

2019-34 European Union Withdrawal (Application of
International Agreements)

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Subsidiary Legislation made under s.5(1).

**Swiss Confederation (Services Mobility Temporary
Agreement) Regulations 2021**

LN.2021/030

Commencement **1.1.2021**

ARRANGEMENT OF REGULATIONS.

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In the exercise of powers conferred on him by section 5(1) of the European Union Withdrawal (Application of International Agreements) Act 2019, and all other enabling powers, and for the purposes of further implementing the Temporary Agreement between the Swiss Confederation (“Switzerland”) and the United Kingdom of Great Britain and Northern Ireland on Services Mobility, the Chief Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Swiss Confederation (Services Mobility Temporary Agreement) Regulations 2021.

Commencement.

2. These Regulations come into operation on 1 January 2021.

Objective and source of application.

3.(1) The objective of these Regulations is to implement the Temporary Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on Services Mobility done at London on 14 December 2020 (“the UK-Switzerland Services Mobility Temporary Agreement”) when the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons (“the FMOPA”) ceases to apply to Gibraltar as a consequence of the United Kingdom’s withdrawal from the European Union.

(2) The UK-Switzerland Services Mobility Temporary Agreement applies to Gibraltar under Article 2 of that Agreement.

Definitions and interpretation.

4. In these Regulations, unless the context otherwise so requires-

“Agreement” means the Temporary Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on Services Mobility done at London on 14 December 2020;

“contractual service supplier” means a natural person employed by a juridical person of Switzerland that-

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- (i) is itself not an agency for placement and supply services of personnel and is not acting through such an agency;
- (ii) has not established in Gibraltar; and
- (iii) has concluded a bona fide contract to supply a service to a final consumer of Gibraltar, requiring the presence on a temporary basis of its employees in Gibraltar in order to fulfil the contract to supply the service in question;¹

“Government” means Her Majesty’s Government of Gibraltar;

“independent professionals” means natural persons who-

- (i) are engaged in the supply of a service and established as self-employed in of Switzerland;
- (ii) have not established in Gibraltar; and
- (iii) have concluded a bona fide contract (other than through an agency for placement and supply services of personnel) to supply a service to a final consumer in Gibraltar, requiring the presence on a temporary basis in Gibraltar in order to fulfil the contract to supply the service in question;²

“juridical person of Switzerland” means a juridical person that carries out substantial business activities in of Switzerland, the concept of “substantial business activities in Switzerland” requiring that the juridical person has a genuine link to the economy of Switzerland;

“mutatis mutandis” means with the technical changes necessary to apply the Agreement as if it had been concluded between Gibraltar and the Swiss Confederation;

“natural person of Switzerland” means a national of Switzerland or a permanent resident of Switzerland, in accordance with its applicable laws and regulations; and

¹ The contract to supply services referred to in subparagraph (a)(iii) shall comply with the requirements of the laws and regulations that apply in the place where the contract is executed.

² The contract to supply services referred to in subparagraph (b)(iii) shall comply with the requirements of the laws and regulations that apply in the place where the contract is executed.

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“service supplier of Switzerland” means a natural person of Switzerland who is a contractual service supplier or an independent professional;

“Switzerland” and “Swiss Confederation” have the same meaning.

Incorporation of the UK-Switzerland Services Mobility Temporary Agreement.

5. (1) The provisions of the UK-Switzerland Services Mobility Temporary Agreement are incorporated, mutatis mutandis, into these Regulations.

(2) For greater certainty, Annex 2 of the UK-Switzerland Services Mobility Temporary Agreement is incorporated, mutatis mutandis, into these Regulations as the Schedule, but where a compatible reading between Annex 2 and the Schedule is not possible, the terms of Annex 2 shall take precedence over the Schedule.

Prohibited immigrant and exclusion.

6.(1) Subregulation (2) and (3) apply where a contractual service supplier or independent professional contravenes any of the following provisions in the Schedule -

- (a) a condition in paragraph 9;
- (b) paragraph 10;
- (c) a condition in paragraph 12; or
- (d) paragraph 13.

(2) The Principal Immigration Officer may declare the contractual service supplier or independent professional to be a prohibited immigrant under section 52(1)(i) of the Immigration, Asylum and Refugee Act.

(3) The Head of the Civil Status and Registration Office Section may apply section 55R of the Immigration, Asylum and Refugee Act to exclude or remove the contractual service supplier or independent professional.

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Regulations 5(2) and 6(1).

SCHEDULE

ACCESS FOR SWISS SUPPLIERS

1. The Government allows the supply of services in Gibraltar by Swiss contractual service suppliers or independent professionals through the presence of natural persons in accordance with Article 12 of the Agreement for the sectors listed in this Schedule, subject to the relevant limitations listed in paragraph 14 of this Schedule.
2. The list of reservations in paragraph 14 of this Annex is composed of the following elements:
 - (a) the first column indicating the sector or sub-sector for which the category of contractual service suppliers and independent professionals are liberalised; and
 - (b) the second column describing the applicable limitations.
3. The Government may adopt or maintain a measure relating to qualification requirements, qualification procedures, technical standards, licensing requirements or licensing procedures that does not constitute a limitation within the meaning of Article 12 of the Agreement. Those measures, which include requirements to obtain a licence, to obtain recognition of qualifications in regulated sectors or to pass specific examinations, even if not listed in this Schedule, apply in any case to contractual service suppliers or independent professionals of Switzerland.
4. The Government does not recognise contractual service suppliers and independent professionals in economic activities which are not listed.
5. The Government does not allow contractual service suppliers and independent professionals to supply services where the intent or effect of their temporary presence is to interfere with, or otherwise affect the outcome of, any labour or management dispute or negotiation.
6. Service suppliers of Switzerland are not required to meet English language requirements as a condition of temporary entry.

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7. The following abbreviations are used in the list below in paragraph 8-

- (a) CSS Contractual service suppliers;
- (b) IP Independent professionals.

Contractual service suppliers

8. Subject to the conditions in paragraphs 9 and 10 and the list of reservations in paragraph 14 of this Schedule, the Government recognises Article 12 of the Agreement with respect to the category of contractual service suppliers in the following sectors or sub-sectors-

- (a) legal advisory services in respect of public international law and foreign law;
- (b) accounting and auditing services and bookkeeping services;
- (c) taxation advisory services;
- (d) architectural services and urban planning and landscape architectural services;
- (e) engineering services and integrated engineering services;
- (f) computer and related services;
- (g) research and development services;
- (h) advertising services;
- (i) market research and opinion polling services;
- (j) management consulting services;
- (k) services related to management consulting;
- (l) technical testing and analysis services;
- (m) related scientific and technical consulting services;

- (n) mining;
 - (o) maintenance and repair of vessels;
 - (p) maintenance and repair of rail transport equipment;
 - (q) maintenance and repair of motor vehicles, motorcycles, snowmobiles and road transport equipment;
 - (r) maintenance and repair of aircrafts and parts thereof;
 - (s) maintenance and repair of metal products, of (non-office) machinery, of (non-transport and non-office) equipment and of personal and household goods;
 - (t) translation and interpretation services;
 - (u) telecommunication services;
 - (v) postal and courier services;
 - (w) site investigation work;
 - (x) environmental services;
 - (y) insurance and insurance related services advisory and consulting services;
 - (z) other financial services advisory and consulting services;
 - (aa) transport advisory and consulting services;
 - (bb) travel agencies and tour operators services;
 - (cc) tourist guides services; and
 - (dd) manufacturing advisory and consulting services.
9. The contractual service suppliers must comply with the following conditions-

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- (a) the natural persons are engaged in the supply of a service on a temporary basis as employees of a juridical person which has obtained a service contract not exceeding 12 months;
 - (b) the natural persons entering Gibraltar have been offering such services as employees of the juridical person supplying the services for at least the year immediately preceding the date of the submission of an application for entry into Gibraltar and possess, at the date of submission of an application for entry into Gibraltar at least three years' professional experience³ in the sector of activity which is the subject of the contract;
 - (c) the natural persons entering Gibraltar shall possess-
 - (i) a university degree or a qualification demonstrating knowledge of an equivalent level;⁴ and
 - (ii) the professional qualification to exercise an activity where this is required pursuant to the laws, regulations or legal requirements of Gibraltar;
 - (d) the natural person does not receive remuneration for the provision of services in Gibraltar other than the remuneration paid by the enterprise employing the natural person;
 - (e) the access accorded relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of Gibraltar where the service is provided; and
 - (f) the number of persons covered by the service contract shall not be larger than necessary to fulfil the contract, as it may be requested by the laws, regulations or other legal requirements of Gibraltar.
10. The permissible length of stay of contractual service suppliers is for a cumulative period of not more than 12 months in any 24 month period or for the duration of the contract, whichever is less.

³ Professional experience shall be obtained after having reached the age of majority.

⁴ Where the degree or qualification has not been obtained in Gibraltar or the United Kingdom, the Government may evaluate whether this is equivalent to a university degree.

Independent professionals

11. Subject to the conditions in this Schedule and the list of reservations in paragraph 14, the Government recognises Article 12 of the Agreement with respect to the category of independent professionals in the following sectors or sub-sectors-
- (a) legal advisory services in respect of public international law and foreign law;
 - (b) architectural services and urban planning and landscape architectural services;
 - (c) engineering services and integrated engineering services;
 - (d) computer and related services;
 - (e) research and development services;
 - (f) market research and opinion polling services;
 - (g) management consulting services;
 - (h) services related to management consulting;
 - (i) mining;
 - (j) translation and interpretation services;
 - (k) telecommunication services;
 - (l) postal and courier services;
 - (m) insurance related services advisory and consulting services;
 - (n) other financial services advisory and consulting services;
 - (o) transport advisory and consulting services; and
 - (p) manufacturing advisory and consulting services.

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12. The independent professionals shall comply with the following conditions -
- (a) the natural persons are engaged in the supply of a service on a temporary basis as self-employed persons established in Switzerland and have obtained a service contract for a period not exceeding 12 months;
 - (b) the natural persons entering the United Kingdom possess, at the date of submission of an application for entry into the United Kingdom at least six years' professional experience in the sector of activity which is the subject of the contract.
 - (c) the natural persons entering Gibraltar possesses-
 - (i) a university degree or a qualification demonstrating knowledge of an equivalent level;⁵ and
 - (ii) the professional qualifications to exercise an activity where this is required pursuant to the law, regulations or other legal requirements of Gibraltar and
 - (d) the access accorded relates only to the service activity which is the subject of the contract and does not confer entitlement to exercise the professional title of Gibraltar.
13. The permissible length of stay of independent professionals is for a cumulative period of not more than 12 months in any 24 month period or for the duration of the contract, whichever is less.
14. These are the reservations referred to in this Schedule:

Sector or sub-sector ⁶	Description of reservations
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⁵ Where the degree or qualification has not been obtained in Gibraltar or the United Kingdom, the Government may evaluate whether this is equivalent to a university degree.

⁶ "CPC" means the Provisional Central Product Classification (Statistical Papers Series M No. 77, Department of International Economic and Social Affairs, Statistical Office of the United Nations, New York, 1991).

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Legal advisory services in respect of public international law and foreign law (part of CPC 861)	CSS: None. IP: None.
Accounting and auditing services and bookkeeping services (CPC 86211, 86212, 86213, 86219 and 86220)	CSS: None. IP: Unbound.
Taxation advisory services (CPC 863) ⁷	CSS: None. IP: Unbound.
Architectural services and Urban planning and landscape architectural services (CPC 8671 and 8674)	CSS: None. IP: None.
Engineering services and Integrated engineering services (CPC 8672 and 8673)	CSS: None. IP: None.
Computer and related services (CPC 84)	CSS: None. IP: None.
Research and development services (CPC 851, 852 excluding psychologists services, ⁸ and 853)	CSS: None. IP: None.
Advertising services (CPC 871)	CSS: None. IP: Unbound.
Market research and opinion polling services (CPC 864)	CSS: None. IP: None.
Management consulting services (CPC 865)	CSS: None. IP: None.
Services related to management consulting (CPC 866)	CSS: None. IP: None.

⁷ Taxation advisory services does not include legal advisory and legal representational services on tax matters, which are under legal advisory services in respect of public international law and foreign law.

⁸ Part of CPC 85201, which is under medical and dental services.

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Technical testing and analysis services (CPC 8676)	CSS: None. IP: Unbound.
Related scientific and technical consulting services (CPC 8675)	CSS: None. IP: Unbound.
Mining (CPC 883, advisory and consulting services only)	CSS: None. IP: None.
Maintenance and repair of vessels (part of CPC 8868)	CSS: None. IP: Unbound.
Maintenance and repair of rail transport equipment (part of CPC 8868)	CSS: None. IP: Unbound.
Maintenance and repair of motor vehicles, motorcycles, snowmobiles and road transport equipment (CPC 6112, 6122, part of 8867 and part of 8868)	CSS: None. IP: Unbound.
Maintenance and repair of aircraft and parts thereof (part of CPC 8868)	CSS: None. IP: Unbound.
Maintenance and repair of metal products, of (non-office) machinery, of (non-transport and non-office) equipment and of personal and household goods ⁹ (CPC 633, 7545, 8861, 8862, 8864, 8865 and 8866)	CSS: None. IP: Unbound.
Translation and interpretation services (CPC 87905, excluding official or certified activities)	CSS: None. IP: None.
Telecommunication services (CPC 7544, advisory and consulting services only)	CSS: None. IP: None.
Postal and courier services (CPC 751, advisory and consulting services only)	CSS: None. IP: None.

⁹ Maintenance and repair services of office machinery and equipment including computers (CPC 845) are under computer services.

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Site investigation work (CPC 5111)	CSS: None. IP: Unbound.
Environmental services (CPC 9401, 9402, 9403, 9404, part of 94060, 9405, part of 9406 and 9409)	CSS: None. IP: Unbound.
Insurance and insurance related services (advisory and consulting services only)	CSS: None. IP: None.
Other financial services (advisory and consulting services only)	CSS: None. IP: None.
Transport (CPC 71, 72, 73, and 74, advisory and consulting services only)	CSS: None. IP: None.
Travel agencies and tour operators services (including tour managers ¹⁰) (CPC 7471)	CSS: None. IP: Unbound.
Tourist guides services (CPC 7472)	CSS: None. IP: Unbound.
Manufacturing (CPC 884, and 885, advisory and consulting services only)	CSS: None. IP: None.

¹⁰ Services suppliers whose function is to accompany a tour group of a minimum of ten natural persons, without acting as guides in specific locations.