Terms) (Information) Regulations 1991, furnished information required by regulation 3 of those regulations, and

(b) the employer has complied with subregulation (3),

he shall be taken to have complied with the provisions of subregulation (1).

Variation of terms of engagement.

12. (1) Where there is a variation in the terms of an engagement of a worker, such variation shall be notified by the employer to the Director and to that worker within the prescribed time.

(2) The notification required by subregulation (1) shall be in the form prescribed in Schedule 3.

(3) Subject to subregulation (4), the time prescribed for the purpose of subregulation (1) shall be 7 days from the date on which the variation in terms of engagement shall have taken place.

(4) Where at the operative date the information prescribed in subregulation (2) has been furnished to the Employment and Training Board in accordance with the provisions of the Employment (Workers Contractual Terms) (Information) Regulations 1991*, it shall be furnished to the worker within 14 days of the operative date.

(5) Where—

* Revoked by r.25(2)

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- (a) at the operative date the employer had, in accordance with the Employment (Workers Contractual Terms) (Information) Regulations 1991*, furnished the information required by regulation 4 of those regulations, and
- (b) the employer has complied with subregulation (4),

he shall be taken to have complied with the provisions of subregulation (1).

Termination of engagement.

13. (1) Where an engagement terminates, the employer shall, within the prescribed time, furnish to the Director such information about that termination as is prescribed.

(2) The information required to be furnished by subregulation (1) shall be—

- (a) that specified in Schedule 4;
- (b) in the form specified in Schedule 4.

(3) The time prescribed for the purpose of subregulation (1) shall be 7 days from the date on which the engagement terminated.

Registration number.

14. On receipt of the confirmation required by regulation 11, the Director shall issue a number (the registration number) in respect of the worker who is the subject of the confirmation.

Engagement outside of Gibraltar.

15. Where a worker is required under the terms of the engagement to work outside of Gibraltar, the employer shall, before the commencement of the period of work outside of Gibraltar, provide to that worker further information in writing which shall specify—

- (a) the duration of the time the worker will be required to work outside of Gibraltar;
- (b) the currency in which the worker will be paid whilst working outside of Gibraltar;

- (c) where appropriate, the benefits in cash or in kind to which the worker would be entitled during the period of work outside of Gibraltar; and
- (d) where appropriate, the conditions governing the repatriation to Gibraltar of the worker.

(2) The provisions of subregulation (1) shall apply in respect of any period of engagement out of Gibraltar in excess of 4 weeks.

Application of regulation to detached workers.

15A. (1) Where a detached worker is an entitled worker—

- (a) by virtue of falling within one of the paragraphs of regulation 6(4); or
- (b) because his employer is an employer who, by virtue of the application of the law of the European Union or of the European Economic Area is entitled to provide services in Gibraltar,

the employer shall notify the Director no later than five working days before it is proposed that the detached worker commence temporary employment in Gibraltar.

(2) A notification under subregulation (1) shall be accompanied by the prescribed fee, and shall be in writing and shall include sufficient details of the employer and the detached worker to enable the Director to satisfy himself that the detached worker in respect of whom the notification is made, is employed by the employer in the State of establishment of the employer and has the benefit of the relevant provisions in that State in respect of industrial injury insurance and medical expenses.

(3) Subject to subregulation (3A), where the Director is satisfied that the detached worker in respect of whom notification has been made is employed in the State of establishment of the employer and has the benefit specified in subregulation (2), the Director shall so advise the employer in writing.

(3A) In order to meet the requirement of subregulation (3), the Director of Employment shall make an overall assessment of all factual elements that are deemed necessary, in particular those set out in subregulations (3B) and (3C), to determine that the person is a genuine detached worker.

(3B) In order to determine whether an employer genuinely performs substantial activities, other than purely internal management or

administrative activities, the Director of Employment shall make an overall assessment of all factual elements characterising those activities, which may include—

- (a) the place where the employer has its registered office and administration, uses office space, pays taxes and social security contributions and, where applicable, in accordance with national law has a professional licence or is registered with the chambers of commerce or professional bodies;
- (b) the place where detached workers are recruited and from which they are sent;
- (c) the law applicable to the contracts concluded by the employer with its workers, on the one hand, and with its clients, on the other;
- (d) the place where the employer performs its substantial business activity and where it employs administrative staff;
- (e) the number of contracts performed or the size of the turnover realised in Gibraltar, taking into account the specific situation of, inter alia, newly established undertakings and SMEs.

(3C) In order to assess whether a detached worker temporarily carries out his work in Gibraltar as opposed to his ordinary Member State of employment, all factual elements characterising such work and the situation of the worker shall be examined, and such elements may include—

- (a) the work is carried out for a limited period of time in a Member State;
- (b) the date on which the work in Gibraltar starts;
- (c) the detached worker returns or is expected to resume working in the Member State from which he is sent after completion of the work or the provision of services for which he is sent to Gibraltar;
- (d) the nature of the activities;
- (e) travel, board and lodging or accommodation is provided or reimbursed by the employer who sends the worker and, if so, how this is provided or the method of reimbursement;

- (f) any previous periods during which the post was filled by the same or by another detached worker.

(4) An employer who causes a detached worker to perform work in Gibraltar prior to receiving the written notification specified in subregulation (3) and the person to whom that employer is providing a service (except where that person is a private householder) shall be guilty of an offence punishable on summary conviction by a fine at level 3 on the standard scale.

(5) Where the detached worker is an entitled worker regulations 4, 5, 6 (except subregulation (4)) 7, 8, 9, 10, 11, 12, 13 and 15 shall not apply.

(6) Regulation 14 shall apply subject to the variation that the reference shall be to regulation 15A in place of regulation 11.

(7) Where an employer proposes to use a detached worker in Gibraltar and that detached worker is not an entitled worker, the provisions of regulation 7 shall apply as if references in that regulation to a proposal to engage a worker were references to proposals to use a detached worker.

(8) The provisions of these Regulations shall apply to a person to whom subregulation (7) applies subject to such variations as are necessary to substitute for references to a worker references to a detached worker.

Complaint to the Employment Tribunal of failure to provide prescribed information.

16.(1) The Director or a worker may present a complaint to the Employment Tribunal that—

- (a) the person by whom information is required to be furnished under regulations 6, 7, 11 to 13 and 15 has failed to furnish that information to him or has failed to furnish it in the prescribed form or within the prescribed time;
- (b) the information furnished under those regulations is not correct or is not complete.

(2) A complaint under subregulation (1) may be presented at any time during the engagement or within 3 months of the termination of that engagement.

(3) Where the Employment Tribunal is satisfied that a complaint under subregulation (1) is well founded, the Employment Tribunal shall make a declaration to that effect and, at the request of the applicant and after

hearing evidence available to the tribunal as to the terms of the engagement, the Employment Tribunal shall determine the terms, or term, as the case may be, of the engagement in respect of which no information was furnished or the information furnished was not correct or was incomplete, as the case may be.

(4) A determination by the Employment Tribunal under subregulation (3) shall be the terms or the term, as the case may be, of the engagement with effect from the day on which the complaint was presented under subregulation (1) or from such other date as the tribunal may determine, and the determination of the tribunal shall be recorded by the Director as if it were the relevant notice, or part of a notice, as the case may be, prescribed in the relevant Schedule to these Regulations and shall issue to the person by whom the information should have been furnished and to the worker the registration number provided for in regulation 14.

(5) The Employment Tribunal Rules made under section 12 of the Act shall, as nearly as may be, govern the presentation hearing and determination of complaints presented under this regulation.

Appeal to the Supreme Court.

17. (1) A person, other than a person against whom a complaint was made under regulation 16 and who did not appear before the Employment Tribunal, aggrieved by any declaration or determination made by the Employment Tribunal under regulation 16 or by the dismissal by the Employment Tribunal of any complaint presented to it under that regulation, may appeal to the Supreme Court on any question of law.

(2) An appeal under subregulation (1) shall be in writing, in such form as may be prescribed, if any, and shall be lodged within 14 days of the date on which the decision against which the appeal is brought was communicated to the appellant, or such further time as the court may, for sufficient reason allow.

(3) On an appeal—

- (a) the Employment Tribunal shall be entitled to appear and be heard, either by counsel or in the person of any member;
- (b) the Director shall be entitled to appear and be heard either by counsel or in person;
- (c) unless he appeared before the Employment Tribunal, the person against whom the complaint under regulation 16 was made, shall not be entitled to appear and be heard.

(4) On an appeal, the Supreme Court may give such directions and may make such decisions as it may think proper not including directions as to the costs of the appeal.

(5) The Employment Tribunal (Appeals) Rules made under section 88 of the Act shall, subject to the provisions of this regulation, apply as nearly as possible to any appeal brought under this regulation.

Offences by bodies corporate.

18. (1) Where an offence under these Regulations which has been committed by a body corporate is shown to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body corporate or any person who is purporting to act in such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against accordingly.

(2) Where the affairs of a body corporate are managed by its members, subregulation (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Regulation 19(1) amends section 47(2)(ii) of the Employment Act.

Regulation 19(2) amends section 86(1)(b) of the Employment Act.

Regulation 19(3) amends section 89(3) of the Employment Act.

Regulation 19(4) repeals sections 52 and 87 and Schedule 1 of the Employment Act.

Regulation 20 omits regulation 3 and Schedules 1 and 2 in the Employment (Forms) Regulations.

Regulation 21 amends regulations 2, 6(1) and (2)(c) of the Gibraltar Development Corporation (Employer's Insolvency) Regulations, 1991.

Regulation 22 inserts new subregulation 5(7) in the Training Regulations, 1993.

Regulation 23 amends regulation 9 and inserts new subregulation 9(2) in The Gibraltar Development Corporation (Pre-Occupational Pensions) Levy Regulations, 1993.

Regulation 24 amends rule 2 in the Industrial Tribunal (Extension of Jurisdiction) Rules 1993.

Regulation 25(1) revokes the Control of Employment Regulations.

Regulation 25(2) revokes the Employment (Workers Contractual Terms) (Information) Regulations, 1991.

Regulation 25(3) revokes the Gibraltar Development Corporation (Employment Vacancies Registration) Regulations, 1992.

Regulation 25(4) revokes the Employment (Work Permit Fees) Regulations, 1993.

Offences.

26.(1) A failure by an employer to comply with the requirements of any of the provisions of these Regulations shall be an offence.

(2) Subject to subregulation (3) and unless the context otherwise provides, a person found guilty of an offence contrary to subsection (1) shall be sentenced on summary conviction to a fine at level 4 on the standard scale.

(3) A person found guilty of an offence contrary to regulation 13 of the Employment Regulations, 1994 shall be sentenced on summary conviction to a fine at level 3 on the standard scale.

SCHEDULE 1

Regulation 4

Information in respect of a vacancy to accompany notification
of the vacancy.

1. Job title.
2. Commencement date.
3. Salary/wage.
4. Location of employment.
5. Hours of work.
6. Other benefits.
7. Necessary qualifications and experience.
8. Employer's name and registration number under the Business Trades
and Professions Regulations, 1991.
9. Person making the notification:
Name
Position in Organisation
Signature
10. Date on which notification registered with Board.

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SCHEDULE 2

Regulations 6, 7 and 11

Notice of terms of engagement and application for permit.

Are you—

- (a) giving notification under regulation 6; Yes/No.
- (b) making an application for a permit under regulation 7; Yes/No.
- (c) applying to renew a permit under regulation 7; Yes/No.

- 1. Name of business, trade or profession.
- 2. Registration number of business, trade or profession under the Business Trades and Professions (Registration) Act 1989.
- 3. Address of principal place of business or, if a company, registered office.
- 4. All locations in Gibraltar at or from which the business, trade or profession is carried on.
- 5. Nature of business, trade or profession.
- 6. Name of worker.
- 7. Address of worker.
- 8. Vacancy registration date.
- 9. Nationality of worker.
- 10. Previous employment of worker (state name of previous employer and place of employment together with the date of termination of that employment).
- 11. Present place of residence of the worker and date on which the worker became resident there.
- 12. Place of residence of the worker when engaged in the employment detailed in Item 10.
- 13. Social insurance number of the worker and existing work permit number (if appropriate).
- 14. Duties in which the worker is to be engaged.
- 15. Location at which the worker is to be engaged.
- 16. Date on which the engagement is to commence.
- 17. Specify whether the engagement is to be of fixed duration or of indefinite duration.
- 18. If the engagement is to be of fixed duration specify the date on which it will terminate.
- 19. Specify the remuneration of the worker as a weekly or annual figure and indicate the method of calculating the amount.
- 20. Specify the intervals at which the remuneration is to be paid.

21. Specify the hours of work of the worker and if these are not fixed, indicate the maximum and minimum and circumstances in which the hours may vary.
22. Specify the worker's entitlement to paid holidays and the method of calculating holiday pay.
23. Specify any entitlement to sick leave and sick or injury pay and the method of calculating such pay.
24. Specify if the worker is entitled to a pension or to be a member of a pension scheme, and in the case of membership of a pension scheme, specify the vocational pension scheme concerned.
25. Specify the period of notice to terminate the contract to which the worker is entitled.
26. Specify the period of notice which the worker must give to terminate the contract.
27. Are any of the terms or conditions of employment in respect of the employment covered by this application governed by a collective agreement or by a Conditions of Employment Order or by a registered Joint Industrial Council?

If 'yes', specify with which trade union the collective agreement is made (give sufficient detail to identify the relevant agreement) or specify which Conditions of Employment Order or which registered Joint Industrial Council is applicable to the employment.

N.B. If there are no contractual terms in respect of any of the items specified above, please indicate this in relation to a particular numbered item.

Signature of person making the application.

Name:

Position in business, trade or profession:

Date:

Signature of worker:

Date:

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SCHEDULE 3

Regulation 12

Notice of variation(s) of terms of engagement.

- 1.Name of business, trade or profession.
- 2.Registration number of business trade or profession under the Business Trades and Professions (Registration) Act, 1989.
- 3.Address of the principal place of business or, in the case of a company, the registered office.
- 4.All locations in Gibraltar at or from which the business trade or profession is carried on.
- 5.Name of the worker.
- 6.Address of the worker.
- 7.Social insurance number of the worker and work permit number (if appropriate).
- 8.Registration number of the engagement of the worker.
- 9.Date of Notice of Terms of Engagement of the worker.
10. Details of variation (specify variation(s) indicating which term has been varied by referring to the number of that term in the Notice of Terms of Engagement submitted in respect of that worker and specify the nature of the variation).
11. Date of variation.
12. Are any of the terms or conditions of employment in respect of the employment covered by this application governed by a collective agreement or by a Conditions of Employment Order or by a registered Joint Industrial Council?

If 'yes', specify with which trade union the collective agreement is made (give sufficient detail to identify the relevant agreement) or specify which Conditions of Employment order or which registered joint industrial council is applicable to the employment.

Signed.

Signature:

Name:

Position in business trade or
profession

Date:

Signature of employee:

Date:

SCHEDULE 4

Regulation 13

Termination of engagement.

- 1.Name of business trade or profession.
- 2.Registration number of business trade or profession under the Business Trades and Professions (Registration) Act, 1989.
- 3.Address of the principal place of business or, in the case of a company, the registered office.
- 4.All locations in Gibraltar at or from which the business or trade or profession is carried on.
- 5.Name of the worker.
- 6.Address of the worker.
- 7.Social insurance number of the worker and work permit number (if appropriate).
- 8.Registration number of the engagement of the worker.
- 9.Date of Notice of Terms of Engagement of the worker.
10. Date on which engagement terminated.
11. Date on which notice of termination given by business trade or profession.
12. Date on which notice of termination given by worker.
13. Reason for termination.
14. Details of any payments made at the date of termination (including any payments in lieu of notice, and compensatory payments and any payments in respect of holiday pay, sick pay or redundancy pay).

Signature:

Name:

Position in business, trade or profession:

Date:

Signature of worker:

Date:

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SCHEDULE 5.

Regulation 9

Permit.

This permit is issued to _____ (the employer) under the provisions of regulation 7 of the Employment Regulations 1994 in respect of _____ (the worker), having Passport No. _____

The permit is valid from _____ to _____ in respect of the engagement specified in the application made by the employer and dated _____ and to which registration No. _____ has been allocated, and whose Social Insurance No. is _____ and subject to the conditions—

- (a) specified in the regulations; and
- (b) set out below,

but shall, during the period set out above, cease to be valid—

- (a) if the employer or the worker fail to comply with the provisions of the Regulations or the conditions set out below;
- (b) if the engagement of the worker terminates;
- (c) if the permit is revoked by the Director.

This permit must be retained by the employer and produced when required by inspectors appointed for the purposes of the Regulations. It must be returned to the Director at his office—

- (a) not later than two months from the date of issue if the worker has not taken up the engagement in respect of which it was issued;
- (b) within seven days of termination of the engagement;
- (c) within three days of the seventh day of absence if the worker is absent without leave for seven days.

Conditions:

Entry of worker into Gibraltar

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**Subsidiary
1994/023**

The Commissioner of Police has been notified of the issue of this permit and if for any reason the entry of this worker cannot be authorised the police authorities will notify you accordingly. Before commencing the engagement it is essential that the worker should report to the Director at his office in order that a Certificate of Employment may be issued.

Signed:

Director:

Date:

Employment

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SCHEDULE 6

Regulation 10

Certificate of Employment
(Permit issued under Regulation 7).

Registration No.
Name of worker
Passport No.
Name of Employer
Nature of Engagement
Commenced on
Permit expires on
Social Insurance No.

You are required to return this certificate to the Director at his office not later than the first working day following that on which the engagement to which it relates terminates, or on the date on which the permit expires, or when the Director requires you to do so.

Signature:

Director:

Date:

Signature of worker:

SCHEDULE 7

Regulations 4, 6, 7 and 10

Fees

PART I.

The fee and penalty payable to the Director in respect of the registration of a vacancy shall be—

- (a) when notification has been made in accordance with regulation 4 (1), - nil;
- (b) when the notification by the employer to the Director of the vacancy is made on or within 10 working days from the commencement date of that worker,— £15;
- (c) when the notification by the employer to the Director of the vacancy is made after the day on which the vacancy is filled, whether that notification is made under these Regulations or otherwise, £30;
- (d) when the notification—
 - (i) by the employer to the Director of the vacancy is made after an inspection of the employer's business by the Director; or
 - (ii) occurs as a result of the exercise by the Director of his obligation under regulation 4(3), an amount of twice the fee calculated in accordance with paragraph (b) or (c).

PART II.

	£
1. The fee payable to the Director in respect of an application for a permit under regulation 7	25.00
2. The fee payable to the Director in respect of an application for a renewal of a permit under regulation 7	15.00
3. The fee payable to the Director in respect of a notification or application under regulation 15A	65.00

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PART III.

	£
The fee payable to the Director in respect of the issue of a replacement certificate under regulation 10(3)	10.00

PART IV.

Annual indexation of fees.

1. Subject to the provision of this regulation, the fees set out in Part I and Part II above must be revised annually in accordance with the Index of Retail Prices published by the Government Statistician.
2. The first revision under this regulation shall apply as from 1 April 2018 and shall apply the index of retail prices for the year ending on 31 January 2018, and subsequent revisions shall apply on each subsequent 1 April and apply the index of retail prices prevailing on the preceding 31 January of that year.
3. Any figure revised pursuant to paragraph 1 shall be rounded up to the next whole penny.