



Technical Notice (11)

Guidance to EU/ EEA and Swiss Frontier Workers

17 November 2020

The position under the EU-UK Withdrawal Agreement of Frontier Workers residing in Spain and working in Gibraltar and Frontier Workers residing in Gibraltar and working in Spain.

Note: This Guidance Note is purely informative and it does not supplement or complete the EU-UK Withdrawal Agreement or legislation enacted by HM Government of Gibraltar to give effect to the same. For these reasons, this Guidance Note should not be interpreted as stating the official position of HM Government of Gibraltar.

Introduction.

The Withdrawal Agreement concluded between the European Union and the United Kingdom established the terms of the United Kingdom and Gibraltar's orderly withdrawal from the EU.

The Withdrawal Agreement, which equally applies to Gibraltar, entered into force on 1 February 2020.

On 31 December 2020, the Transition Period established under the Withdrawal Agreement will come to an end. The end of the Transition Period will bring an end to the current status quo. Subject to the outcome of ongoing negotiations concerning Gibraltar's future relationship with the EU, the resulting changes will primarily affect persons who are not covered by the personal scope of the Withdrawal Agreement and who intend to exercise rights in Gibraltar as from 1 January 2021.



Purpose.

The objective of the Withdrawal Agreement, in so far as Citizens' Rights are concerned, is to safeguard and preserve rights derived from EU law that are, on 31 December 2020, being exercised by EU, EEA or Swiss citizens in the United Kingdom and Gibraltar and by British nationals, including Gibraltarians, in the EU, the EEA or Switzerland.

The purpose of this Guidance Note is to explain, to frontier workers residing in Spain and working in Gibraltar on 31 December 2020, what mechanisms are being put in place by the Gibraltar Government in order to preserve their EU rights in Gibraltar. Such frontier workers will, beyond 31 December 2020, continue to be able to work in Gibraltar and they will be able to benefit from the same EU rights that they currently enjoy.

This guidance note covers only the position of EU, EEA or Swiss frontier workers. A separate Guidance Note was issued on 16 November 2020 with respect to EU, EEA or Swiss citizens exercising residence rights in Gibraltar.

Who are the frontier workers covered by the Withdrawal Agreement?

Persons who are working

A person is a frontier worker covered by the Withdrawal Agreement if on 31 December 2020 they are:

- (1) An EU, EEA or Swiss citizen;
- (2) Not resident in Gibraltar;
- (3) and either:
 - (a) an employed worker legally working in Gibraltar with a contract of employment; or
 - (b) a self-employed person legally pursuing an activity in Gibraltar where Gibraltar is their place of establishment. In order for Gibraltar to be



considered the place of establishment it will be necessary for self-employed persons to have the centre of interest of their activities in Gibraltar and be subject to Gibraltar social security legislation.

Persons who are not working

A person who, having been working in Gibraltar, is no longer a worker or a self-employed person working in Gibraltar, will be treated as having retained the status of a frontier worker in Gibraltar and will therefore be covered by the Withdrawal Agreement if, on 31 December 2020, they are:

- (1) temporarily unable to work as the result of an illness or accident;
- (2) in duly recorded involuntary unemployment after having been employed in Gibraltar for at least one year¹;
- (3) in duly recorded involuntary unemployment after having been employed in Gibraltar for less than one year (such persons shall only retain the status of a frontier worker covered by the Withdrawal Agreement for a maximum of 6 months)²;
- (4) in involuntary unemployment having embarked on vocational training;
- (5) in voluntary unemployment having embarked on vocational training that is related to the person's previous employment; or
- (6) temporarily unable to work due to pregnancy or childbirth³.

What are the benefits for frontier workers who are covered by the Withdrawal Agreement?

As stated above, frontier workers covered by the Withdrawal Agreement will, beyond 31 December 2020, continue to be able to work in Gibraltar and they will be able to benefit from the same EU rights that they currently enjoy.

¹ A person satisfies this paragraph where they have provided evidence that they continue to seek employment or self-employment in Gibraltar.

² A person satisfies this paragraph where they have provided evidence that they continue to seek employment or self-employment in Gibraltar.

³ A person satisfies this paragraph where, 12 months after ceasing work and thereafter, they provide evidence that they continue to seek employment or self-employment in Gibraltar.



In practice, this means that qualifying frontier workers will continue to have the same EU law based workers' rights that they currently enjoy. This includes rights not to be discriminated against, rights to take up and pursue an activity in Gibraltar and rights to social and tax advantages. Therefore, for instance, with respect to unemployment benefits, the same arrangements that have existed up to now will be maintained for qualifying frontier workers.

How will frontier workers be identified as frontier workers covered by the Withdrawal Agreement?

HM Government of Gibraltar has maintained, and will continue to maintain, accurate records with respect to persons registered in Gibraltar as frontier workers and of persons recorded in Gibraltar as being in involuntary unemployment. Therefore, the Government already has a list of all frontier workers. Those who will be protected by the terms of the Withdrawal Agreement are those whose names appear on that list on 31 December 2020.

In order for such persons to be able to verify their status the Government will, on 1 December 2020, be launching an online platform for this purpose. The website will, as of that date, be able to be accessed on frontierworkers.egov.gi. Once it is up and running the platform will, upon persons entering identification details, confirm whether or not they are “on course” to be persons covered by the scope of the Withdrawal Agreement on 31 December 2020.

As from 1 January 2021, frontier workers who interrogate the online platform will receive definitive confirmation as to whether or not they are frontier workers covered by the scope of the Withdrawal Agreement. This will be provided by way of an automated reply. Separately, as from 1 January 2021, frontier workers will also have the possibility of contacting the Gibraltar Department of Employment to obtain a letter certifying that they are frontier workers covered by the scope of the Withdrawal Agreement. The Department will be able to be contacted for these purposes via the following:



By Post: Department of Employment
Employment Registration Section
Unit 75 Harbours Walk
New Harbours
Gibraltar

By Email: frontierworkers@gibraltar.gov.gi

By Telephone: 20011050 or 20011024

In circumstances where what will establish a frontier workers' status in Gibraltar will be their inclusion in the electronic list kept by the Gibraltar Department of Employment it will **not** be mandatory for frontier workers to obtain a copy of this letter.

As from 1 January 2021, all Government departments and agencies that are likely to need to know whether a person is a frontier worker covered by the scope of the Withdrawal Agreement will have electronic access to the list and to information with respect to each individual. In addition to the Department of Employment itself, this will include the Borders and Coastguard Agency, the Income Tax Office, the Department for Social Security and the Gibraltar Health Authority. This is what will allow frontier workers to establish that they have rights under the Withdrawal Agreement when interacting with different Government departments in Gibraltar.

For persons for which the system indicates that they are not frontier workers covered by the scope of the Withdrawal Agreement, facilities will be provided for them to contact relevant Government departments to correct their position if they believe that they meet the conditions to be covered. Frontier workers will be able to, beyond 31 December 2020, challenge a decision which they consider to have been erroneously taken by the Government.

Important: Frontier workers are reminded that what will determine whether or not they have rights under the Withdrawal Agreement is whether, on 31 December 2020, they meet the conditions for being treated as such. Subject to the steps set out in the section below on “what should frontier workers currently



***working in Gibraltar do before 31 December 2020?* having been taken, frontier workers are not required to take any further action.**

Immigration Controls.

As in the UK, during a period of grace from 1 January 2021 to 1 July 2021, HMGoG will not impose any new entry conditions for EU, EEA or Swiss nationals (including frontier workers) to be able to enter Gibraltar. HMGoG will keep this position under review especially in light of the ongoing negotiations to agree a new border fluidity regime with the EU.

What should frontier workers currently working in Gibraltar do before 31 December 2020?

Frontier workers, both employed and self-employed, should ensure that they are duly registered with the Gibraltar Department of Employment and the Gibraltar Income Tax Office.

Employers who wish to formally engage a worker are reminded that they will need to submit Terms of Engagement. For these purposes, the Gibraltar Department of Employment can be contacted:

By Email on: employment.officers@gibraltar.gov.gi;

By WhatsApp on: +350 54083175; or

By Telephone on: 20011061, 20011063, 20011000

For those who are no longer working in Gibraltar and wish to retain worker status in Gibraltar (see section above on "*Persons who are not working*"), steps should be taken to formally record their unemployment and register as jobseekers with the Gibraltar Department of Employment. This can be done:

By Email on: findajob.employment@gibraltar.gov.gi;

By WhatsApp on: +350 54083189; or

By Telephone on: 20011030, 20052662, 20011093.



The following documentation will be required to be submitted:

- (i) A duly completed [Unemployment Registration Form](#);
- (ii) Proof of identity (a valid passport or national ID card); and
- (iii) For EU, EEA or Swiss nationals resident in Spain, the Department will also require a “*Vida Laboral*” issued by the relevant Spanish employment office.

British nationals (including Gibraltarians) working in Spain as frontier workers.

As set out above, the Withdrawal Agreement safeguards, to the same extent, the EU rights currently being exercised by British nationals, including Gibraltarians, working in Spain as frontier workers. The Government of Spain has stated that it will publish information advising such persons of the steps that would need to be taken with the Spanish Authorities in order to establish frontier worker status in Spain.

As is the case with respect to persons working in Gibraltar as frontier workers, persons working in Spain as frontier workers are urged to ensure that they are registered with the relevant Spanish Authorities. This will enable them to continue to exercise EU rights in Spain in accordance with the Withdrawal Agreement.