

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3430 of 30 September, 2004

LEGAL NOTICE NO. 94 OF 2004.

EMPLOYMENT ACT

EMPLOYMENT (AMENDMENT) REGULATIONS 2004

The Minister in the exercise of his powers under section 86(1)(g) of the Employment Act, and all other enabling powers, makes the following regulations.

Title.

1.(1) These regulations may be cited as the Employment (Amendment) Regulations 2004.

Amendments to the Employment Regulations 1994.

2.(1) Regulation 5(1) of the Employment Regulations 1994 is amended by inserting after “in accordance with regulation 7” the words “or regulation 7A.”.

(2) Regulation 6(4) of the Employment Regulations 1994 is amended by–

- (a) in paragraph (a) for the words “application of this law” substituting the words “application of the law”;
- (b) in paragraph (c) inserting after “section 14” the figure “(1)”; and
- (c) after paragraph (c) adding the following new paragraph–

“(d) falls within section 7A(4).”.

(3) The Employment Regulations 1994 are amended by inserting after regulation 7 a new regulation as follows–

“Workers from Central and Eastern European States.

7A.(1) This regulation shall apply during the transitional period as defined in section 46A(1) of the Immigration Control Act.

(2) For the purposes of this regulation—

(a) “relevant accession state” means the Czech Republic, the Republic of Estonia, the Republic of Hungary, the Republic of Latvia, the Republic of Lithuania, the Republic of Poland, the Slovak Republic, or the Republic of Slovenia; and

(b) “relevant accession state worker” means a citizen of a relevant accession state who is legally employed in Gibraltar but is not a qualified person (as defined in section 43 of the Immigration Control Act). It does not include—

(i) a self employed person; or

(ii) a person who is providing services within the definition of Article 49 EC Treaty or is a detached worker.

(3) Regulation 7, and all references to regulation 7 in regulations 8, 9, 11 and 16, shall apply to a relevant accession state worker to the same extent as to a non-entitled worker except that—

(a) in regulation 7(3)(h) the words “valid passport” shall, for the purposes of relevant accession state workers, be construed to mean valid passport or valid identity card issued by the government of the relevant accession state; and

(b) regulation 7(5)(c) shall not apply to a relevant accession state worker.

(4) A family member (as defined in section 39(1) of the Immigration Control Act) of a relevant accession state worker shall be an entitled worker if—

(a) the relevant accession state worker concerned is in legal employment in Gibraltar; and

(b) the family member–

(i) was lawfully resident in Gibraltar on 1 May 2004 with the worker and the worker holds a work permit of at least 12 months duration; or

(ii) commenced lawful residence in Gibraltar with the worker during the transitional period and has been lawfully resident in Gibraltar for 18 months or is legally resident in Gibraltar on 1 May 2007 whichever is earlier; for the purpose of this subparagraph a family member shall be treated as having been lawfully resident in Gibraltar for 18 months if he was lawfully resident in Gibraltar at the beginning and end of that period and any intervening periods in which he was not resident in Gibraltar do not, in total, exceed 45 days.”.

Dated the 30th day of September, 2004.

B LINARES,

Minister for Education,
Employment and Training.

EXPLANATORY MEMORANDUM

These Regulations amend the Employment Regulations 1994 in connection with the accession of the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union.

The amendments deal specifically with citizens of the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Poland, the Republic of Slovenia and

the Slovak Republic. They insert a new regulation 7A into the Employment Regulations. It provides for a transitional period as defined in section 46A(1) of the Immigration Control Act and sets out when workers and family members of workers from those states shall, and shall not, be considered to be entitled workers for the purposes of the Employment Regulations.