

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4275 of 23 June, 2016

LEGAL NOTICE NO. 138 OF 2016.

EMPLOYMENT ACT

INTERPRETATION AND GENERAL CLAUSES ACT

**EMPLOYMENT REGULATIONS, 1994 (AMENDMENT)
REGULATIONS 2016**

In exercise of the powers conferred upon him by section 86 of the Employment Act, section 23(g)(i) of the Interpretation and General Clauses Act, and all other enabling powers, and for the purposes of transposing into the law of Gibraltar Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation'), the Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Employment Regulations, 1994 (Amendment) Regulations 2016.

Commencement.

2. These Regulations come into operation on 18 June 2016.

Amendment of regulation 15A.

3.(1) The Employment Regulations, 1994 are amended in accordance with the provisions of this regulation.

(2) In regulation 15A of the Employment Regulations, 1994—

- (a) at subregulation (3) substitute “Where the Director” with “Subject to subregulation (3A), where the Director”; and
- (b) after subregulation (3) insert—

“(3A) In order to meet the requirement of subregulation (3), the Director of Employment shall make an overall assessment of all factual elements that are deemed necessary, in particular those set out in subregulations (3B) and (3C), to determine that the person is a genuine detached worker.

(3B) In order to determine whether an employer genuinely performs substantial activities, other than purely internal management or administrative activities, the Director of Employment shall make an overall assessment of all factual elements characterising those activities, which may include—

(a) the place where the employer has its registered office and administration, uses office space, pays taxes and social security contributions and, where applicable, in accordance with national law has a professional licence or is registered with the chambers of commerce or professional bodies;

(b) the place where detached workers are recruited and from which they are sent;

(c) the law applicable to the contracts concluded by the employer with its workers, on the one hand, and with its clients, on the other;

(d) the place where the employer performs its substantial business activity and where it employs administrative staff;

(e) the number of contracts performed or the size of the turnover realised in Gibraltar, taking into account the specific situation of, inter alia, newly established undertakings and SMEs.

(3C) In order to assess whether a detached worker temporarily carries out his work in Gibraltar as opposed to his ordinary Member State of

employment, all factual elements characterising such work and the situation of the worker shall be examined, and such elements may include-

- (a) the work is carried out for a limited period of time in a Member State;
- (b) the date on which the work in Gibraltar starts;
- (c) the detached worker returns or is expected to resume working in the Member State from which he is sent after completion of the work or the provision of services for which he is sent to Gibraltar;
- (d) the nature of the activities;
- (e) travel, board and lodging or accommodation is provided or reimbursed by the employer who sends the worker and, if so, how this is provided or the method of reimbursement;
- (f) any previous periods during which the post was filled by the same or by another detached worker.”.

Dated 23rd June, 2016.

N F COSTA,
Minister for Employment.

EXPLANATORY MEMORANDUM

These Regulations amend the Employment Regulations, 1994 in order to transpose Directive 2014/67/EU of the European Parliament and of the Council of 15 May 2014 on the enforcement of Directive 96/71/EC concerning the posting of workers in the framework of the provision of services and amending Regulation (EU) No 1024/2012 on administrative cooperation through the Internal Market Information System ('the IMI Regulation').

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