



No: 204/2019

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Technical Notice – No Deal Brexit - Workplace Rights in Gibraltar

Background

There are over 14,740 persons who live in Spain and work in Gibraltar making up about 50% of the labour market.

This figure includes representation from all the Member States of the European Union as broken down below. It also includes non-EU nationals and 2365 British Citizens.

Austria – 9
Belgium – 21
Bulgaria – 80
Croatia – 19
Cyprus – 3
Czech Republic – 52
Denmark – 37
The Netherlands – 68
Estonia – 26
Finland – 11
France – 110
Germany – 128
Greece – 50
Hungary – 159
Ireland – 119
Italy – 250
Latvia – 31
Lithuania – 58
Luxembourg – 1
Malta – 4
Poland – 204
Portugal – 884
Romania – 513
Slovakia – 76
Slovenia – 7
Spain – 9158
Sweden – 43



Purpose

This notice informs businesses, workers and citizens of Gibraltar's plans to continue workplace protections in the event that the UK and Gibraltar leave the EU in March 2019 with no agreement in place.

The Government firmly believes in the importance of maintaining strong labour protection. Indeed, EU legislation in this regard would remain in force and become retained EU law as we leave the European Union.

This will ensure legal certainty and clarity for stakeholders on their rights and responsibilities.

Before 29 March 2019

- The workplace rights and protections covered in this notice come from EU law and include the following:
 - the Working Time Act, which include provisions for annual leave, holiday pay and rest breaks
 - family leave entitlements, including maternity and parental leave
 - certain requirements to protect the health and safety of workers
 - legislation to prevent and remedy discrimination and harassment based on sex, age, disability, sexual orientation, religion or belief, and race or ethnic origin in the workplace, and any resulting victimisation
 - the TUPE regulations, protecting workers' rights in certain situations when there is a transfer of business or contracts from one organisation to another
 - legislation to cover employment protection of part-time, fixed-term and young workers; information and consultation rights for workers, including for collective redundancies
 - Legislation covering insolvency referred to in the Employment Act and Employment (Occupational Pensions) Regulation 2018 and, the Gibraltar Development Corporation (Employers Insolvency) Regulations, 1991 administering redundancy related payments to employees in case of insolvency.

1. Brexit with a Withdrawal Agreement



In November 2018, the European Union (the “EU”) and the United Kingdom (the “UK”) concluded the terms of a Withdrawal Agreement providing for the UK’s orderly departure from the EU. Gibraltar forms part of these arrangements. The Agreement includes a transition period until the end of 2020. The transition period would also apply to Gibraltar. The Agreement has been debated and voted upon at length but is still subject to ratification by the UK Parliament and the European Parliament.

There are transitional provisions in the Withdrawal Agreement which means that everything will remain the same in respect of Workplace Rights at least until the end of 2020.

2. Brexit without a Withdrawal Agreement – No Deal Brexit

In the meantime, HM Government of Gibraltar (“HMGoG”) continues to plan for the eventuality that the UK and Gibraltar leave the EU without the Withdrawal Agreement.

After 29 March 2019 if there is ‘no deal’

The EU (Withdrawal) Act 2018 brings across the powers from EU Directives. This means that existing workers in Gibraltar will continue to be entitled to the rights they have under local law, covering those aspects, which come from EU law (including those listed above except where caveated below).

Domestic legislation already exceeds EU-required levels of employment protections in a number of ways. The government will make small amendments to the language of our legislation to ensure the existing regulations reflect that Gibraltar no longer forms part of the EU. These amendments will not change existing policy. This will provide legal certainty, allowing for a smooth transition from the day of EU exit, and will ensure that employment rights remain unchanged, including the employment rights of those already working in Gibraltar on a temporary basis, except where set out below.

In the following cases, withdrawal from the EU in a ‘no deal’ scenario has impact on participation in agreed arrangements with the EU that will benefit all EU countries:

- Employer Insolvency:

Currently, Gibraltar, British and EU employees working in Gibraltar are protected under [the Employment Act](#), Employers (Occupational Pensions) Regulations 2018 and, the Gibraltar Development Corporation (Employers Insolvency) Regulations, 1991, with procedures in place for making claims in the case of employer insolvency. Similarly, Gibraltar working in an EU country are protected by the laws of that country that implements the directive.

- European Works Councils:

Currently EU law allows for workers to request, in certain circumstances, that their employer establishes a European Works Council to provide information and consult with employees on issues affecting employees across two or more European Economic Area states. These rules are set out in the European Works Council Directive (2009/38/EC). The statutory framework that applies to



European Works Councils would require a reciprocal agreement from the EU for them to continue to function in their present form within Gibraltar.

In a 'no deal' scenario, there are no expected financial implications or impacts for citizens or businesses operating in Gibraltar in regards to workplace rights. There are some implications in relation to European Works Councils and the insolvency of some employers, laid out below.

Employer insolvency

With regards to employer insolvency, in a 'no deal' scenario, people living and working in Gibraltar for a Gibraltar based employer will continue to be protected under the same parts of the [Employment Act., Employers \(Occupational Pensions\) Regulations 2018 and, the Gibraltar Development Corporation \(Employers Insolvency\) Regulations, 1991 implementing the Insolvency Directive.](#)

Employees will still be able to bring forward claims in the same way that they can currently. Gibraltar law provides protection for all Gibraltarian, British, EU, and non-EU employees working in Gibraltar, provided that certain other criteria are met. This will not change as a result of exiting the EU.

Gibraltarian and EU employees that work outside Gibraltar in an EU country for a Gibraltar employer may still be protected under the national guarantee fund established in that country. However, this may not always be the case, as there are variations in how each EU country has implemented the guarantee required by EU law.

EU and Spanish No Deal Brexit Contingency Planning

The European Union has excluded Gibraltar from its contingency plans in the event of the departure of the United Kingdom and Gibraltar without a Withdrawal Agreement.

However, Spain has made provisions for British Citizens and economic operators based in Gibraltar in its unilateral contingency measures.

This means that:

- British frontier workers who work in Spain but live elsewhere will have their rights protected;
- there will be continued recognition of professional qualifications obtained in UK by British and Spanish nationals who are in Spain prior to the date of withdrawal;
- UK nationals will be exempt from nationality requirements in the field of public employment, provided that they are already practicing a profession in Spain at the date of withdrawal.

Actions for businesses and other stakeholders



Gibraltarian and EU employees working in an EU country

Employees should make themselves aware of the relevant implementing legislation in the EU country in which they work, to confirm whether they will still be protected under the national guarantee fund established in that country.

Gibraltar businesses and trade unions

Gibraltar businesses with European Works Councils, and trade unions that are parties to European Works Council agreements, may need to review those agreements in light of there no longer being reciprocal arrangements between Gibraltar and the EU.

More information

Norway, Iceland and Liechtenstein are party to the Agreement on the European Economic Area and participate in other EU arrangements. As such, in many areas, these countries adopt EU rules. Where this is the case, these technical notices may also apply to them, and EEA businesses and citizens should consider whether they need to take any steps to prepare for a 'no deal' scenario.

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

This is part of the government's ongoing programme of planning for all possible eventualities.