

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4631 of 25 October, 2019

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LEGAL NOTICE NO. 214 OF 2019

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### SOCIAL SECURITY COORDINATION (REGULATION (EC) NO 987/2009) (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 and commencement.**

1. These Regulations may be cited as the Social Security Coordination (Regulation (EC) No 987/2009) (Amendment) (EU Exit) Regulations 2019 and come into force on exit day.

#### **Amendment of Regulation (EC) No 987/2009.**

2. The Schedules to these Regulations amend Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems—

- (a) Schedule 1 amends Title 1 (general provisions);
- (b) Schedule 2 amends Title 2 (determination of the legislation applicable);
- (c) Schedule 3 amends Title 3 (special provisions concerning the various categories of benefits);
- (d) Schedule 4 amends Title 4 (financial provisions);
- (e) Schedule 5 amends Title 5 (miscellaneous, transitional and final provisions);
- (f) Schedule 6 amends the Annexes.

**SCHEDULE 1**

**Regulation 2(a)**

**Amendments to Title 1: General provisions**

**PART 1**

**Amendments to Chapter 1: Definitions**

1. In Article 1—

- (a) in paragraph 2(b) for “Member State” substitute “State”;
- (b) in paragraph 2(d) for “Member States” substitute “States”;
- (c) omit paragraph 2(f).

**PART 2**

**Amendments to Chapter 2: Provisions concerning cooperation and exchanges of data**

2. Before Article 2 insert—

*“Article A2*

**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.”.

3. In Article 2—

- (a) in paragraph 1 for “Member States” substitute “States”;
- (b) in paragraph 2—
  - (i) for “shall without delay” substitute “in Gibraltar may take reasonable steps to”;
  - (ii) after “applies” insert “, including the establishing and determining of those rights and obligations by a Member State applying the basic regulation as it applies in the European Union”;
  - (iii) for “Such” substitute “Any such data”;
  - (iv) for “Member States” substitute “States”.
- (c) in paragraph 3—
  - (i) for “the territory of a Member State other than that in which the institution designated in accordance with the implementing Regulation is situated” substitute “Gibraltar instead of the institution in the Member State designated in accordance with the implementing Regulation”;
  - (ii) for “former institution” substitute “institution in Gibraltar”;
  - (iii) omit from “That date” to the end of paragraph 3;
  - (iv) after paragraph 3 insert—

“3A. Where a person has mistakenly submitted information, documents or claims to an institution in a Member State and the implementing Regulation designated Gibraltar, the date on which they were submitted to the institution in the Member State shall be binding on the institution in Gibraltar to whom they should have been submitted. An institution in Gibraltar shall not, however, be held liable, or deemed to have taken a decision, by virtue of its failure to act as a result of the late transmission of information, documents or claims by Members States’ institutions.”;

(d) in paragraph 4—

- (i) for “the Member State of destination” substitute “Gibraltar”;
- (ii) for “that Member State” substitute “Gibraltar”.

4. In Article 3—

- (a) in paragraph 1 for “Member States” substitute “An institution in Gibraltar”;
- (b) in paragraph 3 for “Member States” substitute “an institution in Gibraltar”;
- (c) in paragraph 4—
  - (i) for “relevant institutions” substitute “relevant institution in Gibraltar”;
  - (ii) for “the Member State in question” substitute “Gibraltar”;
  - (iii) for “another Member State” substitute “a Member State”.

5. Omit Article 4.

6. In Article 5—

- (a) in the heading for “another Member State” substitute “a Member State”;
- (b) in paragraph 1 for “the other Member States” substitute “Gibraltar”;
- (c) in paragraph 2—
  - (i) for “the Member State that receives the document” substitute “Gibraltar”;
  - (ii) for “shall reconsider” substitute “may reconsider”;
- (d) in paragraph 3 for “shall, insofar as this is possible,” substitute “may”;
- (e) omit paragraph 4.

7. Omit Article 6.

8. In Article 7(1)—

- (a) after “competent institution” insert “in Gibraltar”;
- (b) for “another Member State” substitute “a Member State”.

PART 3

Amendments to Chapter 3: Other general provisions for the application of the basic Regulation

9. In Article 8—

- (a) in the heading for “Member States” substitute “States”;
- (b) in paragraph 1—
  - (i) omit from “provisions of the implementing Regulation” to “, except the”;
  - (ii) at the end add “, may continue to have effect”;
- (c) for paragraph 2 substitute—

“2. This Regulation does not apply to any matter within the scope of a convention in force between the United Kingdom and a Member State on or after exit day, which extends to, or applies in, Gibraltar, to the extent that convention makes difference provision.”.

10. In Article 9—

- (a) in paragraph 1 and 3 for “Member States” in each place it occurs substitute “States”;
- (b) in paragraph 2 for “shall be notified to the Administrative Commission and” substitute “are”.

11. In Article 10 for “Member States” in both places it occurs substitute “States”.

12. In Article 11—

- (a) in paragraph 1—
  - (i) for “Where there is” to “agreement” substitute “Where there is a question about whether the place of residence of a person to whom the basic Regulation applies is Gibraltar or a Member State, the institution in Gibraltar shall establish”;
  - (ii) in point (a) after “territory of” insert “Gibraltar or”;
  - (iii) in point (b)(vi) for “Member State” substitute “State”;
- (b) in paragraph 2 for “agreement between the institutions concerned” substitute “a conclusion”.

13. In Article 12—

- (a) in paragraph 1 after “Regulation” insert “where Gibraltar is the competent State”;
- (b) in paragraph 2—
  - (i) for “a Member State” substitute “Gibraltar”;
  - (ii) for “other Member State” substitute “Member State”;
- (c) in paragraphs 3 and 4—
  - (i) for “a Member State” substitute “Gibraltar”;
  - (ii) for “another Member State” substitute “a Member State”;
- (d) in paragraph 5 for “Member States” substitute “States”;
- (e) in paragraphs 5 and 6 for “Member State” in each place it occurs substitute “State”.

14. In Article 13—

- (a) in paragraph 1—
  - (i) for “a Member State” substitute “Gibraltar”;
  - (ii) for “another Member State” substitute “a Member State”;
  - (iii) for “the Member State” substitute “the State”;
- (b) in paragraph 2 for “Member State” substitute “State”.

**SCHEDULE 2**

**Regulation 2(b)**

**Amendments to Title 2: Determination of the legislation applicable**

1. In Article 14—

- (a) for “Member State” in each place it occurs substitute “State”;
- (b) in paragraphs 5, 5a, 6 and 11 for “two” in each place it occurs substitute “Gibraltar and one”;
- (c) in paragraph 7 for “other Member States” substitute “Member States”.

2. In Article 15—

- (a) in the heading after “Article 11(4)” insert “and (4A)”;
- (b) for “Member State” in each place it occurs substitute “State”;
- (c) after “Article 11(3)(b)” insert “or (4A)”;
- (d) for “That institution” in both places it occurs substitute “Where that institution is in Gibraltar, it”.

3. In Article 16—

- (a) in paragraph 1—
  - (i) for “two” substitute “Gibraltar and one”;
  - (ii) for “the Member State of residence thereof” substitute “Gibraltar where it is the person’s state of residence”;
- (b) in paragraph 2—
  - (i) for “The designated institution of the place of residence” substitute “Where the place of residence is Gibraltar, the designated institution”;
  - (ii) omit the second and third sentences;
- (c) omit paragraphs 3 and 4;
- (d) in paragraph 5—
  - (i) for “The competent institution of the Member State whose legislation” substitute “Where the legislation of Gibraltar”;

- (ii) after “definitively” insert “the competent institution”;
- (e) in paragraph 6—
  - (i) for “shall” substitute “may”;
  - (ii) for “designated by the competent authority of the Member State of residence” substitute “of Gibraltar”.
- 4. In Article 17 for “Member State” substitute “State”.
- 5. In Article 18—
  - (a) after “Articles 11 to” insert “13 and”;
  - (b) for “Member State” substitute “State”.
- 6. In Article 19—
  - (a) after “Regulation” in both places it occurs insert “, the competent institution”;
  - (b) in paragraph 1 for “The competent institution of the Member State whose legislation” substitute “Where the legislation of Gibraltar”;
  - (c) in paragraph 2 for “the competent institution of the Member State whose legislation” substitute “where the legislation of Gibraltar”.
- 7. In Article 20—
  - (a) in paragraph 1—
    - (i) for “relevant institutions shall” substitute “relevant institution in Gibraltar shall take reasonable steps to”;
    - (ii) for “Member State” substitute “State”;
    - (iii) after “whose legislation” insert “Gibraltar deems”;
    - (iv) after “contributions which” insert “Gibraltar considers”;
    - (v) for “employer(s) are” substitute “employer may be”;
  - (b) in paragraph 2—
    - (i) for “the Member State whose” substitute “Gibraltar, in the event that its”;
    - (ii) for “shall” substitute “, shall take reasonable steps to”;



- (iii) for “Member State” substitute “State”;
- (iv) after “whose legislation” insert “Gibraltar considers”.

8. In Article 21 for “Member State” in each place it occurs substitute “State”.

**SCHEDULE 3**

**Regulation 2(c)**

**Amendments to Title 3: Special provisions concerning the various categories of benefits**

**PART 1**

Amendments to Chapter 1: Sickness, maternity and equivalent paternity benefits

1. In Article 27—

- (a) in the heading for “Member State” in both places it occurs substitute “State”;
- (b) in paragraph 1—
  - (i) for “If the legislation of the competent Member State” substitute “Where Gibraltar is the competent State and the legislation of Gibraltar”;
  - (ii) for “Article 21(1)” substitute “Article 21”;
- (c) in paragraph 2—
  - (i) after “competent institution” insert “in Gibraltar”;
  - (ii) for “the competent Member State” substitute “Gibraltar”;
- (d) in paragraph 3—
  - (i) for “the competent Member State” substitute “Gibraltar”;
  - (ii) for “The institution shall immediately” substitute “That institution may”;
  - (iii) for the final sentence substitute “If a certificate is drawn up, the insured person shall send it to the competent institution in Gibraltar”;
- (e) in heading B for “the Member State” substitute “Gibraltar where it is the State”;
- (f) in paragraph 5—
  - (i) after “competent institution,” insert “where the place of residence is Gibraltar”;
  - (ii) for “the place of residence” in both places it occurs substitute “Gibraltar”;
  - (iii) for “applied by this latter institution” substitute “of Gibraltar”;
- (g) in heading C after “institution” add “where Gibraltar is the competent State”;
- (h) in paragraph 6 after “competent institution” insert “in Gibraltar”;

- (i) in paragraph 7 for “Without prejudice to the second sentence of Article 21(1) of the basic Regulation, the competent institution” substitute “The competent institution in Gibraltar”;
- (j) in paragraph 8—
  - (i) for “Article 21(1)” substitute “Article 21”;
  - (ii) for “another Member State” substitute “a Member State”;
  - (iii) for “the competent Member State” substitute “Gibraltar”;
- (k) in heading D and in paragraph 10 for “Member State” in each place it occurs substitute “State”.

2. In Article 28—

- (a) in the heading for “Member State” in both places it occurs substitute “State”;
- (b) in paragraph 1—
  - (i) for “In” substitute “Where Gibraltar is the competent State, in”;
  - (ii) for “Article 21(1)” substitute “Article 21”;
  - (iii) after “competent institution” in both places it occurs insert “in Gibraltar”;
- (c) in heading B after “institution of” insert “Gibraltar where Gibraltar is”;
- (d) in paragraph 2—
  - (i) after “competent institution,” insert “where Gibraltar is the place of residence,”;
  - (ii) for “the place of residence” substitute “Gibraltar”;
  - (iii) for “shall” in the second place it occurs substitute “may”;
- (e) in heading C after “competent institution” insert “where Gibraltar is the competent State”;
- (f) in paragraph 3 after “care,” insert “where Gibraltar is the competent State,”;
- (g) in heading D and paragraph 5 for “Member State” in each place it occurs substitute “State”.

3. In Article 30 for “Member State” in each place it occurs substitute “State”.

4. In Article 32 in paragraph 1 for “Member State” substitute “State.”

PART 2

Amendments to Chapter 2: Benefits in respect of accidents at work and occupational diseases

5. In Article 33 in the heading for “Member State” in both places it occurs substitute “State”.

6. In Article 34—

(a) in the heading and paragraph 1 for “Member State” in each place it occurs substitute “State”;

(b) for paragraph 2 substitute—

“2. Where the accident at work occurred, or the occupational disease was first diagnosed, in Gibraltar, the institution in Gibraltar shall notify the competent institution of medical certificates drawn up in the territory of Gibraltar.”;

(c) in paragraph 3—

(i) for “the territory of a Member State other than the competent Member State” substitute “Gibraltar, where it is not the competent State”;

(ii) for “the first Member State” substitute “Gibraltar”;

(iii) for “which shall” substitute “which may”;

(iv) for “that Member State” substitute “Gibraltar”;

(v) after “institutions shall” insert “, as far as possible,”;

(vi) after “relating to the accident” insert “or any documents provided by the claimant”;

(d) in paragraph 4—

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

(ii) at the end add “(but only where that report has been received by the competent institution)”;

(e) in paragraph 5 for “shall” substitute “may”.

7. In Article 36—

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

(b) in paragraph 1—

- (i) for “shall” in the first place it occurs substitute “may”;
- (ii) for “last Member State” substitute “last State”;
- (iii) after “was sent” insert “is an institution in Gibraltar and it”;
- (iv) for “another Member State” substitute “a Member State”;
- (c) in paragraph 2—
  - (i) for “the institution of the last Member” substitute “Gibraltar is the last”;
  - (ii) after “in question” insert “and an institution in Gibraltar”;
  - (iii) for “that Member State” in both places it occurs substitute “Gibraltar”;
  - (iv) for “the first institution” substitute “it”;
  - (v) for “previous Member State” substitute “previous State”;
- (d) in paragraph 3 for “Member State” substitute “State”.

8. In Article 37—

- (a) in paragraph 1 for “one of the Member States under the legislation of which” substitute “Gibraltar, where its legislation is the legislation under which”;
- (b) in paragraph 2—
  - (i) for “applied by the institution to which” substitute “of Gibraltar and”;
  - (ii) after “notification was sent” insert “to an institution in Gibraltar”;
  - (iii) for “latter institution shall” substitute “latter institution may”;
  - (iv) for “That amount” substitute “The reimbursed amount”;
  - (v) for “Articles 72 and 73” substitute “Article 72”;
- (c) after paragraph 2 insert—

“2A. Where advance payments have been made by an institution in a Member State to an institution in Gibraltar and, as a result of an appeal, the institution in Gibraltar is obliged to provide those benefits, it shall reimburse the institution in the Member State.”;
- (d) omit paragraph 3.

9. In Article 38 for “Member State” substitute “State”.

10. In Article 39—

- (a) for “a Member State which” substitute “Gibraltar and the legislation”;
- (b) for “the Member State in question” substitute “Gibraltar”;
- (c) for “another Member State” substitute “a Member State”;
- (d) for “the other Member State” substitute “that Member State”.

11. In Article 40—

- (a) for “Member State” in both places it occurs substitute “State”;
- (b) for “, where appropriate” to the end of the first paragraph substitute “a claim to the competent institution”.

### PART 3

#### Amendments to Chapter 3: Death grants

12. In Article 42—

- (a) omit “either”;
- (b) omit from “or to the institution” to the end of the first paragraph.

### PART 4

#### Amendments to Chapter 4: Invalidity benefits and old-age and survivors’ pensions

13. In Article 43—

- (a) in paragraph 2—
  - (i) for “the institution of the Member State under whose legislation” substitute “and”;
  - (ii) after “completed” insert “under the legislation of Gibraltar, the institution in Gibraltar”;
  - (iii) for “it applies” substitute “of Gibraltar”;
- (b) in paragraph 3—
  - (i) for “each member State” substitute “Gibraltar”;

- (ii) for “it applies” substitute “of Gibraltar”;
- (iii) for “another Member State’s” substitute “a Member State’s”;
- (iv) omit the final sentence.

14. In Article 44—

- (a) in paragraph 1 for “Member State” substitute “State”;
- (b) in paragraph 2—
  - (i) for “, the institution of the Member State” to “the basic Regulation,” substitute “and the legislation of Gibraltar”;
  - (ii) after “child concerned,” insert “the institution in Gibraltar”;
- (c) in paragraph 3 for “another Member State” in substitute “a Member State”.

15. In Article 45—

- (a) in paragraph 1—
  - (i) for “Member State” substitute “State”;
  - (ii) after “place of residence” substitute “if that is Gibraltar”;
- (b) in paragraph 3—
  - (i) after “Regulation,” in the first place it occurs insert “where”;
  - (ii) after “last insured” insert “is in Gibraltar, it”;
  - (iii) after “that date” insert “the institution may withdraw”;
  - (iv) for “shall be withdrawn or reduced to” substitute “or reduce such benefits to the level of”;
- (c) in paragraph 4—
  - (i) for “residence or” substitute “residence and”;
  - (ii) for “Member State” in the first place it occurs substitute “State”;
  - (iii) after “If the” insert “place of residence is Gibraltar and the”;
  - (iv) for “applied by the institution of the place of residence, that institution” substitute “of Gibraltar, the institution in Gibraltar”;

- (d) in paragraph 5 for “all the institutions in the Member State concerned” substitute “the relevant institution in Gibraltar”;
- (e) in paragraph 6—
  - (i) for “Member States” substitute “States”;
  - (ii) for “Member State” substitute “State”.

16. In Article 46—

- (a) for “Member States” in both places it occurs substitute “States”;
- (b) for “institutions concerned” substitute “institution in Gibraltar”;
- (c) for “Member State” substitute “State”.

17. In Article 47—

- (a) in paragraph 1—
  - (i) in the first subparagraph after ““contact institution”” insert “and, where it is in Gibraltar, as ‘Gibraltar’s contact institution’”;
  - (ii) in the second subparagraph for “contact institution” substitute “Gibraltar’s contact institution, take reasonable steps to”;
- (b) in paragraph 2 for “which” in the second place it occurs substitute “and where that is an institution in Gibraltar, it”;
- (c) in paragraph 4 for “the contact institution” in both places it occurs insert “Gibraltar’s contact institution”;
- (d) in paragraph 5—
  - (i) for “Each of the institutions in question” substitute “Where the institution in Gibraltar is contacted by the contact institution in a Member State, it”;
  - (ii) for “their legislation” substitute “the legislation of Gibraltar”;
- (e) in paragraph 6 for “Each of the institutions in question” substitute “Where the institution in Gibraltar is contacted by the contact institution in a Member State, it”;
- (f) in paragraph 7 for “an institution” substitute “the institution in Gibraltar”.

18. In Article 48—

- (a) in paragraph 1—



- (i) for “Each institution” substitute “The institution in Gibraltar”;
  - (ii) for “Each decision” substitute “The decision”;
  - (iii) after the second sentence insert “The contact institution in a Member State may, and the claimant shall, notify the institution in Gibraltar of any decision taken in accordance with the applicable legislation.”;
  - (iv) before “contact institution” insert “Gibraltar’s”;
  - (v) omit the last two sentences;
- (b) in paragraph 2—
- (i) for “two or more institutions” substitute “an institution in Gibraltar and one or more institutions in Member States”;
  - (ii) for “institutions concerned” substitute “institution in Gibraltar”;
  - (iii) for “respective national legislation” substitute “legislation of Gibraltar”;
  - (iv) for “The claimant shall be notified” substitute “Where the institution in Gibraltar reviews a decision, it shall notify the claimant”.

19. In Article 49—

- (a) omit paragraph 1.
- (b) in paragraph 2—
  - (i) for “Where Article 46(3)” to “, each institution” substitute “The institution in Gibraltar”;
  - (ii) for “its legislation” substitute “the legislation of Gibraltar”;
  - (iii) for “a Member State” substitute “Gibraltar”;
  - (iv) for “other Member State” substitute “Member State”;
  - (v) for “its own Member State” substitute “Gibraltar” .

20. In Article 50—

- (a) in paragraph 1—
  - (i) for “any institution which” substitute “where an institution in Gibraltar”;
  - (ii) for “applicable legislation” substitute “the legislation of Gibraltar”;

(iii) after “basic Regulation,” insert “it”;

(b) in paragraph 2 after “an institution” insert “in Gibraltar”.

21. In Article 51 after “the institution” insert “in Gibraltar”.

22. In Article 52—

(a) in paragraph 1—

(i) for “the institutions to whose legislation a person has been subject” substitute “where a person has been subject to the legislation of Gibraltar, the institution in Gibraltar”;

(ii) for “other Member States” in both places it occurs substitute “Member States”;

(b) omit paragraphs 2 and 3.

23. Omit Article 53.

## PART 5

### Amendments to Chapter 5: Unemployment benefits

24. In Article 54—

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

(b) omit paragraphs 2 and 3.

25. In Article 55—

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

(b) in paragraph 1—

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

(ii) for “That institution” substitute “Where the competent institution is in Gibraltar, it”;

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

(c) in paragraph 2—

(i) for “Member State” in the first two places it occurs substitute “State”;

- (ii) after “this document,” insert “and he has gone to Gibraltar,”;
- (iii) for “the Member State to which the unemployed person has gone” substitute “Gibraltar”;
- (d) in paragraph 3 for “The employment services” to “seek employment” substitute “Where the unemployed person has gone to seek employment in Gibraltar, the employment services in Gibraltar”;
- (e) in paragraph 4 in the third subparagraph after “competent institution” insert “of the Member State”;
- (f) in paragraphs 4 and 5—
  - (i) for “The institution” substitute “Where the unemployed person has gone to Gibraltar, the institution”;
  - (ii) for “the Member State to which the unemployed person has gone” in each place it occurs substitute “Gibraltar”;
- (g) in paragraph 6 for “Member States” in both places it occurs substitute “States”.

26. In Article 56—

- (a) in the heading for “Member State” in both places it occurs substitute “State”;
- (b) in paragraph 1—
  - (i) for “Member State” in the first two places it occurs substitute “State”;
  - (ii) for “At” substitute “Where Gibraltar is providing the benefits, the employment services in Gibraltar shall, at”;
  - (iii) omit “the employment services in the Member State that is providing the benefits shall”;
- (c) in paragraph 2—
  - (i) for “Member States” substitute “States”;
  - (ii) for “Member State” in each place it occurs substitute “State”;
- (d) in paragraph 3 for “the institution of the Member State to whose legislation the worker was last subject shall” substitute “where the worker was last subject to the legislation of Gibraltar, the institution in Gibraltar shall take reasonable steps to”.

27. In Article 57—

- (a) in the heading omit “62.”;
- (b) in paragraph 2—
  - (i) for “An” substitute “Where Gibraltar is the competent State, an”;
  - (ii) for “the competent Member State” substitute “Gibraltar”;
  - (iii) for “that Member State” substitute “Gibraltar”;
  - (iv) for “competent institution” substitute “institution in Gibraltar”.

## PART 6

### Amendments to Chapter 6: Family benefits

#### 28. In Article 58—

- (a) for “each Member State concerned” substitute “the competent institution in Gibraltar”;
- (b) for “the competent institution” to the end of the text substitute—

“where the amount of benefit paid by Gibraltar is higher than that paid by the Member State under whose legislation a person has an overlapping right to family benefits, the competent institution in Gibraltar shall pay the full amount of such benefits and shall request reimbursement of half this sum from the competent institution in the Member State under whose legislation a person has an overlapping right to family benefits up to the limit of the amount provided for in the legislation of that Member State.”.

#### 29. In Article 59—

- (a) in paragraph 1—
  - (i) after “Where the” insert “determination of the”;
  - (ii) for “change between Member States” substitute “by the competent institution in Gibraltar changes”;
  - (iii) for “those Member States, the institution” substitute “Gibraltar, the competent institution in Gibraltar”;
- (b) in paragraph 2—
  - (i) for “other Member State or Member States concerned” substitute “Member State or Member States under whose legislation it believes a person may have a right to family benefits”;

- (ii) omit the final sentence.

30. In Article 60—

- (a) in paragraph 1—
  - (i) after “the competent institution” in the first place it occurs insert “in Gibraltar”;
  - (ii) for “the Member State concerned” substitute “Gibraltar”;
  - (iii) for “the Member State whose legislation is applicable” substitute “Gibraltar”;
- (b) in paragraph 2—
  - (i) for “The institution” substitute “The competent institution in Gibraltar”;
  - (ii) for “another Member State” substitute “a Member State”;
  - (iii) for “other Member State” in the first place that it occurs substitute “Member State under whose legislation the competent institution in Gibraltar believes a person may have a right to family benefits”;
  - (iv) for “the other Member State” in the second place that it occurs substitute “that Member State”;
  - (v) after “benefits paid” add “to the applicant by Gibraltar”;
- (c) in paragraph 3—
  - (i) after “Where the institution” insert “in Gibraltar”;
  - (ii) for “its legislation” substitute “the legislation of Gibraltar”;
  - (iii) omit “shall take a provisional decision, without delay, on the priority rules to be applied and”;
  - (iv) for “other Member State” insert “Member State under whose legislation the competent institution in Gibraltar believes a person may have a right to family benefits”;
  - (v) omit from “That institution shall take” to “benefits paid.”;
- (d) omit paragraphs 4 and 5.

31. In Article 61—

- (a) omit the first sentence;

- (b) after “institution competent” insert “in Gibraltar”.

#### **SCHEDULE 4**

#### **Regulation 2(d)**

#### **Amendments to Title 4: Financial provisions**

##### **PART 1**

Amendments to Chapter 2: Reimbursement of unemployment benefits pursuant to Article 65 of the basic Regulation

1. In Article 70—

- (a) in the first paragraph—
- (i) for “shall” in the first place it occurs substitute “may”;
  - (ii) for “Member State” substitute “State”;
  - (iii) for “The request shall be” substitute “There is no requirement to consider a request unless it is”;
  - (iv) for “. The request shall indicate” substitute “ and the request indicates”;
  - (v) for “. The claims shall be” substitute “and the claim is”;
  - (vi) for “Member States” in the first place it occurs substitute “States”;
- (b) omit the second, third and fourth paragraphs;
- (c) in the fourth paragraph—
- (i) for “Member State” in both places it occurs substitute “State”;
  - (ii) omit the final sentence.

##### **PART 2**

Amendments to Chapter 3: Recovery of benefits provided but not due, recovery of provisional payments and contributions, offsetting and assistance with recovery

2. In Article 71 for “Member States” substitute “the States”.

3. In Article 72—

- (a) in paragraph 1—

- (i) for “Member State” in the first two places it occurs substitute “State”;
  - (ii) for “The institution of the latter Member State” substitute “Where an institution in Gibraltar is responsible for paying benefit to the person concerned, it”;
  - (iii) for “it applies” substitute “of Gibraltar”;
- (b) in paragraph 2—
- (i) for “Member State” in both places it occurs substitute “State”;
  - (ii) for “After the latter institution” substitute “Where an institution in Gibraltar is responsible for the payment of corresponding benefits to the person concerned, after it”;
  - (iii) for “shall” in the first place it occurs substitute “may”;
  - (iv) for “which is due to pay arrears” substitute “in Gibraltar”;
  - (v) omit the final sentence;
- (c) in paragraph 3—
- (i) for “Member State” in each place it occurs substitute “State”;
  - (ii) in the final subparagraph for “shall” in the first place it occurs substitute “may”;
  - (iii) in the final subparagraph after “which” in the second place it occurs insert “, if it is an institution in Gibraltar,”;
  - (iv) in the final subparagraph for “it applies” substitute “of Gibraltar”.
4. Omit Article 73.
5. In Article 74 for “Articles 72 and 73” substitute “Article 72”.
6. In Article 75—
- (a) in paragraph 1 for “Member State” in both places it occurs substitute “State”;
  - (b) in paragraph 2 for “Member States” substitute “States”;
  - (c) omit paragraph 3.
7. In Article 76—
- (a) in paragraph 1—

- (i) after “requested party” in both places it occurs insert “in Gibraltar”;
- (ii) for “its own Member State” substitute “Gibraltar”;
- (b) in paragraph 2 for “request for information shall indicate” substitute “requested party in Gibraltar is not obliged to supply information unless the request for information indicates”;
- (c) in paragraph 3 for “Member State” in both places it occurs substitute “State”;
- (d) in paragraph 4 after “requested party” insert “in Gibraltar”.

8. In Article 77—

- (a) in paragraph 1—
  - (i) after “requested party” insert “in Gibraltar”;
  - (ii) for “its own Member State” substitute “Gibraltar”;
- (b) in paragraph 2 for “request for notification shall indicate” substitute “requested party in Gibraltar is not obliged to provide notification unless the request for notification indicates”;
- (c) in paragraph 3 after “requested party” insert “in Gibraltar”.

9. In Article 78—

- (a) in paragraph 1—
  - (i) after “applicant party” in the first place it occurs insert “in Gibraltar”;
  - (ii) for “the Member State of the applicant party” substitute “Gibraltar”.
- (b) in paragraph 2—
  - (i) for “Member State” in both places it occurs substitute “State”;
  - (ii) after point (c) add—

“(d)the request includes the following information:

- (i) the name, address and any other relevant information relating to the identification of the natural or legal person concerned or to the third party holding his or her assets, or to both;
- (ii) the name, address and any other relevant information relating to the identification of the applicant party;



- (iii) a reference to the instrument permitting its enforcement, issued in the State of the applicant party;
  - (iv) the nature and amount of the claim, including the principal, the interest, fines, administrative penalties and all other charges and costs due indicated in the currencies of the States of the applicant and requested parties;
  - (v) the date of notification of the instrument to the addressee by the applicant party and/or by the requested party;
  - (vi) the date from which and the period during which enforcement is possible under the laws in force in the State of the applicant party;
  - (vii) any other relevant information;
- (e) the request contains a declaration by the applicant party confirming that the conditions laid down in points (a) to (c) have been fulfilled.”;
- (c) omit paragraphs 3 and 4;
- (d) in paragraph 5 after “applicant party” insert “in Gibraltar”.

10. In Article 79—

- (a) in paragraph 1 for “the Member State” substitute “Gibraltar where it is the State”;
- (b) in paragraph 2—
  - (i) for “the Member State” substitute “Gibraltar where it is the State”;
  - (ii) for “that Member State” substitute “Gibraltar”;
  - (iii) for “Member States” in the first place it occurs substitute “Gibraltar”;
  - (iv) for “Member States” in the second place it occurs substitute “Gibraltar”;
  - (v) after “requested party” in the second place it occurs insert “in Gibraltar”.

11. In Article 80—

- (a) in paragraph 1 for the first sentence substitute “Where the requested party is in Gibraltar, claims shall be recovered in pounds sterling.”;
- (b) in paragraph 2 in the first subparagraph—
  - (i) after “requested party” in both places it occurs insert “in Gibraltar”;

- (ii) for “its own Member State” substitute “Gibraltar”;
- (c) in paragraph 2 in the second subparagraph—
  - (i) for “interest shall be charged,” substitute “the requested party in Gibraltar may charge interest”;
  - (ii) for “the Member State of the requested party and” substitute “Gibraltar and that interest”.

12. In Article 81—

- (a) in paragraph 1—
  - (i) after “recovery procedure” insert “where the institution in Gibraltar is the applicant party”;
  - (ii) for “the Member State of the applicant party” in both places it occurs substitute “Gibraltar”;
  - (iii) for “that Member State” substitute “Gibraltar”;
  - (iv) after “applicant party” insert “in Gibraltar”;
- (b) in paragraph 2 in the first subparagraph—
  - (i) for “As soon as the requested party” substitute “Where the requested party is in Gibraltar, as soon as it”;
  - (ii) after “requested party” in the second place it occurs insert “in Gibraltar”;
  - (iii) for “its own Member State” substitute “Gibraltar”;
- (c) in paragraph 2 in the second subparagraph—
  - (i) for “Member State” substitute “State”;
  - (ii) for “applicant party shall be liable for the” substitute “requested party in Gibraltar may seek”;
- (d) in paragraph 3—
  - (i) for “the Member State of the requested party” substitute “Gibraltar”;
  - (ii) for “that Member State” substitute “Gibraltar”;
- (e) in paragraph 4 for “the Member State of the applicant party” substitute “Gibraltar”.

13. In Article 82—

(a) in paragraph 1—

- (i) after “requested party” in the first place it occurs insert “in Gibraltar”;
- (ii) for “the Member State of the requested party” in both places it occurs substitute “Gibraltar”;

(b) in paragraph 2 after “requested party” insert “in Gibraltar”.

14. In Article 83 for “Member State” in each place it occurs substitute “State”.

15. In Article 84—

(a) after “requested party” in the first place it occurs insert “in Gibraltar”;

(b) for “the Member State of the requested party” substitute “Gibraltar”.

16. In Article 85—

(a) in paragraph 1—

- (i) for “shall” substitute “in Gibraltar may”;
- (ii) for “the Member State of the requested party” substitute “Gibraltar”;

(b) in paragraph 3—

- (i) for “The Member State of the applicant party” substitute “Where the institution in Gibraltar is the applicant party, Gibraltar”;
- (ii) after “applicant party” in the second place it occurs insert “in Gibraltar”.

17. Omit Article 86.

**SCHEDULE 5**

**Regulation 2(e)**

**Amendments to Title 5: Miscellaneous, transitional and final provisions**

1. In Article 87—

(a) for paragraph 1 substitute—

“1. Without prejudice to the other provisions, where a recipient or a claimant of benefits, or a member of his family, is staying or residing in Gibraltar, where that is not the place in which the debtor institution is located, the medical examination shall be carried out, at the request of the debtor institution, by the institution in Gibraltar in accordance with the procedures laid down by the legislation of Gibraltar.

The debtor institution may inform the institution in Gibraltar of any special requirements to be followed and points to be covered by the medical examination.”;

(b) in paragraph 2—

(i) for “the place of stay or residence” substitute “Gibraltar”;

(ii) omit the final sentence of the first subparagraph;

(c) in paragraph 3—

(i) for “the territory of a Member State other than that” substitute “Gibraltar where that is not the State”;

(ii) for “the beneficiary’s place of stay or residence” substitute “Gibraltar”;

(d) omit paragraph 4;

(e) in paragraph 5—

(i) for “Member States” substitute “States”;

(ii) for “Member State” substitute “State”;

(f) omit paragraph 6.

2. Omit Articles 88 and 89.

3. In Article 90 omit the final sentence.

4. Omit Articles 91 and 92.

5. In Article 94—

- (a) for “Member State” in each place it occurs substitute “State”;
- (b) for “Member States” in each place it occurs substitute “States”.

6. Omit Article 95.

7. After Article 97 omit “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

**SCHEDULE 6**

**Regulation 2(f)**

**Amendments to the Annexes**

1. Omit Annexes 1, 2, 4 and 5.

Dated 25th October, 2019.

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

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**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 (in particular under section 11(2) and section 11(3)) arising from the withdrawal of Gibraltar from the European Union.

These Regulations make amendments to Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems. This is one of the EU 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.