

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4631 of 25 October, 2019

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LEGAL NOTICE NO. 212 OF 2019

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### SOCIAL SECURITY COORDINATION (COUNCIL REGULATION (EEC) No 574/72) (AMENDMENT) (EU EXIT) REGULATIONS 2019

In exercise of the powers conferred upon him by section 11(1) of, and Schedule 3 to, the European Union (Withdrawal) Act 2019 the Minister has made the following Regulations—

#### **Title, commencement and interpretation.**

1.(1) These Regulations may be cited as the Social Security Coordination (Council Regulation (EEC) No 574/72) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

(2) In these Regulations “Regulation (EEC) No 574/72” means Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community.

#### **Amendment of Regulation (EEC) No 574/72.**

2. The Schedules to these Regulations amend Regulation (EEC) No 574/72 as follows—

- (a) Schedule 1 amends Title 1 (general provisions);
- (b) Schedule 2 amends Title 2 (implementation of the general provisions of the Regulation);
- (c) Schedule 3 amends Title 3 (implementation of the provisions of the Regulation for determining the legislation applicable);
- (d) Schedule 4 amends Title 4 (implementation of the special provisions of the Regulation relating to the various categories of benefits);
- (e) Schedule 5 amends Title 5 (financial provisions);
- (f) Schedule 6 amends Title 6 (miscellaneous provisions);
- (g) Schedule 7 amends Title 7 (transitional and final provisions);
- (h) Schedule 8 amends the Annexes.

**Revocation.**

3. Title 6a (provisions governing electronic data processing) of Regulation (EEC) 574/72 is revoked.

**SCHEDULE 1**

**Regulation 2(a)**

**Amendments to Title 1: General provisions**

1. After Article 1 insert—

“Article 1A

**Performance of obligations dependent on Member State information**

1. This Article applies where, in the view of the competent authority of Gibraltar, performance of an obligation under this Regulation by an institution in Gibraltar is wholly or partly dependent on information held by an institution or authority in a Member State.

2. The institution in Gibraltar must take all reasonable steps to obtain the information from the institution or authority in the Member State.

3. If the institution in Gibraltar complies with the duty in paragraph 2 but is unable to obtain the information and the institution considers that the claimant could provide the information, it must inform the claimant that it has been unable to obtain the information and ask the claimant—

- (a) to take reasonable steps to obtain the information from the institution or authority in the Member State; or
- (b) where it is not possible for the claimant to obtain the information from the institution or authority in the Member State, to provide such relevant information or evidence as the claimant has.

4. The institution in Gibraltar is not required to perform the obligation if it complies with the duty in paragraphs 2 or 3 but is unable to obtain the information and—

- (a) the claimant does not provide it within a reasonable time; or
- (b) the claimant does provide it but the institution is of the view that the information is not accurate or is incomplete.”.

2. Omit Article 2.

3. In Article 3 for “Member State” in each place it occurs substitute “State”.

4. In Article 4—

- (a) in paragraphs 1, 2, 3 and 6 for “Member State” in each place it occurs substitute “State”;

- (b) in paragraph 5 omit “104,”;
- (c) in paragraph 8 for “Member States” substitute “States”;
- (d) in paragraph 10(b) for “89(1), 91(2), 102(2), 109, 110, 113(2)” substitute “91(2), 109, 113”.

**SCHEDULE 2**

**Regulation 2(b)**

**Amendments to Title 2: Implementation of the general provisions of the Regulation**

5. Omit Article 5 and the heading “Implementation of Articles 6 and 7 of the Regulation”.

6. In Article 6—

- (a) for “Articles 9 and 15(3)” substitute “Article 9”;
- (b) for “one Member State” substitute “Gibraltar”;
- (c) for “that Member State” substitute “Gibraltar”;
- (d) for “Articles” substitute “Article”;
- (e) for paragraph 2 substitute—

“2. In order to invoke the provisions of Article 9(2) of the Regulation, a person shall take reasonable steps to obtain a certified statement relating to the insurance periods or periods of residence completed under the legislation of any Member State and shall submit any such statement to the institution in Gibraltar.”.

7. In Article 7—

- (a) in paragraph 1—
  - (i) for “two” substitute “Gibraltar and one”;
  - (ii) for “the Member States concerned” substitute “Gibraltar”;
- (b) in paragraph 2—
  - (i) for “Article 12(2), (3) and (4)” substitute “Article 12(2) and (3)”;
  - (ii) for “institutions concerned” to the end of the paragraph substitute “institution in Gibraltar shall request all appropriate information from the competent institutions of the Member States concerned”.

8. In Article 8—

- (a) in the heading for “Member States” substitute “States”;
- (b) in paragraph 1—
  - (i) for “two” substitute “Gibraltar and one”;

- (ii) for “the Member State in whose territory the confinement took place” substitute “Gibraltar, if the confinement took place in Gibraltar,”;
  - (iii) after “take place in” insert “Gibraltar or in”;
  - (iv) for “Member State” substitute “State”;
- (c) in paragraph 2—
- (i) after “incapacity for work” insert “and the person was last subject to the legislation of Gibraltar”;
  - (ii) for “the Member State to which the person concerned was last subject” substitute “Gibraltar”;
- (d) omit paragraph 3.

9. In Article 8a—

- (a) in the heading for “one or more other Member States” substitute “Gibraltar”;
- (b) for “one or more Member States” substitute “Gibraltar”.

10. In Article 9—

- (a) in the heading for “Member States” substitute “States”;
- (b) in paragraph 1—
  - (i) for “a Member State” substitute “Gibraltar”;
  - (ii) for “that Member State only” substitute “Gibraltar”;
  - (iii) omit from “, whilst the right” to the end of the paragraph;
- (c) in paragraph 2—
  - (i) for “one Member State” substitute “Gibraltar”;
  - (ii) for “two” in both places it occurs substitute “Gibraltar and one”;
  - (iii) for “the territory of the Member States” substitute “Gibraltar”;
  - (iv) for “Member State” substitute “State”;
  - (v) omit from “, whilst the right” to the end of the paragraph;
- (d) omit paragraph 3.

11. Omit Article 9a.

12. In Article 10—

- (a) in paragraph 1(a)—
  - (i) for “a Member State” substitute “Gibraltar”;
  - (ii) after “suspended when” insert “it appears to Gibraltar that”;
  - (iii) for “another Member State” substitute “a Member State”;
  - (iv) omit “or in application of Articles 73, 74, 77 or 78 of the Regulation”;
- (b) paragraph 1(b) for “the first member State” substitute “Gibraltar”;
- (c) in paragraph 1(b)(i)—
  - (i) for “another Member State” substitute “a Member State”;
  - (ii) for “the right to family benefits due either only under national legislation of that Member State or under these Articles shall be suspended” substitute “Gibraltar will deem that Member State to have suspended its family benefits”;
  - (iii) omit the final sentence;
- (d) in paragraph 1(b)(ii)—
  - (i) for “another Member State” substitute “a Member State”;
  - (ii) for “the right to family benefits” to the end of the paragraph substitute “Gibraltar will deem that Member State to have suspended its family benefits”;
- (e) omit paragraph 2;
- (f) in paragraph 3—
  - (i) for “two Member States” substitute “Gibraltar and a Member State”;
  - (ii) for “the competent institution of the Member State with legislation providing for the highest level of benefit” substitute “where the legislation of Gibraltar provides for the highest levels of benefits, the competent institution in Gibraltar”;
  - (iii) for “be reimbursed” substitute “may request reimbursement of”;
  - (iv) for “other Member State” substitute “Member State”;

(v) for “latter Member State” substitute “Member State”.

13. In Article 10a—

- (a) for “Member States” in each place it occurs (including the heading) substitute “States”;
- (b) in point (b) for “shall” substitute “may”;
- (c) in point (c) for “Member State” in both places it occurs substitute “State”.



**SCHEDULE 3**

**Regulation 2(c)**

**Amendments to Title 3: Implementation of the provisions of the Regulation for determining the legislation applicable**

14. In Article 10b—

- (a) for “Member State” in the first place it occurs substitute “State”;
- (b) for the second sentence substitute “Where the legislation of Gibraltar becomes applicable to the person, the institution designated by the competent authority in Gibraltar shall apply to the institution designated by the competent authority of the Member State with a request to specify this date.”.

15. In Article 10c—

- (a) after “Article 13(2)(d),” insert “where the legislation of Gibraltar is applicable,”;
- (b) for “the Member State whose legislation is applicable” substitute “Gibraltar”.

16. In Article 11 for “The institutions designated by the competent authority of the Member State whose legislation is to remain applicable” substitute “Where the legislation of Gibraltar is to remain applicable, the institution designated by the competent authority of Gibraltar”.

17. In Article 11a—

- (a) in the heading for “Member State” substitute “State”;
- (b) for “The institution designated by the competent authority of the Member State whose legislation is to remain applicable” substitute “Where the legislation of Gibraltar is to remain applicable, the institution designated by the competent authority of Gibraltar”.

18. Omit Article 12.

19. In Article 12a—

- (a) in the heading for “Member States” substitute “States”;
- (b) in paragraph in 1(a)—
  - (i) for “Member States” in both places it occurs substitute “States”;
  - (ii) for “Member State” in each place it occurs substitute “State”;
- (c) in paragraph in 1(b) —

- (i) for “legislation of the Member State in the territory of which the person resides” substitute “person resides in Gibraltar but the legislation of Gibraltar”;
  - (ii) for “that Member State” substitute “Gibraltar”;
  - (iii) after “whose legislation” insert “it considers”;
- (d) in paragraph 1a—
- (i) for “the Member State in whose territory” substitute “Gibraltar as the state where”;
  - (ii) for “that Member State” substitute “Gibraltar”;
  - (iii) for “its legislation” substitute “the legislation of Gibraltar”;
- (e) in paragraph 2(a)—
- (i) for “Member States” substitute “States”;
  - (ii) for “the Member State in whose territory he resides” substitute “Gibraltar, which is where he resides,”;
  - (iii) for “that Member State” in the first place it occurs substitute “Gibraltar”;
  - (iv) for “that Member State shall” substitute “Gibraltar may, where requested,”;
  - (v) for “its legislation” substitute “the legislation of Gibraltar”;
  - (vi) omit from “and shall send” to the end of point (a)(ii);
- (f) in paragraph 2(b)—
- (i) for “shall” substitute “may”;
  - (ii) for “the Member State whose legislation is applicable” substitute “Gibraltar”;
  - (iii) for “that legislation” substitute “the legislation of Gibraltar”;
- (g) in paragraph 3(a)—
- (i) for “one Member State” substitute “a Member State”;
  - (ii) for “another Member State” substitute “Gibraltar”;

- (iii) for “the Member State in whose territory” substitute “Gibraltar as the State where”;
  - (iv) for “the latter Member State shall” substitute “Gibraltar may, where requested,”;
  - (v) for “its legislation” substitute “the legislation of Gibraltar”;
  - (vi) omit from “and shall send” to the end of point (a)(ii);
- (h) in paragraph 4(a)—
- (i) for “member States” substitute “States”;
  - (ii) for “the Member State in whose territory” substitute “Gibraltar as the State where”;
  - (iii) for “the latter Member State shall” substitute “Gibraltar may, where requested,”;
  - (iv) for “its legislation” substitute “the legislation of Gibraltar”;
  - (v) omit from “and shall send” to the end of point (a)(ii);
- (i) in paragraph 5(a)—
- (i) for “who is normally” to “resides, is” substitute “is not”;
  - (ii) for “the Member State” to “designated by” substitute “Gibraltar”;
  - (iii) for “the Member State in the territory of which he resides shall forthwith” substitute “Gibraltar may”;
  - (iv) for “other Member States” substitute “Member States”;
- (j) in paragraph 5(b)—
- (i) for “Member States” substitute “States”;
  - (ii) for “shall” substitute “may”;
- (k) in paragraph 5(c)—
- (i) for “The institution administering the legislation that has been determined as applicable to the person concerned shall” substitute “Where the legislation of Gibraltar has been determined as applicable to the person concerned, the institution in Gibraltar may, where requested,”;

- (ii) omit from “and shall send” to the end of the point;
- (l) in paragraph 5(e) for “shall” substitute “may”;
- (m) in paragraph 6(a)—
  - (i) for “an institution designated” to “Article 14a(2) or (3) of the Regulation” substitute “the legislation of Gibraltar is applicable by virtue of Article 14a(2) or (3) of the Regulation and an institution designated by the competent authority of Gibraltar”;
  - (ii) for “shall” in the first place it occurs substitute “may”;
  - (iii) for “other Member States” substitute “Member States”;
  - (iv) omit from “; where necessary” to the end of the point;
- (n) in paragraph 6(b)—
  - (i) for “shall” substitute “may”;
  - (ii) for “the Member State whose” substitute “Gibraltar if its legislation”;
- (o) in paragraph 7(a)—
  - (i) for “Article 14c(a)” substitute “Article 14c”;
  - (ii) for “the Member State in whose territory” substitute “Gibraltar as the State where”;
  - (iii) for “the latter Member State shall” substitute “Gibraltar may, where requested,”;
  - (iv) omit from “and shall send” to the end of point (a)(ii);
- (p) omit paragraph 8.

20. In Article 12b—

- (a) for “Articles 14e or 14f” (including in the heading) substitute “Article 14e”;
- (b) omit the last sentence.

21. In Article 13—

- (a) in paragraph 2—
  - (i) for “the Member State” substitute “the State”;

- (ii) for “The said institution” substitute “Where the institution is in Gibraltar, it”;
  - (iii) for “the same Member State” substitute “Gibraltar”;
  - (iv) for “that Member State” substitute “Gibraltar”;
- (b) in paragraph 3—
- (i) for “The institution designated by the competent authority of the Member State for whose legislation the person concerned has opted” substitute “Where the person concerned has opted for the legislation of Gibraltar, the institution designated by the competent authority of Gibraltar”;
  - (ii) for “that Member State” substitute “Gibraltar”;
- (c) omit paragraph 4.

22. In Article 14—

- (a) in paragraph 1—
- (i) for “Member State” in the first place it occurs substitute “State”;
  - (ii) for “The said institution” substitute “Where that institution is an institution in Gibraltar it”;
  - (iii) for “the same Member State” substitute “Gibraltar”;
- (b) in paragraph 2—
- (i) for “The institution designated by the competent authority of the Member State for whose legislation the auxiliary staff member has opted” substitute “Where the auxiliary staff member has opted for the legislation of Gibraltar, the institution designated by the competent authority of Gibraltar”;
  - (ii) for “that Member State” substitute “Gibraltar”;
- (c) in paragraph 3 for “authorities of the Member States” substitute “authority of Gibraltar”;
- (d) in paragraph 4 for “the territory of a Member State other than Germany” substitute “Gibraltar”.

**SCHEDULE 4**

**Regulation 2(d)**

**Amendments to Title 4: Implementation of the special provisions of the Regulation relating to the various categories of benefits**

**PART 1**

Amendments to Chapter 1: General rules for the aggregation of periods

23. In Article 15—

- (a) in paragraph 1(a)—
  - (i) for “Member State” in each place it occurs substitute “State”;
  - (ii) for “two” substitute “Gibraltar and one”;
  - (iii) for “each of the institutions concerned” substitute “the institution in Gibraltar”;
  - (iv) for “Member States” in the second place it occurs substitute “States”;
  - (v) omit the final sentence;
- (b) in paragraph 1(b) and (c) for “Member State” in each place it occurs substitute “State”;
- (c) in paragraph 1(d)—
  - (i) for “Member States” substitute “States”;
  - (ii) for “Member State” in each place it occurs substitute “State”;
- (d) in paragraph 1(e) for “Member State” in both places it occurs substitute “State”;
- (e) in paragraph 1(f)—
  - (i) for “one Member State” substitute “Gibraltar”;
  - (ii) for “which administers such legislation” substitute “of Gibraltar”;
  - (iii) for “another Member State” in both places it occurs substitute “a Member State”;
  - (iv) for “second Member State” substitute “Member State”;
- (f) in paragraphs 2 and 3 for “Member State” in each place it occurs substitute “State”.

PART 2  
Amendments to Chapter 2: Sickness and maternity

24. In Article 16—

- (a) in paragraph 1 after “shall” insert “take reasonable steps”;
- (b) in paragraph 2—
  - (i) for the first sentence substitute “Where the employed person was last subject to the legislation of Gibraltar, the institution in Gibraltar shall issue this certified statement at the request of the person.”;
  - (ii) for “shall” in the second sentence substitute “may”;
- (c) in paragraph 3—
  - (i) for “other Member State” substitute “Member State”;
  - (ii) for “the competent State” substitute “Gibraltar”.

25. In Article 18—

- (a) in the heading for “other than” substitute “where Gibraltar is”;
- (b) in paragraph 1 after “institution of the place of residence” in the first place it occurs insert “or, where that institution will not accept such an application, the competent institution in Gibraltar,”;
- (c) in paragraph 2—
  - (i) for “shall immediately” substitute “may”;
  - (ii) for “. Such certificate shall state” substitute “, stating”;
  - (iii) for “and shall be forwarded” to the end of the paragraph substitute “. If the certificate is drawn up, the person concerned shall send it to the competent institution in Gibraltar.”;
- (d) in paragraph 3—
  - (i) for “shall, as soon as possible” to “have him” substitute “may have the person concerned”;
  - (ii) for “shall” substitute “may”;
  - (iii) omit “within the three days following the date of the examination”;

(e) in paragraph 4—

(i) for “shall” in the first place it occurs substitute “may”;

(ii) for “shall forthwith” substitute “may”;

(f) after paragraph 4 insert—

“4A. Where paragraphs 1 and 2 do not apply, the person concerned shall arrange to be examined by a doctor and forward to the competent institution as soon as reasonably practicable a report from that doctor stating the probable duration of the incapacity for work.”;

(g) in paragraph 8 for “the competent State” substitute “Gibraltar”;

(h) omit paragraph 9.

26. In Article 24 in the heading for “other than” substitute “where Gibraltar is”.

27. In Article 25—

(a) after “competent institution” in each place it occurs insert “in Gibraltar”;

(b) omit “other than that wherein the said institution is situated”;

(c) for “shall” in the first place it occurs in paragraph 2 substitute “may”;

(d) omit “other than that wherein the said institutions is situated”.

28. In Article 26—

(a) in paragraph 1a—

(i) after “competent insurance institution” insert “in Gibraltar”;

(ii) for “shall” in the third place it occurs substitute “may”;

(b) in paragraph 2—

(i) for “shall” in the first two places it occurs substitute “may”;

(ii) omit the final sentence;

(c) in paragraph 5 for “shall” substitute “may”;

(d) in paragraph 6 for “shall” in each place it occurs substitute “may”.



29. In Article 32—

- (a) in the heading for “a Member State other than” substitute “Gibraltar where it is not”;
- (b) for “the country of stay or residence” substitute “Gibraltar”;
- (c) for “the territory of the Member State in which they are staying or residing” in both places it occurs substitute “Gibraltar”.

30. In Article 33—

- (a) for “another Member State” (including in the heading) substitute “a Member State”;
- (b) for “a Member State called upon to provide benefits” substitute “Gibraltar”.

### PART 3

#### Amendments to Chapter 3: Invalidity, old-age and death (pensions)

31. In Article 35—

- (a) in paragraph 1 for “either to the institution” to the end of the paragraph substitute “to the institution in Gibraltar”;
- (b) in paragraph 2—
  - (i) for “the institution” in the first place it occurs substitute “where Gibraltar is the institution initially responsible for payment of the benefits, it may request from the institution”;
  - (ii) omit “shall notify”;
  - (iii) for “it administers to the institution initially responsible for payment of the benefits” substitute “the latter administrators”;
- (c) omit paragraph 3.

32. In Article 36—

- (a) in paragraph 1—
  - (i) for “the place of residence” in the first place it occurs substitute “Gibraltar, where it is the place of residence,”;
  - (ii) for “administered by that institution” substitute “of Gibraltar”;

- (iii) for “the place of residence” in the second place it occurs substitute “Gibraltar”;
  - (iv) for the final sentence substitute “Where Gibraltar is the State to whose legislation an employed or self-employed person was last subject and a claim is forwarded by the institution of the place of residence, the date on which the claim was submitted to that institution shall be regarded as the date on which the claim was submitted to the institution in Gibraltar.”;
- (b) in paragraph 2 for “the Member State to whose legislation the employed or self-employed person was last subject” substitute “Gibraltar if he was last subject to the legislation of Gibraltar”;
- (c) in paragraph 3—
- (i) for “a State” substitute “a state”;
  - (ii) after “Member State” in the first place it occurs insert “or Gibraltar”;
  - (iii) for “that Member State” substitute “Gibraltar if it is the”;
  - (iv) for “the Member State” in the final place it occurs substitute “Gibraltar as the State”;
- (d) in paragraph 4—
- (i) for “one Member State” substitute “Gibraltar”;
  - (ii) omit “concurrent”;
  - (iii) for “all the Member States in question” to the end of paragraph substitute “Gibraltar”.

33. In Article 37—

- (a) in point (a)—
  - (i) after “legislation” insert “of Gibraltar”;
  - (ii) omit points (i) and (ii);
- (b) in point (b)—
  - (i) after “the claimant” in the first place it occurs insert “to the institution in Gibraltar”;
  - (ii) after “confirmed” insert “, as far as possible,”;
- (c) in point (c) for “Member State” in both places it occurs substitute “State”;

(d) omit point (d).

34. In Article 38—

- (a) in paragraph 1 in the first paragraph omit “other than in which the institution responsible for the award of benefits is situated”;
- (b) in paragraph 1 in the second paragraph for “shall” in the first place it occurs substitute “may”;
- (c) in paragraph 1 in the third paragraph—
  - (i) for “responsible for the award of benefits,” substitute “in Gibraltar”;
  - (ii) omit “other than the State in which the said institution is situated”;
- (d) in paragraph 2 for “administered by the institution concerned” substitute “of Gibraltar”.

35. In Article 39—

- (a) in paragraph 1—
  - (i) after “institution” in the first place it occurs insert “in Gibraltar”;
  - (ii) for “shall” substitute “may”;
- (b) in paragraph 2—
  - (i) for “other Member State” substitute “State”;
  - (ii) for “the competent State” substitute “Gibraltar”;
- (c) omit paragraph 3;
- (d) in paragraph 4 for “paragraphs 1, 2 and 3” substitute “paragraphs 1 and 2”.

36. In Article 40—

- (a) for “the Member State” substitute “Gibraltar”;
- (b) for “other Member State” substitute “Member State”;
- (c) for “Each institution” substitute “The institution in Gibraltar”;
- (d) omit from “except where” to the end of the Article.

37. In Article 41 for “Claims for benefit shall be investigated by that institution to which they have been sent or forwarded” substitute “Where claims for benefits are sent or forwarded to the institution in Gibraltar, they shall be investigated by that institution”.

38. In Article 42—

- (a) for “Member States” substitute “States”;
- (b) omit paragraph 2.

39. In Article 43—

- (a) in paragraph 1 for “Member State” substitute “State”;
- (b) in paragraph 2—
  - (i) for “that institution shall complete the said form by indicating” substitute “the investigating institution may request that the other institution completes the following information in the said form”;
  - (ii) for “it administers” substitute “the other institution administers”;
  - (iii) omit “The form, thus completed, shall be returned to the investigating institution.”;
  - (iv) for “second Member State” substitute “Member State”;
- (v) for “shall” in the last two places it occurs substitute “may”;
- (c) in paragraph 3 in the first subparagraph for “each one” to the end of the paragraph substitute “the investigating institution may request that the other institution complete the said form.”;
- (d) in paragraph 3 in the second subparagraph for “shall” in both places it occurs substitute “may”;
- (e) in paragraph 3 in the third subparagraph—
  - (i) for “Member States” substitute “States”;
  - (ii) for “shall” in the first place it occurs substitute “may”;
  - (iii) for “which shall” substitute “and may request each institution to”;
  - (iv) for “shall” in the last place it occurs substitute “to”;
- (f) omit paragraph 5.

40. Omit Articles 44 and 45.

41. In Article 46—

- (a) for “applicable” substitute “applied by the institution in Gibraltar”;
- (b) for “the Member State’s” substitute “Gibraltar’s”.

42. In Article 47—

- (a) for “it applies” substitute “of Gibraltar”;
- (b) for “each Member State” substitute “Gibraltar”;
- (c) for “another Member State” substitute “a Member State”.

43. In Article 48—

- (a) for “shall” in the first place it occurs substitute “may”;
- (b) for “must” substitute “may”.

44. In Article 49—

- (a) for “the institution which has taken such a decision” substitute “by the institution in Gibraltar, it”;
- (b) omit “, if necessary through the good offices of the investigating institution”.

45. In Article 50—

- (a) in paragraph 1(a)—
  - (i) for “one Member State” substitute “a Member State”;
  - (ii) for “another Member State” substitute “Gibraltar”;
  - (iii) for “the latter Member State” substitute “Gibraltar”;
  - (iv) for “same Member State” substitute “Member State”;
  - (v) omit “, under conditions fixed by the Administrative Commission,”;
  - (vi) for “member State” substitute “State”;
- (b) in paragraph 1(b) for “shall” substitute “may”;
- (c) omit paragraph 2.

46. In Article 51—

- (a) for “the territory of a Member State other than” substitute “Gibraltar which is not”;
- (b) for “the place of stay or residence of the recipient” substitute “Gibraltar”;
- (c) for “administered by the latter institution” substitute “of Gibraltar”;
- (d) in the last sentence of paragraph 1 for “shall” substitute “may”;
- (e) in paragraph 2 for “the place of stay or residence” substitute “Gibraltar”.

47. In Article 52—

- (a) for “Member State” substitute “State”;
- (b) for “shall” substitute “may”.

48. In Article 53—

- (a) in paragraph 1—
  - (i) for “the territory of another Member State” substitute “Gibraltar”;
  - (ii) for “the latter Member State” substitute “Gibraltar”;
  - (iii) for “the place of residence of the said persons entitled to benefits” substitute “Gibraltar”;
  - (iv) for “shall” in the last place it occurs substitute “may”;
  - (v) for “the place of residence” substitute “Gibraltar”;
- (b) in paragraph 2—
  - (i) for “Two” substitute “Gibraltar and one”;
  - (ii) for “Member States” in the second place it occurs substitute “States”;
  - (iii) omit the final sentence;
- (c) in paragraph 3 after “agreements” insert “between the United Kingdom and Member States, which extend to, or apply in, Gibraltar.”.

49. In Article 54 for “The institution responsible for payment of benefits” substitute “Where Gibraltar is responsible for the payment of benefits, the institution in Gibraltar”.

50. In Article 55—

- (a) in paragraph 1—
  - (i) for “Ten” substitute “Where Gibraltar is responsible for the payment of benefits, ten”;
  - (ii) for “responsible for payment” in the first place it occurs substitute “in Gibraltar”;
  - (iii) for “the member State in whose territory it is situated” substitute “Gibraltar”;
  - (iv) for “the Member State in whose territory the institution responsible for payment is situated” substitute “Gibraltar”;
- (b) omit paragraph 2.

51. In Article 56—

- (a) in paragraph 1—
  - (i) for “The payments specified in the” substitute “Where Gibraltar receives payments specified in a”;
  - (ii) after “Regulation” insert “, those payments”;
  - (iii) for “the paying body” in the second place it occurs substitute “Gibraltar”;
- (b) in paragraph 2—
  - (i) after “paying body” substitute “in Gibraltar”;
  - (ii) for “another State” substitute “a Member State”;
- (c) in paragraph 3 after “paying body” substitute “in Gibraltar”.

52. In Article 57—

- (a) in paragraph 1 after “payment period” insert “by the paying body in Gibraltar”;
- (b) in paragraph 2—
  - (i) for “Member State” substitute “State”;

- (ii) after “paying body” insert “in Gibraltar”;
- (c) in paragraph 3 after “paying body” insert “in Gibraltar”;
- (d) in paragraph 4—
  - (i) for “Member State” substitute “State”;
  - (ii) after “paying body” insert “in Gibraltar”;
  - (iii) for “shall” substitute “may”.

53. In Article 59 for “Member States” substitute “States”.

#### PART 4

#### Amendments to Chapter 4: Accidents at work and occupational diseases

54. In Article 61—

- (a) in the heading for “other than” in the second place it occurs substitute “where Gibraltar is”;
- (b) in paragraph 1 after “institution of the place of residence” in the first place it occurs insert “or, where that institution will not accept such an application, the competent institution in Gibraltar,”;
- (c) in paragraph 2—
  - (i) for “shall immediately” substitute “may”;
  - (ii) for “. Such certificate shall state” substitute “, stating”;
  - (iii) for “and shall be forwarded” to the end of the paragraph substitute “. If the certificate is drawn up, the person concerned shall send it to the competent institution in Gibraltar.”;
- (d) in paragraph 3—
  - (i) for “shall, as soon as possible” to “have him” substitute “may have the person concerned”;
  - (ii) for “shall” substitute “may”;
  - (iii) omit “within the three days following the date of the examination”;
- (e) in paragraph 4—
  - (i) for “shall” in the first place it occurs substitute “may”;



(ii) for “shall forthwith” substitute “may”;

(f) after paragraph 4 insert—

“4A. Where paragraphs 1 and 2 do not apply, the person concerned shall arrange to be examined by a doctor and forward to the competent institution as soon as reasonably practicable a report from that doctor stating the probable duration of the incapacity for work.”;

(g) in paragraph 8 for “the competent State” substitute “Gibraltar”;

(h) omit paragraph 9.

55. In Article 64 in the heading for “other than” in the second place it occurs substitute “where Gibraltar is”.

56. In Article 65—

(a) in the heading for “other than” substitute “where Gibraltar is”;

(b) in paragraph 1—

(i) for “When” substitute “Where Gibraltar is the competent State, when”;

(ii) omit “other than the competent State”;

(iii) for “the competent State” substitute “Gibraltar”;

(c) in paragraph 2—

(i) for “shall” substitute “may”;

(ii) after “competent institution” insert “in Gibraltar”;

(d) in paragraph 3—

(i) for “If” substitute “Where Gibraltar is the competent State, if”;

(ii) omit “other than the competent State”;

(iii) after “competent institution” insert “in Gibraltar”;

(iv) after “of that Member State” insert “and seek any necessary consent for the investigation”;

(v) for “shall” in the last place it occurs substitute “may”;

(e) in paragraph 4—

- (i) for “shall” in the first two places it occurs substitute “may”;
- (ii) after “competent institution” in both places it occurs insert “in Gibraltar”;
- (f) in paragraph 5 after “competent institution” insert “in Gibraltar”.

57. In Article 67—

- (a) in the heading for “Member States” substitute “States”;
- (b) in paragraph 1—
  - (i) omit “either”;
  - (ii) for “in respect of occupational diseases of the Member State under whose legislation” substitute “in Gibraltar if”;
  - (iii) after “an activity” insert “that was”;
  - (iv) after “disease in question” insert “under the legislation of Gibraltar”;
  - (v) for “of the place of residence” substitute “in Gibraltar if it is the place of residence”;
- (c) in paragraph 2—
  - (i) after “paragraph 1” insert “is the institution in Gibraltar and it”;
  - (ii) for “another Member State” substitute “a Member State”;
- (d) in paragraph 3—
  - (i) for “When the institution of the Member State” substitute “Where Gibraltar is the State”;
  - (ii) after “question,” insert “if the institution in Gibraltar”;
- (e) in paragraph 4 for “the case should be referred back” substitute “the institution in Gibraltar shall refer the case back”.

58. In Article 68—

- (a) in paragraph 1 for “Where” to “in question” substitute “Where Gibraltar is one of the States under whose legislation the person suffering from the disease pursued an activity which might cause the occupational disease in question and where an appeal is lodged against a decision to reject a claim taken by the institution in Gibraltar”;

- (b) in paragraph 2 for “shall” in each place it occurs substitute “may”.

59. In Article 69—

- (a) in point (a) for “the competent institution of the Member State under whose legislation cash benefits are granted pursuant to Article 57(1) of the Regulation” substitute “where cash benefits are granted pursuant to Article 57(1) of the Regulation under the legislation of Gibraltar, the competent institution in Gibraltar”;
- (b) in point (b) for “shall” in the last two places it occurs substitute “may”;
- (c) in point (d)—
  - (i) for “shall” in the second place it occurs substitute “may”;
  - (ii) omit “as soon as possible, and within three months at the latest”.

60. In Article 70 in paragraph 1—

- (a) for “Member State” substitute “State” in each place it occurs;
- (b) in the second paragraph for “shall” in the first place it occurs substitute “may”.

61. In Article 71—

- (a) in paragraph 1 for “the Member State from which he is claiming rights to benefits” substitute “Gibraltar”;
- (b) omit paragraphs 2 to 4.

62. In Article 72—

- (a) in paragraph 1—
  - (i) for “a claimant shall” to “first diagnosed,” substitute “where a claimant was subject to the legislation of Gibraltar at the time when the accident at work was sustained or the occupational disease was first diagnosed, he shall supply the competent institution in Gibraltar”;
  - (ii) for “other Member State” substitute “Member State”;
- (b) in paragraph 2—
  - (i) for “which it administers” substitute “of Gibraltar”;

- (ii) after “competent institution” insert “in Gibraltar”;
  - (c) in paragraph 3—
    - (i) after “competent institution” in the first place it occurs insert “in Gibraltar”;
    - (ii) for “shall” in the first place it occurs substitute “may”;
    - (iii) for “another Member State” substitute “Gibraltar”;
    - (iv) for “second Member State” substitute “Member State”.
63. In Article 73—
- (a) in the heading for “a Member State other than” substitute “Gibraltar when it is not”;
  - (b) in paragraph 1—
    - (i) for “and where, in the country of stay or residence” substitute “where Gibraltar is the country of stay or residence and where, in Gibraltar”;
    - (ii) for “territory of the Member State in which they are staying or residing” substitute “Gibraltar”;
  - (c) in paragraph 2 for “territory of the Member” substitute “Gibraltar, if that is the”.
64. Omit Article 74 and the heading “Implementation of Article 62(2) of the Regulation”.
65. In Article 75—
- (a) in paragraph 1—
    - (i) for “a Member State” substitute “Gibraltar”;
    - (ii) for “another Member State” substitute “a Member State”;
    - (iii) omit “either”;
    - (iv) for “, or to the institution of the place of residence, which shall forward such claim to the competent institution” substitute “in Gibraltar”;
  - (b) in paragraph 2 after “competent institution” insert “in Gibraltar”.
66. In Article 76—
- (a) for “shall” in the first place it occurs substitute “may”;

(b) after “competent institution” in the first place it occurs insert “in Gibraltar”.

67. In Article 77 for “Member State” in both places it occurs substitute “State”.

PART 5  
Amendments to Chapter 5: Death grants

68. In Article 78—

- (a) for “a Member State other than” substitute “Gibraltar where it is not”;
- (b) omit “either”;
- (c) for “or to the institution of the place of residence” substitute “in Gibraltar”;
- (d) for “which the competent institution administers” substitute “of Gibraltar”.

69. In Article 79—

- (a) in paragraph 1 after “competent institution” insert “in Gibraltar”;
- (b) in paragraph 2 for “shall” in both places it occurs substitute “may”;
- (c) in paragraph 3—
  - (i) for “the competent State” substitute “Gibraltar”;
  - (ii) for “other Member State” substitute “Member State”.

PART 6  
Amendments to Chapter 6: Unemployment benefits

70. In Article 80—

- (a) in paragraph 1 after “competent institution” insert “in Gibraltar”;
- (b) in paragraph 2 for “shall” in both places it occurs substitute “may”;
- (c) in paragraph 3—
  - (i) for “the competent State” substitute “Gibraltar”;
  - (ii) for “other Member State” substitute “Member State”.

71. In Article 81—

- (a) for “an institution covered by” substitute “the institution in Gibraltar by virtue of”;
- (b) for “the Member State in which that institution is situated” substitute “Gibraltar”;
- (c) for “another Member State” substitute “a Member State”;

(d) for “shall” in the second place it occurs substitute “may”;

(e) for “latter Member Sate” substitute “Member State”.

72. In Article 82—

(a) in paragraph 1 after “competent institution” insert “in Gibraltar”;

(b) in paragraph 2—

(i) for “shall” in the first place it occurs substitute “may”;

(ii) for “must” substitute “may”;

(iii) after “competent institution” insert “in Gibraltar”.

73. In Article 83—

(a) in the heading for “another Member State” substitute “a Member State”;

(b) in paragraph 1—

(i) after “competent institution” insert “in Gibraltar”;

(ii) for “the competent State” in both places it occurs substitute “Gibraltar”;

(c) in paragraph 2—

(i) for “another Member State” substitute “a Member State”;

(ii) for “shall” in the first place it occurs substitute “may”;

(iii) after “competent institution” insert “in Gibraltar”;

(iv) for “the competent State” substitute “Gibraltar”;

(d) in paragraph 3—

(i) for “shall” in each place it occurs except the sixth occurrence substitute “may”;

(ii) after “competent institution” in each place it occurs insert “in Gibraltar”;

(iii) for “the competent State” substitute “Gibraltar”;

(iv) omit “immediately”;

(e) in paragraph 4—

- (i) for “Two” substitute “Gibraltar and one”;
- (ii) after “competent authorities of” insert “Gibraltar and”;
- (iii) omit “, having received the opinion of the Administrative Commission,”.

74. In Article 84—

- (a) in the heading for “a Member State other than” substitute “Gibraltar where it is not”;
- (b) in paragraph 1 for “the place of residence” substitute “Gibraltar”;
- (c) in paragraph 2—
  - (i) for “submit to the institution of his place of residence” substitute “request a certified statement from the institution of the Member State to whose legislation he was last subject, indicating that he has no right to benefits under Article 69 of the Regulation and, when such a statement is issued, submit it to the institution in Gibraltar”;
  - (ii) omit from “, a certified statement” to the end of the paragraph.

PART 7

Amendments to Chapter 7: Family benefits

75. In Article 85—

- (a) in paragraph 1 after “competent institution” insert “in Gibraltar”;
- (b) in paragraph 2 for “shall” in both places it occurs substitute “may”;
- (c) in paragraph 3—
  - (i) for “the competent State” substitute “Gibraltar”;
  - (ii) for “other Member State” substitute “Member State”.

76. In Article 86—

- (a) in paragraph 1 after “competent institution” insert “in Gibraltar”;
- (b) in paragraph 2—
  - (i) omit “other than that in which the competent institution is situated”;
  - (ii) for “shall” in the second place it occurs substitute “may”;



- (c) in paragraph 3 for “the competent State” substitute “Gibraltar”;
- (d) in paragraph 4—
  - (i) for “two” substitute “Gibraltar and one”;
  - (ii) omit the final sentence;
- (e) in paragraph 5 after “competent institution” insert “in Gibraltar”.

#### PART 8

#### Amendments to Chapter 8: Benefits for dependent children of pensioners and for orphans

##### 77. In Article 90—

- (a) in paragraph 1—
  - (i) after “institution of” insert “Gibraltar, if it is”;
  - (ii) for “administered by that institution” substitute “of Gibraltar”;
- (b) in paragraph 2—
  - (i) after “however,” insert “Gibraltar is the competent State and”;
  - (ii) for “the territory of the Member State in which the competent institution is situated he may” substitute “Gibraltar, he shall”;
  - (iii) omit “either”;
  - (iv) for “or to the institution” to the end of the paragraph substitute “in Gibraltar”;
- (c) in paragraph 3—
  - (i) for “referred to in paragraph 2” substitute “in Gibraltar”;
  - (ii) for “which it administers” substitute “of Gibraltar”;
- (d) omit paragraph 4.

##### 78. In Article 91 for “authorities of the Member State” substitute “authority of Gibraltar”.

**SCHEDULE 5**

**Regulation 2(e)**

**Amendments to Title 5: Financial Provisions**

79. In Article 93 in paragraph 1 for “Member State” substitute “State”.

80. In Article 97—

- (a) in paragraph 1 after “competent institution” insert “in Gibraltar”;
- (b) in paragraph 2—
  - (i) for “Two” substitute “Gibraltar and one”;
  - (ii) omit “having received the opinion of the Administrative Commission,”.

81. In Article 100 for “Member States” substitute “States”.

82. Omit Articles 101 and 102.

83. In Article 103 for “authorities of the Member States” substitute “authority of Gibraltar”.

84. Omit Article 104.

85. In Article 105—

- (a) in paragraph 1 for “shall” substitute “may”;
- (b) in paragraph 2—
  - (i) for “two” substitute “Gibraltar and one”;
  - (ii) for “Member States” substitute “States”;
  - (iii) omit the second sentence;
  - (iv) for “in the said Annex” substitute “Annex 5 to the implementing Regulation”.

86. Omit Article 106.

87. In Article 107—

- (a) in paragraph 1(a)—
  - (i) for “Article 22(1)(ii)” substitute “Article 22(1)”;

- (ii) omit “and (d)”;
  - (iii) for “Article 70(1), first subparagraph” substitute “Article 70(1)”;
  - (iv) omit “and (b)(ii), penultimate sentence”;
- (b) omit paragraph 4;
- (c) in paragraph 5 for “shall be” substitute “are those which were”.

**SCHEDULE 6**

**Regulation 2(f)**

**Amendments to Title 6: Miscellaneous Provisions**

88. In Article 108—

- (a) for “he is a seasonal worker, the employed person covered by Article 1(c) of the Regulation” substitute “an employed person covered by Article 1(c) of the Regulation who has gone to work or has worked in Gibraltar is a seasonal worker, that person”;
- (b) for “the Member State in whose territory he has gone to work or has worked” substitute “Gibraltar”;
- (c) for “that Member State” substitute “Gibraltar”;
- (d) for “the country of employment” substitute “Gibraltar”.

89. In Article 109—

- (a) for “The employer who has no place of business in the Member State in whose territory the employed person is employed” substitute “Where the employed person is employed in Gibraltar and the employer has no place of business in Gibraltar, the employer”;
- (b) for “latter” substitute “employed person”;
- (c) for “the said Member State” substitute “Gibraltar”.

90. In Article 110—

- (a) after “to him,” insert “and the place of residence of such a person is Gibraltar.”;
- (b) for “the place of residence of the person” substitute “Gibraltar”;
- (c) for “the Member State in whose territory that person resides” substitute “Gibraltar”.

91. In Article 111—

- (a) for “Member State” in each place it occurs substitute “State”;
- (b) for “The latter institution” in both places it occurs substitute “Where the institution which has deducted the amount is in Gibraltar, it”;
- (c) for “which it administers” in both places it occurs substitute “of Gibraltar”;

- (d) for “The institution responsible for payment” substitute “Where the institution responsible for payment is an institution in Gibraltar, it”.

92. In Article 112—

- (a) after “an institution” insert “in Gibraltar”;
- (b) for “first institution” substitute “institution in Gibraltar”.

93. Omit Article 114.

94. In Article 115—

- (a) for “The institution of” substitute “Where Gibraltar is”;
- (b) for “which” in the first place it occurs substitute “and an institution in Gibraltar”;
- (c) after “examination,” insert “the institution”;
- (d) for “which it administers” substitute “of Gibraltar”.

95. In Article 116, for paragraph 1 substitute—

“1. Where the United Kingdom concludes an agreement pursuant to Article 92(2) of the Regulation, which extends to, or applies in, Gibraltar, Gibraltar may, or if requested, shall enter that agreement in Annex 5 to the implementing Regulation.”

**SCHEDULE 7**

**Regulation 2(g)**

**Amendment of Title 7: Transitional and final provisions**

96. In Article 118—

- (a) in paragraph 1—
  - (i) for “Member State” in each place it occurs substitute “State”;
  - (ii) for “Member States” substitute “States”;
- (b) in paragraph 2—
  - (i) for “a Member State from 1 October 1972” or” substitute “Gibraltar”;
  - (ii) for “the territory of the Member State concerned, or in a part of the territory of that State” substitute “Gibraltar”.

97. In Article 119—

- (a) in paragraph 1—
  - (i) for “Member State” in each place it occurs substitute “State”;
  - (ii) for “Member States” substitute “States”;
- (b) in paragraph 2—
  - (i) for “a Member State” substitute “Gibraltar”;
  - (ii) omit “or from the date of implementation of the implementing Regulation in the territory of the Member State concerned, or in a part of the territory of that State”;
  - (iii) for “other Member States” substitute “Member States”.

98. In Article 119a—

- (a) in paragraph 1 for “Member States” substitute “States”;
- (b) in paragraph 2 for “or institutions of one or more of the other Member States” substitute “in Gibraltar”;
- (c) in paragraphs 3 and 4 for “Member State” substitute “State”;
- (d) in paragraph 5 for “Member States” substitute “States”.

99. In Article 121—

- (a) for “Two” substitute “The United Kingdom and one”;
- (b) for “Member States” in the second place it occurs substitute “States”;
- (c) after “conclude agreements” insert “, which extend to, or apply in, Gibraltar,”.

100. Omit Article 122.

**SCHEDULE 8**

**Regulation 2(h)**

**Amendments to the Annexes**

**PART 1**

Amendments to Annex 5: Implementing provision of bilateral conventions which remain in force

101. Omit Annex 5 with the exception of –

- (a) paragraph 2 under the heading “98. DENMARK-UNITED KINGDOM”;
- (b) paragraph (c) under the heading “120. GERMANY-UNITED KINGDOM”;
- (c) paragraph (c) under the heading “128. LUXEMBOURG-UNITED KINGDOM”;

**PART 2**

Amendments to Annex 6: Procedure for the payment of benefits

102. Under the heading B. BULGARIA omit paragraph 2.

103. Under the heading E. GERMANY omit paragraphs 1(b), 2(b) and 4(a) and (b).

104. Under the heading F. ESTONIA omit paragraph 2.

105. Under the heading K. ITALY omit paragraph 1(b).

106. Under the heading M. LATVIA omit paragraph 2.

107. Under the heading N. LITHUANIA omit paragraph 2.

108. Under the heading R. NETHERLANDS omit paragraph 2.

Dated 25th October, 2019.

G H LICUDI QC,  
Minister with responsibility for social security.



### **EXPLANATORY MEMORANDUM**

These Regulations are made in exercise of the powers conferred by section 11(1) of the European Union (Withdrawal) Act 2019 (the “EU(W)A”) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of Gibraltar from the European Union.

These Regulations make amendments to Council Regulation (EEC) No 574/72 of 21 March 1972 laying down the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community. This is one of the European Union Regulations which makes provision for the coordination of social security. In particular they make amendments to prevent, remedy or mitigate the deficiencies in section 11(2)(a), (b), (c) and (d) and under section 11(3) of the EU(W)A in relation to cash benefits, pensions and the determination of applicable law.