



## Technical Notice (1)

### Getting ready for the end of the Transition Period

#### **The movement of people across the land border between Gibraltar and Spain**

On 31 December 2020, the Transition Period (sometimes also referred to as the “Implementation Period”) under the EU-UK Withdrawal Agreement will come to an end. The end of the Transition Period will bring an end to the current status quo whereby Gibraltar, its citizens and its business, have enjoyed EU rights. Therefore, subject to the outcome of ongoing negotiations concerning the UK and Gibraltar’s future relationship with the EU, the end of the Transition Period will bring about important changes which Gibraltar, as a whole, will need to be ready for.

#### **Purpose.**

The purpose of this Notice is to explain what the effect of those changes are on the movement of persons across the land border between Gibraltar and Spain in a scenario where there is no negotiated outcome in place with respect to Gibraltar’s future relationship with the EU by 31 December 2020.

#### **Existing Position.**

Gibraltar, like the UK, is currently not a part of the Schengen Area. Therefore, the border between Gibraltar and Spain is treated as an external border of the Schengen Area for the purposes of the Schengen Border Code (Regulation (EU) 2016/399) (the “Code”). The Code sets out different rules for (1) persons enjoying the right of free movement under EU law (“EU Citizens”) and (2) third-country nationals; with respect to entry conditions and border checks on exit and entry to and from the Schengen Area which includes Spain.



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Currently, the overwhelming majority of persons who cross the land border in either direction are EU citizens. That is the case with respect to residents of Gibraltar, residents of the neighbouring area of Spain, frontier workers and indeed many of the tourists who visit Gibraltar.

### Entry conditions

In terms of entry conditions into Spain, and thereby the rest of the Schengen Area, EU citizens are broadly not subject to any condition other than the requirement to be in possession of a valid identity card or passport. The position is different in relation to third-country nationals who are in turn required to satisfy the entry conditions stipulated in the Code (discussed further below).

In terms of entry conditions into Gibraltar, this is a matter for HMGoG subject to the requirements of EU law. In essence, EU citizens can enter Gibraltar on the production of a valid identity card or passport. Third-country nationals are subject to such further requirements (e.g. visa requirements) as may apply depending on the country of nationality.

### Border checks

With respect to border checks, the default position under the Code obliges Member State authorities to carry out “systematic checks” on EU citizens and “thorough checks” on third-country nationals. With respect to both categories of persons, these checks are to be conducted both on entry and exit.

In addition to the immigration controls summarised above, Spanish Authorities conduct customs controls on persons crossing the border by virtue of the fact that Gibraltar is outside of the Customs Union.



**If there is no agreement with respect to Gibraltar's future relationship with the EU by 31 December 2020.**

Since Gibraltar has never been part of the Schengen Area, the fact that there may be no agreement with respect to Gibraltar's future relationship with the EU by 31 December 2020 would not alter the EU legal framework governing border controls on entry and exit to and from Spain.

Likewise, if there is no negotiated solution in place by 31 December 2020, there should be no change to the nature of the customs controls that Spanish Authorities can carry out on all persons irrespective of nationality.

**However, what would change is that, as from 1 January 2021, all UK nationals will lose their status as EU Citizens. This means that when crossing the border, UK nationals would be subjected to the Code's rules as applicable to all other third-country nationals and not EU Citizens as is the case today. Note that whenever "UK nationals" are mentioned in this document that includes British Gibraltarians. What does this mean?**

**Entry conditions**

In practice, losing EU citizenship would mean that UK nationals would have to satisfy the entry conditions that the Code places on third-country nationals in order to enter Spain and thereby the rest of the Schengen Area. These are broadly as follows:

- (a) With respect to **visa requirements**, it is likely that, even in a scenario where there is no future deal, reciprocal arrangements will be put in place between the UK and the EU providing for visa-free travel. These arrangements would mean that UK nationals would not have to obtain a visa in order to enter Spain. HMGoG will confirm the position definitively once those arrangements are agreed as expected.



- (b) Separately, the Code sets limitations with regard to the **amount of time** that a third-country national can remain in the Schengen Area – namely 90 days in any 180 day period. **For these purposes, passports enabling third-country nationals, including UK nationals, to cross the border will be stamped<sup>1</sup>.** In order to plan stays in Spain (or the rest of the Schengen Area), third-country nationals can use the European Commission’s [online calculator](#) to assist<sup>2</sup>. It is important to bear in mind that the reference to “any” 180 day period implies the application of a moving 180 day reference period looking backwards at each day of stay in the previous 180 days. For this reason, if you visit Spain very frequently, or if you have a second home in Spain at which you stay on weekends or for extended periods of time, HMGoG would recommend that you become acquainted with these rules.
- (c) Spanish Authorities may also, as is the position currently with respect to any other third-country nationals, make **enquiries** at the border in order to verify that those crossing can justify the purpose and conditions of the intended stay in the Schengen Area and that they have sufficient means of subsistence.
- (d) In future, UK nationals and all other third-country nationals would also be required to be in possession of **travel authorisations** granted under the EU’s ETIAS system which is yet to commence operations. The European Commission has estimated that ETIAS will become operational in 2022. Travel authorisations are valid for 3 years on payment of a 7 EUR fee.

In terms of entry conditions into Gibraltar, this will continue to be a matter for HMGoG

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<sup>1</sup> The EU’s new Entry/Exit System (established under Regulation (EU) 2017/2225), which is not yet ready to start operations, will eventually replace the current system of manually stamping passports with electronic systems.

<sup>2</sup> [https://ec.europa.eu/home-affairs/content/visa-calculator\\_en](https://ec.europa.eu/home-affairs/content/visa-calculator_en)



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## Border checks

With regard to **border checks**, UK nationals and all other third-country nationals would have to undergo “thorough checks” in accordance with the provisions of Code both on entry into and exit from Spain. These checks will include checks on all UK nationals crossing the border to:

- (a) Verify the identity and nationality of the person crossing the border and the authenticity and validity of the travel document used for crossing the border;
- (b) Verify that the entry conditions listed above have been satisfied; and
- (c) Verify that the person intending to cross the border is not a security risk.

This will involve the scanning of travel documents as against EU databases including the Schengen Information System and other security databases.

## Derogations

It would be open to the Spanish Authorities, at their discretion, to apply some limited derogations contained within the Code which would allow for the border to be operated in the best possible manner. In particular, the Code allows for derogations from its rules for persons who are regular cross-border commuters. This, however, is a matter that is in Spain’s discretion.

## Implications

It is clear that if HMGoG is unable to agree a negotiated solution to the future operation of the land border this would have a severely detrimental effect on border fluidity. In this worst case scenario, citizens should prepare for the long delays which will become inevitable when crossing the border in either direction. This is well-known and it is something which HMGoG has warned of throughout the Brexit process. Indeed all



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parties, including the current Spanish Government, recognise the importance of avoiding the worst effects of the above by safeguarding fluidity at the border for the benefit of all residents of the area and for the benefit of the shared prosperity of the region.

HMGoG remains engaged in constructive discussions with all parties concerned in order to reach a permanent solution which would be of critical importance to Gibraltar and the Campo de Gibraltar. In this context, one of the solutions being explored is the possibility of Gibraltar becoming associated with the Schengen Area in a manner which would not cross red lines on sovereignty, jurisdiction or control. HMGoG remains confident that a pragmatic and sensible arrangement can and will be found. Nevertheless, in the event that negotiations break down, it is important to underline that the default position which would apply on 1 January 2021 would be that as outlined in this Notice.

### **Further information**

This Notice is meant for guidance only.

Further information can be sought from [brexit@gibraltar.gov.gi](mailto:brexit@gibraltar.gov.gi)