

**GIBRALTAR MERCHANT SHIPPING (COUNTING AND
REGISTRATION OF PERSONS ON BOARD PASSENGER SHIPS)
REGULATIONS 2004**

**Subsidiary
2004/052**

Regulations made under s. 118.

**GIBRALTAR MERCHANT SHIPPING (COUNTING AND
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SHIPS) REGULATIONS 2004**

(LN. 2004/052)

9.9.2004

(LN. 2004/083)

Amending enactments	Relevant current provisions	Commencement date
None		

EU Legislation/International Agreements involved:

Directive 98/41/EC

Directive 2002/84/EC

ARRANGEMENT OF REGULATIONS

Regulations

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In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 and all other enabling powers, the Government, for the purposes of transposing into the law of Gibraltar Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community as amended by Article 8 of Directive 2002/84/EC of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships, has made the following Regulations:

Title and commencement.

1.(1) These Regulations may be cited as the Gibraltar Merchant Shipping (Counting and Registration of persons on board passenger ships) Regulations 2004.

(2) These Regulations shall come into operation on a date to be appointed by the Minister with responsibility for shipping by notice in the Gazette.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“Administration” means the Maritime Administrator in the case of Gibraltar, and in other cases the person in the relevant flag State holding equivalent responsibilities;

“appropriate search and rescue services” means, in relation to a ship involved in an emergency, the search and rescue services for the area in which the ship is located;

“Community ship” means a ship which is registered in, or which is entitled to fly the flag of, a Member State;

“Directive” means Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the member States of the Community as amended by Directive 2002/84/EC of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships;

“domestic voyage” means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;

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“Gibraltar passenger ship” means a passenger ship which is registered in Gibraltar;

“Gibraltar ship” means a ship which is registered in Gibraltar in accordance with the Gibraltar Merchant Shipping (Registration) Act, 1993;

“Gibraltar waters” means the area of waters contained within British territorial waters in Gibraltar;

“international voyage” means a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by Resolution A.741 (18) in its up-to-date version as in force at the time of reference;

“landing point” means any berth, excursion point, floating pier or stage, link span, pier, port, stop or anchorage point from or to where passengers are embarked or disembarked;

“long international voyage” means a voyage by sea from a port in a country to which the SOLAS Convention applies to a port in another country or conversely and which is not a short international voyage;

“Member State” means any State within the European Union, and a reference to a Member State shall be deemed to include a reference to Gibraltar;

“mile” means a nautical mile consisting of 1852 metres;

“owner” means the owner of the ship and includes any person responsible for the safe operation of the ship;

“passenger registrar” means the person appointed by the owner of a ship pursuant to regulation 7(1)(b) below;

“passenger ship” means any sea-going ship or sea-going high speed craft carrying more than 12 passengers;

“person” means any person on board a ship irrespective of age;

“protected sea area” means a sea area sheltered from open sea effects where a ship is at no time more than six miles from a place of

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refuge where shipwrecked persons can land and in which the proximity of search and rescue facilities is ensured;

“regular community service” means a regular service in a sea area where the annual probability of the significant wave height exceeding two metres is less than 10% and—

- (a) the voyage does not exceed thirty miles or thereabouts from the point of departure; or
- (b) the primary purpose of the service is to provide regular links to outlying communities for customary purposes;

“regular service” means a series of ship crossings operated so as to serve traffic between the same two or more ports either—

- (a) according to a published timetable; or
- (b) with crossings so regular or frequent that they constitute a recognisable systematic series;

“search and rescue services” means the search and rescue services responsible for the initiation and co-ordination of all maritime search and rescue activity required to provide assistance in the event of an emergency involving a ship or its aftermath;

“ship” includes hovercraft;

“short international voyage” means an international voyage—

- (a) in the course of which a ship is not more than two hundred nautical miles from a port or place in which the passengers and crew could be placed in safety; and
- (b) which does not exceed six hundred nautical miles in distance between the last port of call in the country in which the voyage begins and the first port of destination;

“SOLAS Convention” means the International Convention for the Safety of Life at Sea, 1974 as amended by the Protocol of 1988, in its up-to-date version as in force at the time of reference;

“voyage” includes an excursion.

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(2) Where a ship is managed or operated by a person other than the owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that other person.

(3) Any approval or exemption given pursuant to these Regulations shall be given in writing and shall specify the date on which it takes effect and the conditions, if any, on which it is given.

Application of these Regulations.

3.(1) These Regulations shall apply to—

- (a) a Gibraltar passenger ship which departs from a port located in a Member State or which is bound from a port in a third country to a port located in a Member State; and
- (b) any passenger ship while it is within Gibraltar waters.

(2) These Regulations shall not apply to—

- (a) a ship of war;
- (b) a troop ship; or
- (c) a pleasure yacht unless it is or will be crewed and carry more than 12 passengers for commercial purposes.

Passenger counting.

4.(1) The owner of every passenger ship to which these Regulations apply shall ensure that there is a system in use capable of counting all persons on board when it leaves any landing point which—

- (a) in the case of a passenger ship engaged on a voyage of more than 20 miles from the port of departure—
 - (i) departs from a port located in a Member State, or
 - (ii) in the case of a Gibraltar passenger ship, departs from a port located outside the territory of the European Community and is bound for a port located within the European Community,uses a system of individual passenger boarding cards in respect of passengers;

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- (b) conforms to the requirements of subregulations (2) to (4); and
- (c) is approved by the Administration in Gibraltar.

(2) The system of counting all persons on board as established pursuant to subregulation (1) above shall be such that—

- (a) all persons boarding such a ship at a landing point at the beginning of a voyage are counted individually on, or just prior to, boarding and, as the case may be—
 - (i) all persons disembarking at subsequent landing points, during the course of a voyage, are counted individually as they disembark;
 - (ii) all persons boarding at subsequent landing points, during the course of a voyage, are counted individually on, or just prior to, boarding; and
 - (iii) the number of persons remaining on board at each landing point is determined; or
- (b) the number of persons is determined and recorded according to an alternative method approved by the Administration, which shall be of equivalent effectiveness to the system set out in paragraph (a).

(3) If the counting system established in respect of a passenger ship pursuant to subregulation (1) includes a system of individual passenger boarding cards no passenger shall be permitted to board the ship unless he has been issued with an individual boarding card.

(4) Immediately before a passenger ship leaves any landing point the total number of persons on board at that time as determined by means of the counting system shall be communicated to the master of the ship and the passenger registrar or shore-based passenger registrar and in the case of a passenger ship leaving Gibraltar the Captain of the Port.

(5) No passenger ship shall leave any landing point if—

- (a) the requirements of subregulation (4) have not been complied with; or
- (b) the total number of persons on board the ship exceeds the number of persons the ship is permitted to carry.

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(6) The arrangements made in pursuance of the requirements in subregulation (1) shall be described in written instructions which shall be kept on board the ship at all times in the custody of the master.

Additional requirements for voyages of more than 20 miles.

5.(1) The owner of a passenger ship to which these Regulations apply and which is engaged on voyages of more than 20 miles from the landing point shall ensure that the information specified in subregulation (2) is collected, and communicated, not later than 30 minutes after departure, to the passenger registrar or shore-based passenger registrar.

(2) The information referred to in subregulation (1) is, in relation to each person on board the ship—

- (a) family name;
- (b) forenames or initials;
- (c) sex;
- (d) subject to subregulation (3), an indication of the category of age (such category being either adult, child or infant) to which the person belongs or the age or the year of birth of the person; and
- (e) if volunteered by a person, any information concerning the need for special care or assistance in emergency situations.

(3) If the information in relation to a person indicates the category of age to which the person belongs but does not indicate that person's age or year of birth—

- (a) the information must be accompanied by an indication of the age range used to define each category; and
- (b) the age range used must be the age range used by the system for the registration of the information established in accordance with regulation 7(1).

Non-Community ships on voyages from outside the European Community to Gibraltar.

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6. In respect of any passenger ship which is not a Community ship on any voyage from any landing point outside the territory of the European Community to Gibraltar the owner shall make—

- (a) information as to the total number of persons on board the ship; and
- (b) the information specified in regulation 5(2),

readily available to the appropriate search and rescue services for the purposes of search and rescue in the event of an emergency or in the aftermath of an accident involving the ship.

Registration system.

7.(1) The owner of a passenger ship to which regulation 4 or 5 applies shall—

- (a) establish a system for the registration of the information collected pursuant to these Regulations which—
 - (i) meets the functional criteria set out in the Schedule; and
 - (ii) is approved by the Administration in Gibraltar;
- (b) appoint a passenger registrar or a shore-based passenger registrar who shall be responsible for keeping the information collected pursuant to these Regulations and for its transmission to appropriate search and rescue services in the event of an emergency or in the aftermath of an accident involving the ship; and
- (c) ensure that the information required by and collected pursuant to these Regulations is at all times readily available for transmission to the appropriate search and rescue services for use in an emergency or in the aftermath of an accident involving the ship;
- (d) ensure that information concerning persons who have declared a need for special care or assistance in emergency situations is properly recorded and communicated to the master before the passenger ship departs.

(2) Any personal data which is collected solely pursuant to these Regulations by an owner shall be kept only for as long as is necessary for the purposes of these Regulations.

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(3) The Administration may appoint persons to carry out random checks on the proper functioning of registration systems approved under this regulation.

(4) In performing the checks referred to in subregulation (3), the persons appointed shall—

- (a) be entitled to board any ship to which the registration system relates and enter any premises of a passenger registrar or a shore-based passenger registrar; and
- (b) have access to any records and documents, including electronic and computer records, which comprise the owner's registration system.

Exemptions.

8.(1) Subject to the provisions of these Regulations, the Administration may exempt any passenger ship—

- (a) leaving any landing point within Gibraltar from the requirements of regulation 4(4) in so far as they apply as respects a passenger registrar or a shore-based passenger registrar if the ship is engaged, exclusively in a protected sea area, on a regular service of less than one hour between calls at landing points; or
- (b) from the requirements of regulation 5(1) if—
 - (i) in respect of any Gibraltar passenger ship leaving any landing point outside the territory of the European Community on an international voyage, the scheduled voyages of the ship make it impracticable for such records to be prepared; and
 - (ii) in respect of any passenger ship where the ship—
 - (aa) sails exclusively in protected sea areas between two landing points one of which is Gibraltar or from and to the same landing point in Gibraltar without calling at any intermediate landing point; or
 - (bb) is engaged on a regular community service.

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(2) Where an exemption is granted pursuant to subregulation (1), the Administration shall cause the Commission to be informed of it, giving substantive reasons for, granting such exemption.

(3) Subregulation (1) shall not apply to any passenger ship sailing from Gibraltar and flying the flag of a third country that is a contracting party to the SOLAS Convention which under the relevant SOLAS provisions does not agree to the application of any exemptions referred to in that subregulation.

(4) The Maritime Administrator may lower the twenty-mile threshold referred to in regulation 5(1) for a passenger ship which departs from a landing point in Gibraltar.

(5) Where the Administration considers it impracticable for companies to record the information specified in regulation 5(2), it may request the Commission to derogate, wholly or partly, from the requirement of that regulation for regular services in an area—

- (a) where the annual probability of the significant wave height's exceeding two metres is less than 10%; and
- (b) the voyage does not exceed about thirty miles from the point of departure; or
- (c) where the primary purpose of the service is to provide regular links to outlying communities for customary purposes.

False statements.

9. A person shall not, in connection with a system for counting the persons on board a passenger ship or collecting the information specified in regulation 5(2)—

- (a) knowingly or recklessly make any false statement liable or intended to lead to error in the determination of the total number of persons on board or in the collection of the information specified in regulation 5(2); or
- (b) falsify the information collected or transmitted to the passenger registrar.

Offences.

10.(1) If there is any breach of any of the requirements specified by these Regulations in respect of a passenger ship the owner and the master both

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shall be guilty of an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

(2) Any person who contravenes regulation 9 shall be guilty of an offence punishable, on summary conviction, to a fine not exceeding level 5 on the standard scale or, on conviction on indictment, by imprisonment for a term not exceeding two years or a fine, or both.

Defences.

11.(1) It shall be a defence for the person charged under these Regulations to prove that he took all reasonable steps to avoid the commission of the offence.

(2) Without prejudice to subregulation (1), it shall be a defence for a person providing information to the owner of a ship in respect of other persons not being members of his family, being information required by the owner pursuant to these Regulations, if that person has been charged under regulation 9, to prove that the information was collected by him in good faith.

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SCHEDULE

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Regulation 7(1)(a)(i)

**FUNCTIONAL CRITERIA FOR A SYSTEM FOR THE
REGISTRATION OF INFORMATION**

1. For the purposes of the registration systems must meet the following functional criteria—

- (a) **readability:**
the required data must be in a format that is easy to read,
- (b) **availability:**
the required data must be easily available to the designated authorities for which the information contained in the system is relevant,
- (c) **facilitation:**
the system must be designed in such a way that no undue delay is caused for passengers embarking and/or disembarking the vessel;
- (d) **security:**
the data must be appropriately protected against accidental or unlawful destruction or loss and unauthorised alteration, disclosure or access.

2. A multiplicity of systems on the same or similar routes is to be avoided.