

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4800 GIBRALTAR Thursday 24th December 2020

LEGAL NOTICE NO. 539 OF 2020.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

EMPLOYMENT RIGHTS (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

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

Title.

1. These Regulations may be cited as the Employment Rights (Amendment etc.) (EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation on 1 January 2021.

Amendment of the Employment Act.

3.(1) The Employment Act is amended in accordance with this regulation.

(2) In section 2, after the definition of “general minimum standards of employment” insert-

““Health and Safety Representative” means an employee or employees designated by the employer to carry out activities related to the protection and prevention of occupational risks for the employer, or an external service or person appointed for that purpose for the employer, appointed under section 31A(3);”.

(3) In section 20 delete “Provided that no provision shall be made in regulations under this section which is contrary to the requirements of Regulation 1612/68 of the European Community”.

(4) In section 31A(3) for “a competent person within the meaning of Article 7 of Directive 89/391/EEC and provided that the protection afforded by that Directive is guaranteed” substitute “a Health and Safety Representative provided that the protection afforded by Directive 89/391 as it had effect immediately before 1 January 2021 is guaranteed”.

(5) In section 78B(3), after “Treaty on the Functioning of the European Union” insert “or Gibraltar”.

(6) In section 86(1)(g) delete “and the law of the European Economic Community”.

Amendment of the Fixed-term and Part-time Employees (Prevention of Less Favourable Treatment) Regulations 2003.

4. For regulation 12(1) of the Fixed-term and Part-time Employees (Prevention of Less Favourable Treatment) Regulations 2003 substitute-

“(1) These Regulations shall not have effect in relation to an employee who is employed on a scheme, designed to provide him with training or work experience for the purpose of assisting him to seek or obtain work, which is provided to him under arrangements made by the Government.”.

Amendment of the Employment Tribunal (Constitution and Procedure) Rules 2016.

5.(1) The Employment Tribunal (Constitution and Procedure) Rules 2016 are amended in accordance with this regulation.

(2) Delete rules 32 and 79.

Amendment of the Employment (Information and Consultation of Employees) Regulations 2005.

6.(1) The Employment (Information and Consultation of Employees) Regulations 2005 are amended in accordance with this regulation.

(2) In regulation 2 delete the definition of “Information and Consultation Directive”.

Amendment of the Agency Workers Regulations 2012.

7. Delete regulation 31(4) of the Agency Workers Regulations 2012.

Amendment and saving of the Gibraltar Development Corporation (Employer’s Insolvency) Regulations, 1991.

8.(1) The Gibraltar Development Corporation (Employer’s Insolvency) Regulations, 1991 are amended by deleting regulations 18, 19 and 20, subject to subregulation (2).

(2) Regulations 18, 19 and 20 shall continue to apply to any claims received by the Administrator pursuant to regulation 20 before the 1 January 2021.

Amendment of the Working Time Act 1999.

9. In section 13 of the Working Time Act 1999-

(a) in subsection (1) for “the European Agreement on the organisation of working time of seafarers dated 30 September 1998 and put into effect by Council Directive 1999/63/EC of 21 June 1999” substitute “the Gibraltar Merchant

Shipping (Seafarers' Hours of Work and Medical Examination) Regulations 2003"; and

(b) for subsection 2(b) substitute

“(b) to workers to whom Part IIA (Working time in civil aviation) applies”.

Amendment of the Employment (European Works Council) Regulations 2012.

10.(1) The Employment (European Works Council) Regulations 2012 are amended in accordance with the provisions in this regulation.

(2) Throughout the Regulations in each place they occur-

- (a) for “an EEA State” substitute “a Relevant State”;
- (b) for “EEA States” substitute “Relevant States”;
- (c) for “EEA State” substitute “Relevant State”.

(3) In regulation 4-

- (a) delete the definition of “EEA State”;
- (b) for the definition of European Works Council substitute-

““European Works Council” means the council, established-

- (a) before 1 January 2021 under and in accordance with regulation 11, or regulation 12 and the provisions of the Schedule; or
- (b) where appropriate, under and in accordance with the provisions of the law or practice of a Relevant State other than Gibraltar which are designed to give effect to Directive 2009/38/EC,

with the purpose of informing and consulting employees.”.

- (c) in the definition of “Special Negotiating Body” after “established” insert “before 1 January 2021”.
- (d) after the definition of “Special Negotiating Body” insert-

““Relevant State” means a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993 and Gibraltar.”.

- (e) in subregulation (7)-

- (i) for “referred to” substitute “described”;
 - (ii) at the end insert “(whether or not the Regulation applies to that company)”.
- (4) In regulation 6-
- (a) in subregulation (1) for the words before paragraph (a) substitute “This regulation applies where-”;
 - (b) delete paragraph (a);
 - (c) in paragraph (c)(ii) delete “and the central management initiates, or is required to initiate, negotiations for a European Works Council or information and consultation procedure”;
 - (d) in subregulation (2) for “the circumstances described in subregulation (1)(b) or (c) apply” substitute “this regulation applies”.
- (5) Delete regulations 7 to 11.
- (6) For regulation 12 substitute –
- “The provisions of the Schedule continue to apply on or after 1 January 2021 in any case where they applied before that day, as if regulations 7 to 11 had not been deleted.”
- (7) In regulation 16-
- (a) in subregulation (2A) after “established” insert “before 1 January 2021”;
 - (b) in subregulation (3) delete “the Special Negotiating Body”.
- (8) Delete regulation 17(1)(a).
- (9) Delete regulations 25 and 26.

Employment (European Works Council) Regulations 2012 - transitional and savings provisions.

- 11.(1) In this regulation-
- (a) “the 2012 Regulations” means the Employment (European Works Council) Regulations 2012;
 - (b) “the modifications” means the following modifications to the 2012 Regulations –

- (i) any reference to a “Member State” or “Member States” is to be read as a reference to a “Relevant State” or “Relevant States” (as the case may be);
- (ii) regulation 4 is to be read as if-
 - (aa) the definition of “EEA State” were deleted; and
 - (bb) the following were inserted at the appropriate place-

“Relevant State” means-

 - (a) a state which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993; and
 - (b) Gibraltar;”
- (iii) regulation 4(7) is to be read as if –
 - (aa) for the words “referred to” there were substituted “described”;
 - (bb) at the end there were inserted the words “(whether or not the Regulation applies to that company)”;
- (c) terms used which are defined in the 2012 Regulations have the same meanings in this Part as in those Regulations, as they had effect before 1 January 2021 or as they have effect on and after 1 January 2021, as the context requires.

(2) Despite the amendments and revocations made by regulation 10, the 2012 Regulations continue, on and after 1 January 2021, to have effect in relation to ongoing negotiations as they had effect immediately before that day, but subject to the modifications.

(3) The reference in subregulation (2) to ongoing negotiations is a reference to any case in which the negotiation process for the establishment of a European Works Council or an information and consultation procedure was commenced, but not concluded, before 1 January 2021.

(4) For the purposes of subregulation (3)-

- (a) the negotiation process for the establishment of a European Works Council is commenced on the date on which either-
 - (i) a valid request is made by employees or employees’ representatives under regulation 7(2)(b) of the 2012 Regulations; or
 - (ii) the central management initiates negotiations in accordance with regulation 7(2)(a) of the 2012 Regulations; and

- (b) the negotiation process is concluded on the date on which -
 - (i) the Special Negotiating Body makes a decision under regulation 9(1) of the 2012 Regulations not to open negotiations with central management or to terminate negotiations; or
 - (ii) the central management and the Special Negotiating Body reach a written agreement on the detailed arrangements for the information and consultation of employees in accordance with regulation 11(1) of the 2012 Regulations; or
 - (iii) the provisions of the Schedule to the 2012 Regulations first apply by virtue of regulation 12 of those Regulations.

(5) The 2012 Regulations as amended by regulation 10 apply in relation to-

- (a) a European Works Council or an information and consultation procedure established pursuant to this regulation on or after 1 January 2021 as if it had been established before 1 January 2021;
- (b) an agreement on the establishment of a European Works Council or an information and consultation procedure reached pursuant to this regulation on or after 1 January 2021 as if the agreement had been reached before 1 January 2021;
- (c) a case where the negotiation process is concluded as mentioned in subregulation 4(b)(iii) on or after 1 January 2021 as if the case is within regulation 12 of those Regulations.

(6) Despite the amendments and revocations made by regulation 10, the 2012 Regulations continue, on and after 1 January 2021, to have effect, in relation to any complaint or application presented under those Regulations before 1 January 2021 to the Employment Tribunal, as they had effect immediately before that day but subject to the modifications.

Dated: 24th December 2020.

P.BALBAN,
Minister with responsibility for Employment.

EXPLANATORY MEMORANDUM
(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 11 and paragraph 1 of Schedule 3 of the European Union (Withdrawal) Act 2019 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom and Gibraltar from the European Union.

These Regulations amend domestic legislation to ensure legal clarity and certainty, and to remove references which will no longer be appropriate.

Regulation 3 amends the Employment Act.

Regulation 4 amends the Fixed-term and Part-time Employees (Prevention of Less Favourable) Treatment Regulations 2003.

Regulation 5 amends the Employment Tribunal (Constitution and Procedure) Rules 2016.

Regulation 6 amends the Employment (Information and Consultation of Employees) Regulations 2005.

Regulation 7 amends the Agency Workers Regulations 2012.

Regulation 8 amends the Gibraltar Development Corporation (Employer's Insolvency) Regulations 1991 and makes saving provisions in relation to claims notified to the administrator before 1 January 2021.

Regulation 9 amends the Working Time Act, 1999.

Regulation 10 amends the Employment (European Works Council) Regulations 2012.

Regulation 11 contains saving and transitional provisions relating to the Employment (European Works Council) Regulations 2012.