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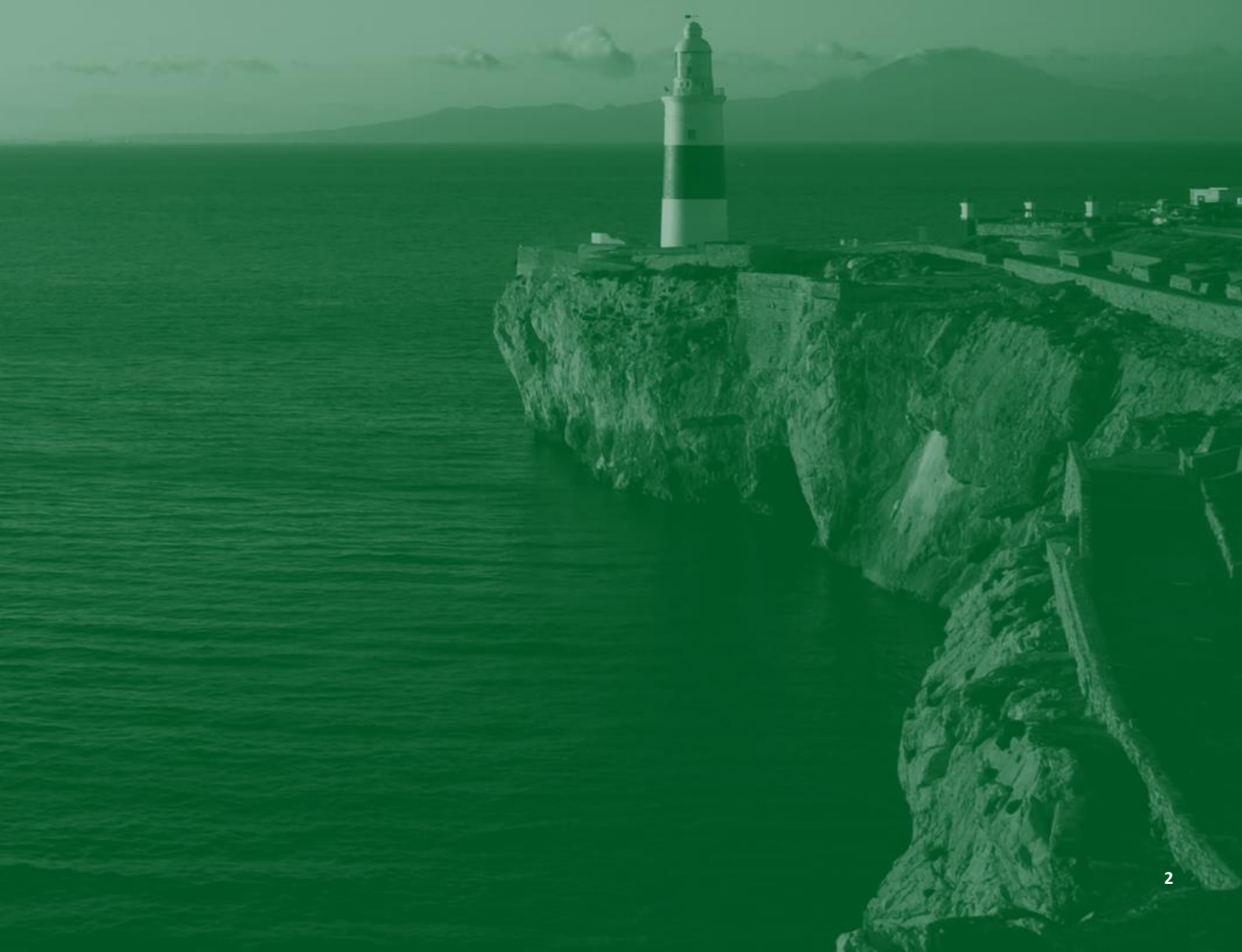
# Gibraltar Immigration Rules and Right to Work

January 2023

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# Gibraltar Immigration Rules

Gibraltar's Immigration, Asylum and Refugee Act ("the Act") sets out the relevant statutory provisions governing immigration into Gibraltar.

## 1. VISA REQUIREMENTS FOR ENTRY INTO GIBRALTAR

UK nationals and British Overseas Territories citizens will not require a visa to travel to Gibraltar.

By and large, all EU/EEA nationals are allowed, under the Act, to enter Gibraltar without the need for a visa.

Nationals from several other countries and territories will also not require a visa to travel to Gibraltar. The Gibraltar Borders & Coastguard Agency ("BCA") website ([www.gibraltarborder.gi/visa](http://www.gibraltarborder.gi/visa)) provides a search tool which will confirm whether an individual requires a visa for entry into Gibraltar.

Additionally, the following individuals will not require a visa to enter Gibraltar:

- Persons who hold Service, Temporary Service and Diplomatic passports issued by the Holy See;
- Persons holding –
  - EU issued family permits;
  - UK Residence Permits issued for a period of 12 months or more;
  - UK Biometric Residence permits; or
  - UK multiple entry visa issued for 6 months or more.
- Persons who hold indefinite leave to remain in the UK and persons who hold a UK certificate of entitlement to the right of abode and have not been absent from the UK for more than 2 years.

## 2. GIBRALTAR VISA APPLICATION

An application for a relevant visa to enter Gibraltar can be submitted through [www.gov.uk](http://www.gov.uk)

## 3. BREXIT IMPLICATIONS

Notwithstanding the fact that an agreement surrounding the future relationship between Gibraltar and the EU is still being negotiated between the EU and the UK, it is understood that any Agreement is expected to contain provisions to permit the application in Gibraltar of the relevant parts of the Schengen acquis necessary to achieve the elimination of control on the movement of persons between Gibraltar and the Schengen area.

## 4. GIBRALTAR CIVILIAN REGISTRATION CARD AND PERMIT OF RESIDENCE

The Gibraltar authorities may issue to any non-Gibraltarian nationals a Permit of Residence together with a Civilian Registration Card, for a period not exceeding 5 years. These will only be issued if the Principal Immigration Officer is satisfied that the relevant applicant, or the parent of an applicant under the age of eighteen or the spouse or civil partner of the applicant, holds a valid certificate of employment in Gibraltar<sup>1</sup> and is residing in Gibraltar.

It is worth noting that neither a Gibraltar Civilian Registration Card nor a Gibraltar issued Permit of Residence comprises a travel document. These documents are valid solely for the purpose of providing support to any other jurisdiction that the holder has been awarded the right to reside in Gibraltar by the Gibraltarian authorities.

1 - Self-employed individuals and self-sufficient individuals are also entitled to apply for Gibraltar issued Civilian Registration Cards and Permits of Residence.

# Right to work

## 5. RIGHT TO WORK IN GIBRALTAR

It is an offence to engage or attempt to engage a worker in Gibraltar, other than an entitled worker, without having first obtained a Gibraltar work permit.

### 5.1 Entitled workers

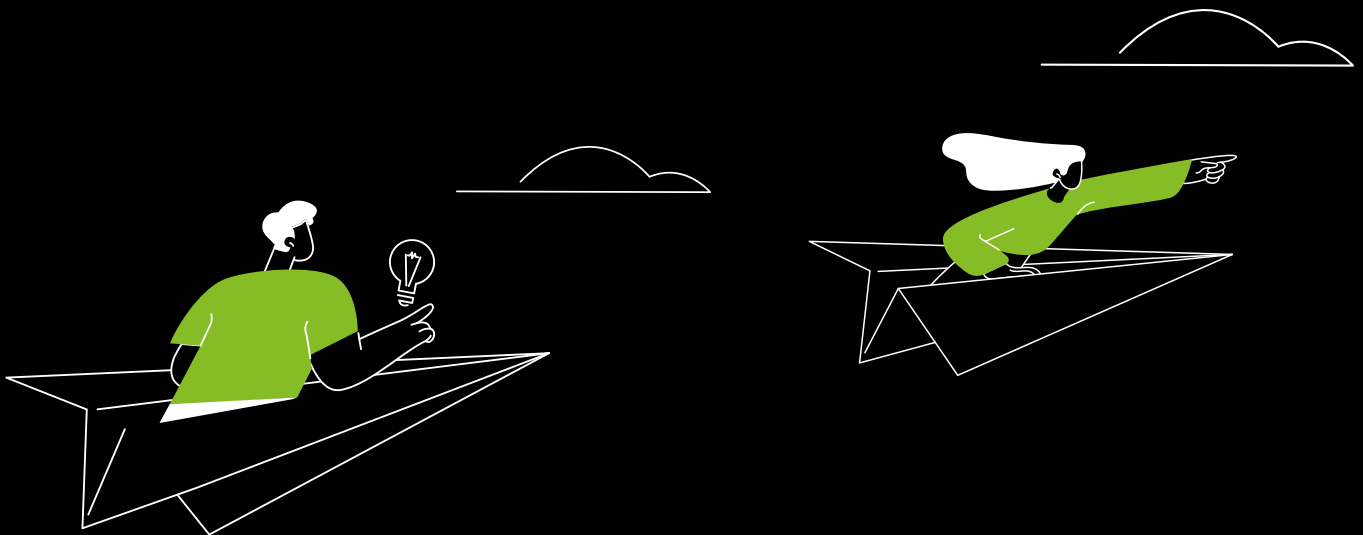
Under Gibraltar's Employment Regulations 1994, an entitled worker mostly refers to a worker who is:

- i. By virtue of their nationality or residence entitled to seek and take up employment in Gibraltar; or
- ii. Otherwise entitled by the law of the EU or EEA to seek and take up employment in Gibraltar.

### 5.2 Work permit applications

Where a Gibraltar employer proposes to engage a worker, who is not an entitled worker, they will be required to apply to the Gibraltar authorities for a work permit in respect of that worker. The Gibraltar authorities shall have discretion to issue a work permit provided they are satisfied that one or more of the following requirements have been fulfilled:

- a) There is no entitled worker who is capable of undertaking, and suitable for the engagement, in respect of which the work permit is sought (hereafter referred to as "the particular engagement").
- b) That the terms and conditions of the engagement are not less favorable than those prescribed by law or generally observed by good employers.
- c) The employer has made adequate efforts to find an entitled worker who is capable of undertaking and suitable for the engagement.
- d) That the employer genuinely intends to engage the worker in the engagement.
- e) That a valid written contract of engagement, as set out under Gibraltar's Employment Regulations 1994, has been entered into by the employer and the worker.
- f) That any accommodation required to be provided by the employer for the worker, whether by virtue of a contract or otherwise –
  - o Is available;
  - o Has been recently inspected and approved by the Gibraltar Health Authorities on behalf of the Gibraltar Government; and
  - o A certificate of inspection and approval has been issued by the Gibraltar authorities in this respect.
- g) That a deposit of money has been made by the employer to the Gibraltar authorities, which in the opinion of the Gibraltar authorities, would be enough to repatriate the worker on termination of the engagement<sup>2</sup>.
- h) The worker is in possession of a valid passport and will continue to be valid for a period no less than the duration of their contract in Gibraltar.



<sup>2</sup>- A repatriation fee would only be used to assist a worker return to their jurisdiction of residence should they not already have travel arrangements in place. Should the relevant worker return to their country/territory of residence without the need of this assistance, then the repatriation fee should be repayable in full to their employer.

# Right to work

## 6. EMPLOYER/WORKER REGISTRATION OBLIGATIONS

All short-term business travelers coming to Gibraltar for the purpose of exercising employment duties will be required to register with the Gibraltar Department of Employment irrespective of the time spent in Gibraltar. Persons with an overseas (non-Gibraltar) employment contract can register under a Gibraltar registered employer, whether under a Gibraltar-based branch or subsidiary of their own employer or directly with their client. These 'detached workers' are defined by the Gibraltar Employment Regulations 1994 as persons who:

- Are not ordinarily tax resident in Gibraltar; and
- Is in employment in a country or territory outside Gibraltar –

And is required by their employer to perform work of a temporary nature in Gibraltar during their employment.

Registration of Detached workers who are not entitled workers will also require the obtaining of a work permit.

### 6.1 Expedited detached worker registration – Short term/infrequent visits

This registration route is for short-term business travelers coming to Gibraltar, to provide employment services, for short stints no greater than 2 weeks at any given time and for a period no greater than 2 months, on aggregate, over any 12-month period. Employees travelling to Gibraltar to provide services over short periods of time could therefore benefit from registering under this route, as the process is administratively less burdensome than the 'standard' detached worker route (see Section 7.2).

Registration applications are to be filed with the Gibraltar Department of Employment together with a £84 application fee. Applications comprise of a short stay application letter (specific wording can be provided) as well as a certified true copy of the passport of the short-term business traveler.

Applications must be submitted by the Gibraltar-based entity under which the short-term business traveler will be registered.

Separate applications, together with payments, will need to be filed each time the same person is required to come to Gibraltar on assignment. Importantly, confirmation of a successful registration should be obtained prior to the short-term business traveler arriving in Gibraltar for the purposes of exercising their employment duties.

An application tends to be processed over a 24-hour turnaround period provided this is filed with the Gibraltar authorities by no later than 11:00am the prior day.



### 6.2 Detached worker registration – Long term/frequent visits

Short-term business travelers who do not meet the requirements for registering under the 'expedited' route, will need to register under the standard route. In the same way as with the expedited detached worker registration, an application together with a £84 payment, must be filed with the Gibraltar Department of Employment. Likewise, a successful application must be in place before the short-term business traveler arrives in Gibraltar for the purpose of exercising employment duties.

Registration requires the completion of the Form 'Notification of Temporary Employment of a Detached Worker,' (hereafter referred to as the "Registration Form") setting out:

- Details of the contracting-out (non-Gibraltar registered) employer;
- Employee details; and
- Details of the contracting-in (Gibraltar registered) employer.

The registration form must be signed by an authorised signatory of the contracting-in (Gibraltar registered) employer.



# Right to work

A successful application will require the following supporting documents accompany the application form:

- a) An original copy of Form A1 (see section 7.3 below) for any short-term UK<sup>3</sup> business traveler, providing the same period of cover as that specified in the Registration Form.
- b) A certified true copy of the passport of the short-term business traveler.
- c) A certified true copy of the employment contract held by the short-term business traveler with the contracting-out (non-Gibraltar registered) employer.

Whilst this registration process is administratively more burdensome than that for an expedited detached worker, under this registration route, cover can be provided to any short-term business traveler for a period of 12 months with the requirement for a single application and payment. Assignments greater than 12 months will require a yearly application and payment.

An application normally takes 5 working days to be successfully processed provided all the supporting documents required are made available to the Gibraltar Department of Employment and the Gibraltar Income Tax Office.

## 7. ORDINARY TAX RESIDENCE AND GIBRALTAR PERSONAL TAX COMPLIANCE OBLIGATIONS

Ordinary tax residence when applied to an individual means an individual who in any year of assessment (1 July to 30 June) -

- a) Is present in Gibraltar for a period of, or periods together amounting to, at least 183 days; or
- b) Is present in Gibraltar in any year of assessment which is one of three consecutive years in which the total of the days for which the individual is present in Gibraltar exceeds 300.

For the purpose of this definition, presence in Gibraltar for any part of a 24-hour period commencing at midnight shall be counted as a day of presence whether or not any accommodation is used in Gibraltar.

Short-term business travelers (other than company directors) who are present in Gibraltar for a period not

exceeding 30 days should have no Gibraltar income tax compliance obligations, whereas Gibraltar ordinarily tax resident individuals will be chargeable to Gibraltar income tax on their worldwide income.

Short-term business travelers who are not deemed Gibraltar ordinarily tax resident, but who exceed 30 days presence in Gibraltar in any year of assessment, will be chargeable to Gibraltar income tax on income derived from their employment duties exercised in Gibraltar.

Short-term business travelers may however be exempted from Gibraltar income tax under the provisions of a Double Tax Agreement entered into between Gibraltar and their jurisdiction of tax residence (normally by means of the 'Income from Employment' Article).

There are two systems of taxation in Gibraltar, namely the Allowance Based System of Taxation ("ABS") and the Gross Income Based System of Taxation ("GIBS"). Under ABS, taxpayers are subject to tax at higher rates but are entitled to several allowances. GIBS provides for lower tax rates, but only entitles the taxpayer to a few deductions. Detached workers are registered for Gibraltar income tax under GIBS.

The responsibility to ensure that any employer related compliance obligations in respect of a detached worker lies with the contracting-in (Gibraltar registered) employer.

The contracting-in employer will therefore need to ensure that payroll information for all detached workers is declared annually in their year-end forms e.g., Form P8, which has a filing deadline date of **31 July each year**. If a Gibraltar payroll has been setup for a short-term business traveler and PAYE and Social Insurance (if applicable) is accounted for monthly, then said individual should be up to date with their Gibraltar income tax payments and would only be required to file their personal income tax return, which has a filing deadline date of 30 November each year.

If a payroll is not arranged on behalf of a short-term business traveler, then any income tax and social insurance payable (if applicable) should be paid by the earliest of either 31 July (together with the filing of Form P8 by the contracting-in employer) or by 30 November, with the filing of the individuals personal income tax return.

<sup>3</sup>- The Gibraltar authorities are currently not issuing or accepting Forms A1 other than for engagements to and from the UK. Short-term business travellers coming to Gibraltar from jurisdictions other than the UK may therefore be liable to Gibraltar social security. Short-term business travellers coming to Gibraltar from the Channel Islands and the Isle of Man should be exempted from Gibraltar social security payments, provided they can obtain support, in the form of a letter from Treasury, confirming that they are already suffering social security payments in their jurisdiction of tax residence.



## 8. REGISTRATION OF LONG-TERM HIRES

Individuals travelling to Gibraltar to provide long-term employment duties for a Gibraltar-resident employer will best be registered as a long-term hire (and not as a detached worker). Gibraltar-based employers seeking to contract with a non-entitled worker will need to obtain a work permit in advance of the relevant worker commencing their duties in Gibraltar.

For entitled and non-entitled workers alike, the Gibraltar-based employer who proposes to engage said worker shall, before doing so, notify the Gibraltar Department of Employment of that intention at least 10 working days prior to the commencement date of that worker.

After this period of notification, the Gibraltar-resident employer will then need to notify the Gibraltar Department of Employment of their intention for a specific worker to fill said vacancy. This notification requirement should be made no later than the day on which the engagement commences.

## 9. RIGHT TO WORK CHECKS

It should be noted that there are currently no statutory requirements under Gibraltar law, which would require an employee to physically provide their employer with original identification documents for the purpose of in situ certification. Notwithstanding this, each Gibraltar-based employer will have their own best practice approach in respect of the documents which they will collate in contracting with an employee (and how these are collected).

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