

# **UK-CANADA TRADE CONTINUITY AGREEMENT AS EXTENDED TO GIBRALTAR**

## **PROVISIONAL GUIDE TO THE TEMPORARY ENTRY AND STAY FOR BUSINESS PURPOSES IN GIBRALTAR OF NATURAL PERSONS FROM CANADA**

### **Objectives and scope of this Guide.**

1. This Guide reflects the preferential trading relationship between Gibraltar and Canada as well as the mutual objective to facilitate trade in services and investment by allowing temporary entry and stay to natural persons for business purposes and by ensuring transparency in the process.
2. This Guide applies to measures adopted or maintained by HMGoG (“the Government”) concerning the temporary entry and stay into its territory of key personnel, contractual services suppliers, independent professionals and short-term business visitors. This Guide does not apply to measures affecting natural persons seeking access to the Gibraltar employment market, nor shall it apply to measures regarding citizenship, residence, or employment on a permanent basis.
3. Nothing in this Guide or applicable Gibraltar law prevents the Government from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to Canada under the terms of the UK-Canada Trade Continuity Agreement. The sole fact of requiring a visa for natural persons of a certain country and not for those of others shall not be regarded as nullifying or impairing benefits under the UK-Canada Trade Continuity Agreement.
4. Notwithstanding the provisions of the UK-Canada Trade Continuity Agreement, all requirements of Gibraltar law regarding employment and social security measures shall continue to apply, including regulations concerning minimum wages as well as collective wage agreements.
5. The right of temporary entry and stay does not apply to cases where the intent or effect of the temporary entry and stay is to interfere with or otherwise affect the outcome of a labour or management dispute or negotiation, or the employment of natural persons who are involved in such dispute or negotiation.

### **General obligations.**

1. As from 01 January 2021 HMGoG will allow temporary entry to natural persons for business purposes from Canada who otherwise comply with Gibraltar’s immigration measures applicable to temporary entry.
2. The measures referred to in paragraph 1 immediately above will be applied in such a manner as to avoid unduly impairing or delaying trade in services or the conduct of investment activities under the UK-Canada Trade Continuity Agreement.

3. the Government will ensure that any fees for processing applications for temporary entry are reasonable and commensurate with the costs incurred.

#### **Provision of information.**

1. Recognising the importance of transparency of temporary entry information, the Government is making this Guide available to the Government of Canada and business persons from Canada so as to acquaint them with the requirements for temporary entry and stay in Gibraltar.

2. The Government may collect and maintain data relating to temporary entry by category of business persons, and may make this data available to the Government of Canada on request, in accordance with Gibraltar law related to privacy and data protection.

#### **Key personnel.**

1. the Government will allow the temporary entry and stay of key personnel from Canada subject to the reservations and exceptions the UK-Canada Trade Continuity agreement (please refer to the Government Law Offices if in doubt).

2. The Government will not adopt or maintain limitations on the total number of key personnel from Canada allowed temporary entry, in the form of a numerical restriction or an economic needs test.

3. The Government will allow the temporary entry of business visitors for investment purposes **without requiring a work permit or other prior approval procedure of similar intent.**

4. The Government will allow the temporary employment in Gibraltar of intra-corporate transferees and investors from Canada.

5. The permissible length of stay of key personnel is as follows:

intra-corporate transferees (specialists and senior personnel): the lesser of three years or the length of the contract, with a possible extension of up to 18 months at the discretion of HMGoG as the party granting the temporary entry and stay [Footnote 1](#);

intra-corporate transferees (graduate trainees): the lesser of one year or the length of the contract;

investors: one year, with possible extensions at the discretion of the Government as the party granting the temporary entry and stay;

business visitors for investment purposes: 90 days within any six month period [Footnote 2](#).

#### **Contractual services suppliers and independent professionals.**

1. The Government will allow the temporary entry and stay of contractual services suppliers from Canada, subject to the following conditions:

the natural persons must be engaged in the supply of a service on a temporary basis as employees of an enterprise which has obtained a service contract for a period not exceeding 12 months. If the service contract is longer than 12 months, the Government's commitments apply only for the initial 12 months of the contract;

the natural persons entering Gibraltar must be offering those services as employees of the enterprise supplying the services for at least the year immediately preceding the date of submission of an application for entry into Gibraltar and must possess, at the date of the submission, at least three years of professional experience [Footnote 3](#) in the sector of activity that is the subject of the contract;

the natural persons entering Gibraltar must possess,

a university degree or a qualification demonstrating knowledge of an equivalent level; [Footnote 4](#) and

professional qualifications, if this is required to practice an activity pursuant to the laws or requirements of Gibraltar;

the natural persons must not receive remuneration for the provision of services other than the remuneration paid by the enterprise employing the contractual services suppliers during their stay in Gibraltar;

the temporary entry and stay accorded relate only to the supply of a service which is the subject of the contract. Entitlement to utilise the relevant Gibraltar or UK professional title may be granted, as required, by the relevant authority in Gibraltar or otherwise; and

the service contract must comply with the laws and other legal requirements of Gibraltar (where the contract is executed). [Footnote 5](#)

2. The Government will allow the temporary entry and stay of independent professionals from Canada, subject to the following conditions:

the natural persons must be engaged in the supply of a service on a temporary basis as self-employed persons established in Gibraltar and must have obtained a service contract for a period not exceeding 12 months. If the service contract is longer than 12 months, the Government's commitments shall only apply for the initial 12 months of the contract;

the natural persons entering Gibraltar must possess, at the date of submission of an application for entry into Gibraltar at least six years professional experience in the sector of activity which is the subject of the contract;

the natural persons entering Gibraltar must possess,

a university degree or a qualification demonstrating knowledge of an equivalent level; [Footnote 6](#) and

professional qualifications, if this is required to practice an activity pursuant to the laws, or requirements of Gibraltar;

the temporary entry and stay accorded relate only to the supply of a service which is the subject of the contract. Entitlement to utilise the relevant Gibraltar or UK professional title, as required, by the relevant authority; and

the service contract must comply with the laws and other legal requirements of Gibraltar (where the contract is executed).

3. Unless otherwise specified in the UK-Canada Trade Continuity Agreement, the Government will not adopt or maintain a limitation on the total number of contractual services suppliers and independent professionals from Canada allowed temporary entry, in the form of numerical restrictions or an economic needs test.

4. The length of stay of contractual services supplier or independent professionals is for a cumulative period of not more than 12 months, with extensions possible at the discretion of Gibraltar, in any 24 month period or for the duration of the contract, whichever is less.

### **Short-term business visitors.**

1. the Government will allow the temporary entry and stay of short-term business visitors from Canada provided that the short-term business visitors:

are not engaged in selling a good or a service to the general public;

do not on their own behalf receive remuneration from a source located within Gibraltar as the place where the short-term business visitors are staying temporarily; and

are not engaged in the supply of a service in the framework of a contract concluded between an enterprise that has no commercial presence in Gibraltar (as the place where the short-term business visitors are staying temporarily) and a consumer in Gibraltar.

**2. The Government will allow temporary entry of short-term business visitors without the requirement of a work permit or other prior approval procedures of similar intent.**

3. The maximum length of stay of short-term business visitors is 90 days in any six-month period. [Footnote 7](#)

### **Definitions**

*contractual services suppliers* means natural persons employed by an enterprise of Canada that has no establishment in Gibraltar and that has concluded a bona fide contract to supply a service to a consumer in Gibraltar that requires the presence on a temporary basis of its employees in Gibraltar in order to fulfil the contract to supply a service;

*enterprise* means an entity constituted or organised under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including a corporation, trust, partnership, sole proprietorship, joint venture or other association;

*independent professionals* means natural persons engaged in the supply of a service and established as self-employed in Canada who have no establishment in Gibraltar and who have concluded a bona fide contract (other than through an agency as defined by CPC 872) to supply a service to a consumer in Gibraltar that requires the presence of the natural person on a temporary basis in Gibraltar in order to fulfil the contract to supply a service;

*key personnel* means business visitors for investment purposes, investors, or intra-corporate transferees:

*business visitors for investment purposes* means natural persons working in a managerial or specialist position who are responsible for setting up an enterprise but who do not engage in direct transactions with the general public and do not receive remuneration from a source located within Gibraltar;

*investors* means natural persons who establish, develop, or administer the operation of an investment in a capacity that is supervisory or executive, and to which those persons or the enterprise employing those persons has committed, or is in the process of committing, a substantial amount of capital; and

*intra-corporate transferees* means natural persons who have been employed by an enterprise or have been partners in an enterprise for at least one year and who are temporarily transferred to an enterprise (that may be a subsidiary, branch, or head company of the enterprise) in Gibraltar. This natural person must belong to one of the following categories:

*senior personnel* means natural persons working in a senior position within an enterprise who:

primarily direct the management of the enterprise or direct the enterprise, or a department or sub-division of the enterprise; and

exercise wide latitude in decision making, which may include having the authority to personally recruit and dismiss or to take other personnel actions (such as promotion or leave authorisations), and

receive only general supervision or direction principally from higher level executives, the board of directors, or stockholders of the business or their equivalent; or

supervise and control the work of other supervisory, professional or managerial employees and exercise discretionary authority over day-to-day operations; or

*specialists* means natural persons working in an enterprise who possess:

uncommon knowledge of the enterprise's products or services and its application in international markets; or

an advanced level of expertise or knowledge of the enterprise's processes and procedures such as its production, research equipment, techniques, or management.

In assessing such expertise or knowledge, Gibraltar will consider abilities that are unusual and different from those generally found in a particular industry and that

cannot be easily transferred to another natural person in the short-term. Those abilities would have been obtained through specific academic qualifications or extensive experience with the enterprise;

*graduate trainees* means natural persons who:

possess a university degree; and

are temporarily transferred to an enterprise in Gibraltar for career development purposes, or to obtain training in business techniques or methods; and

**NB:** natural persons for business purposes means key personnel, contractual services suppliers, independent professionals, or short-term business visitors who are citizens of Canada.

**THIS PROVISIONAL GUIDE IS NOT INTENDED TO AND DOES NOT CONSTITUTE LEGAL ADVICE.**

**HER MAJESTY'S GOVERNMENT OF GIBRALTAR ACCEPTS NO LIABILITY IN RESPECT OF ANY INFORMATION CONTAINED IN THIS PROVISIONAL GUIDE AND DOES NOT WAIVE ITS RIGHTS TO ENFORCE IMMIGRATION, LABOUR AND OTHER LAW.**

## **Footnotes**

### Footnote 1

The length of stay permitted may not be taken into consideration in the context of an application for citizenship.

### Footnote 2

This is without prejudice to the rights granted to Canada under any bilateral visa waivers

### Footnote 3

The professional experience must have been obtained after having reached the age of majority.

### Footnote 4

If the degree or qualification has not been obtained in Gibraltar or the UK, HMGoG may evaluate whether it is equivalent to a university degree required in its territory.

### Footnote 5

For greater certainty, the natural person must be engaged by the enterprise for the fulfilment of the services contract pursuant to which temporary entry is sought.

### Footnote 6

If the degree or qualification was not obtained in Gibraltar or the UK, HMGoG may evaluate whether it is equivalent to a university degree required in its territory.

### Footnote 7

This is without prejudice to the rights granted under bilateral visa waivers.

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