

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,746 of 1st December, 2009

B. 39/09

BILL

FOR

AN ACT to amend the Motor Fuel (Composition and Content) Act 2001 in order to transpose into the law of Gibraltar Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005 amending Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of certain liquid fuels.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Motor Fuel (Composition and Content) (Amendment) Act 2009 and shall be deemed to have come into operation on 1 December 2009.

Amendment of Principal Act.

2. The Motor Fuel (Composition and Content) Act 2001 (“the Principal Act”) is amended in accordance with the provisions of this Act.

Amendment of Section 2.

3. In section 2 of the Principal Act—

- (a) in subsection (1), immediately before the definition “Licensing Authority” insert—

““Directive” means Council Directive 1999/32/EC of 26 April 1999 relating to a reduction in the sulphur content of

Motor Fuel (Composition and Content) (Amendment) Act 2009

[B. 39/09]

certain liquid fuels and amending Directive 93/12/EEC, as amended by Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005;”;

(b) for subsections (3) and (4) substitute—

“(3) In Parts III and IIIA and unless the context otherwise requires—

“Annex VI of MARPOL” means the annex to MARPOL entitled ‘Regulations for the Prevention of Air Pollution from Ships’, as amended from time to time;

“ASTM method” means the methods laid down by the American Society for Testing and Materials in the 1976 edition of standard definitions and specifications for petroleum and lubricating products;

“combustion plant” means any technical apparatus in which fuels are oxidized in order to use the heat generated;

“Compliance Notice” means a notice issued under section 12O(1);

“emission abatement technology” means an exhaust gas cleaning system or any other technological method that is verifiable and enforceable;

“enforcement authority” means the body designated under section 12N(1) to enforce the provisions of Part IIIA;

“gas oil” means any petroleum-derived liquid fuel that meets the following criteria—

(a) it falls within CN code 2710 19 25, 2710 19 29, 2710 19 45 or 2710 19 49; or

(b) less than 65 per cent by volume (including losses) distils at 250°C and at least 85 per cent by volume (including losses) distils at 350°C by the ASTM D86 method,

but excluding marine fuel, diesel fuels (as defined in Article 2(2) of Council Directive 98/70/EC relating to the quality of petrol and diesel fuels) and fuels used in non-road mobile machinery and agricultural tractors;

“heavy fuel oil” means any petroleum-derived liquid fuel, other than marine fuel and gas oil, that meets the following criteria—

(a) it falls within CN code 2710 19 51 to 2710 19 69;

(b) by reason of its distillation limits it falls within the category of heavy oils intended for use as fuel and less than 65 per cent by volume (including losses) distils at 250°C by the ASTM D86 method; or

(c) where the distillation cannot be determined by the ASTM D86 method, it is categorised as heavy fuel oil;

“IMO” means the International Maritime Organisation;

“marine diesel oil” means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMB and DMC grades in Table 1 of ISO 8217;

“marine fuel” means any petroleum-derived liquid fuel intended for use or in use on board a vessel, including those fuels defined in ISO 8217⁽¹⁾;

“marine gas oil” means any marine fuel which has a viscosity or density falling within the ranges of viscosity or density defined for DMX and DMA grades in Table 1 of ISO 8217;

⁽¹⁾ ISO 8217 (1996) is described in the British Standard entitled, “Specification for Petroleum Fuels for marine oil engines and boilers”, published under the numbers BS MA100 and ISO 8217:1996, which came into effect on 15 August 1996.

“MARPOL” means the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating to that Convention, including all its other Protocols, Annexes and Appendices, and amendments thereto adopted by the IMO in accordance with Article 16 of that Convention;

“master” means the person (except a pilot) having command or charge of a ship including the skipper of a fishing vessel;

“passenger ship” means a ship that carries more than 12 passengers where a passenger is every person other than—

(a) the master and members of the crew or other person employed or engaged in any capacity on board a ship on the business of that ship; and

(b) a child under one year of age;

“regular services” means a series of passenger ship crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either—

(a) according to a published timetable; or

(b) with crossings so regular or frequent that they constitute a recognisable schedule;

“ship at berth” means a ship which is securely moored or anchored in the port of Gibraltar while it is loading, unloading or hotelling, including the time spent when not engaged in cargo operations;

“sulphur content of liquid fuels licence” has the meaning given in section 10(6)(c)(ii);

“warship” means a ship belonging to the armed forces of a State bearing the external marks distinguishing such

ships of its nationality, under the command of an officer duly commissioned by the government of the state and whose name appears in the appropriate service list or its equivalent, and manned by a crew which is under regular armed forces discipline.

- (4) Words used in Part III and Part IIIA which are not defined in this section but also used in the Directive have the same meaning as in the Directive.”.

Amendment of sections 9, 10 and 11.

4. For sections 9, 10 and 11 of the Principal Act substitute—

“Application.

9. This Act does not apply to heavy fuel oil or gas oil intended for—

- (a) the purposes of research and testing;
- (b) processing prior to final combustion; or
- (c) processing in the refining industry.

Maximum sulphur content of heavy fuel oil.

10.(1) Subject to subsection (2), a person who uses any heavy fuel oil which has a sulphur content that exceeds 1 per cent by mass shall be guilty of an offence.

(2) Subsection (1) shall not apply to the use of heavy fuel oil—

- (a) in a new plant which is operated in accordance with a licence which contains a condition that emission limit values for sulphur dioxide are at least as stringent as those set out for such plant in Annex IV to Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants;

- (b) in an existing plant which is operated in accordance a licence which contains a condition that emission limit values for sulphur dioxide are at least as stringent as those set out for new plants in Part A of Annex IV to Directive 2001/80/EC;
- (c) in a combustion plant other than a new or existing plant to which paragraphs (a) or (b) apply which is operated in accordance with a licence which contains a condition which prohibits the emissions of sulphur dioxide from the plant exceeding 1,700 mg/Nm³ at an oxygen content in the flue gas of 3 per cent by volume on a dry basis; or
- (d) in combustion plants forming part of a refinery other than—
 - (i) a new plant to which paragraph (a) applies; or
 - (ii) an existing plant to which paragraph (b) applies,

and where the combustion plants are operated in accordance with a licence which contains a condition that their monthly average of emissions of sulphur dioxide averaged over all plants in the refinery, irrespective of the fuel or fuel combination used, does not exceed 1,700 mg/Nm³.

- (3) An authority which grants a licence referred to in subsection (2) shall carry out the appropriate monitoring of emissions of sulphur dioxide to ensure that the limitations on emissions contained in that licence are met.
- (4) In this section—
 - (a) “existing plant” and “new plant” shall have the meanings given in Articles 2(10) and 2(9) respectively of Directive 2001/80/EC; and
 - (b) “licence” means—

Motor Fuel (Composition and Content) (Amendment) Act 2009
[B. 39/09]

- (i) a licence granted under section 93C of the Public Health Act if the operation of the plant requires such a licence;
 - (ii) in any other case, a licence granted for the purpose of this Act (a “sulphur content of liquid fuels licence”).
- (5) Schedule 2 shall have effect in relation to applications for, the grant of, and other matters relating to, sulphur content of liquid fuels licences.

Maximum sulphur content in gas oil.

11. After 31 December 2009 a person who uses gas oil with a sulphur content exceeding 0.1 percent by mass shall be guilty of an offence.”.

Amendment of section 12.

5. In section 12 of the Principal Act—

- (a) in subsection 2(a) for “by 1st July 2003” substitute “at the date of the coming into operation of the Motor Fuel (Composition and Content) (Amendment) Act 2009;”;
- (b) in subsection 2(c) for “by 1st July 2008” substitute “at the date of the coming into operation of the Motor Fuel (Composition and Content) (Amendment) Act 2009”.

New Section 12A and Part IIIA.

6. After section 12 of the Principal Act insert—

“Penalties.

12A.(1) A person guilty of an offence under section 10(1) or section 11 shall be liable on summary conviction, to a fine up to level 5 on the standard scale.

- (2) Where an offence under section 10(1) or section 11 is committed by a body corporate and is proved—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(3) In subsection (2) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

(4) If the affairs of a body corporate are managed by its members, subsection (2) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

PART IIIA SULPHUR CONTENT OF MARINE FUELS

Application.

12B. This Part does not apply to—

- (a) marine fuel intended for the purposes of research and testing;
- (b) marine fuel used by warships or other vessels on military service;
- (c) any use of marine fuel in a vessel necessary for the specific purpose of securing the safety of a ship or saving life at sea; or
- (d) any use of marine fuel in a ship necessitated by damage sustained to it or its equipment—

- (i) except where such damage was caused with intent or recklessly by the owner or master of the ship; and
- (ii) provided that all reasonable measures are taken after the occurrence of the damage to prevent or minimise excess emissions and that measures are taken as soon as possible to repair the damage.

Restriction on the marketing of marine diesel oil.

12C. No person shall place marine diesel oil on the market if the sulphur content exceeds 1.5% per cent by mass.

Restriction on the use and marketing of marine gas oil.

12D.(1) Subject to subsection (2) no person shall use marine gas oil in the territorial waters if the sulphur content exceeds 1.5% per cent by mass.

(2) After 31 December 2009 no person shall place marine gas oil on the market if the sulphur content exceeds 0.1% per cent by mass.

Supplies of marine fuel.

12E.(1) A supplier of marine fuel shall—

- (a) complete a bunker delivery note which specifies the sulphur content of the marine fuel that he supplies;
- (b) supply marine fuel only if it complies with the specification on the bunker delivery note; and
- (c) make up a sealed sample of the fuel supplied and arrange for the master of the ship or other person acting on his behalf to sign a confirmation that the sample is representative of the fuel supplied.

- (2) The master of the ship or other person acting on his behalf shall—
- (a) sign the confirmation referred to in subsection (1)(c) if he is satisfied that the sealed sample is representative of the fuel supplied; and
 - (b) retain that sealed sample and the signed confirmation on board the ship until the later of—
 - (i) the date that the fuel supplied is substantially consumed; or
 - (ii) 12 months from the date of delivery of the fuel.

Register of suppliers.

- 12F.(1) The Minister shall maintain a register of suppliers of marine fuel.
- (2) A register compiled under subsection (1) may contain such further information as the Minister may consider appropriate.

Record in the ship's logbook.

- 12G.(1) The master of the ship shall ensure that the ship's logbook records the marine fuel used by the ship—
- (a) in the territorial waters;
 - (b) where the ship is subject to section 12K, while at berth; and
 - (c) in pollution control areas.
- (2) The requirement under subsection (1) shall include recording any fuel changeover operations conducted, as appropriate, on entering or leaving those sea areas or on arrival or departure from a berth.

Denial of entry into port.

12H. The Captain of the Port or such other person as the Minister designates may deny a ship entry into Gibraltar port where he has reason to believe that section 12G has not been complied with.

Sulphur Oxide Emission Control Area.

12I.(1) Subject to subsections (2) and (3), a ship registered under the Gibraltar Merchant Shipping (Registration) Act, 1993 shall not use marine fuel whose sulphur content exceeds 1.5% by mass in a sulphur oxide emission control area.

(2) In this section “sulphur oxide emission control area” means an area designated as such in accordance with regulation 14(3)(b) of Annex VI to MARPOL.

(3) Subsection (1) applies—

- (a) in respect of the Baltic Sea Area referred to in regulation 14(3)(a) of Annex VI to MARPOL, on the date that the Motor Fuel (Composition and Content) (Amendment) Act 2007 comes into operation;
- (b) in respect of the North Sea sulphur oxide emission control area which ever occurs first—
 - (i) 12 month after the entry into operation of the IMO designation; or
 - (ii) 11 August 2007; and
- (c) in respect of any other area designated by the IMO as a sulphur oxide emission control area, 12 months after that designation.

Maximum sulphur content of marine fuel used by passenger ships.

12J.(1) Subject to subsection (2), no passenger ship operating on a regular service between Gibraltar and a port in a Member State shall use marine fuel which has a sulphur content that exceeds 1.5 per cent by mass in the territorial waters.

(2) Subsection (1) shall not apply—

- (a) to the extent that a passenger ship is subject to section 12K;
- (b) to a passenger ship using emission abatement technologies in accordance with a permit issued pursuant to sections 12L and 12M.

Maximum sulphur content of marine fuel used by a ship at berth.

12K.(1) Subject to subsection (2), on and from 1st January 2010, no ship at berth shall use marine fuel which has a sulphur content that exceeds 0.1% per cent by mass.

(2) Subsection (1) shall not apply—

- (a) for that period of time which is necessary to allow the crew to complete any necessary fuel changeover operation as soon as possible after arrival at berth and as late as possible before departure;
- (b) to ships which, according to published timetables, are due to be at berth for less than two hours;
- (c) to ships which switch off all engines and use shoreside electricity while at berth; and
- (d) to ships using emission abatement technologies in accordance with a permission granted under sections 12L or 12M.

Trials of emission abatement technologies.

12L.(1) The owner of a ship may apply in writing to the Minister for a permit to use emission abatement technologies for trial purposes—

- (a) if the ship is registered in Gibraltar under the Gibraltar Merchant Shipping (Registration) Act, 1993;
- (b) in respect of any other ship if that ship—
 - (i) operates or intends to operate within the territorial waters;
 - (ii) operates or intends to operate within a pollution control area; or
 - (iii) is or will be a ship at berth.

(2) A permit granted by the Minister pursuant to an application under subsection (1)—

- (a) shall be in writing;
- (b) subject to subsection (5), may include such conditions as the Minister considers to be appropriate to the trial in question; and
- (c) may be varied or revoked by the Minister.

(3) The Minister shall—

- (a) at least 6 months before an intended trial begins, ensure that a written notification of that trial is made to—
 - (i) the European Commission; and
 - (ii) the relevant port authorities, and

- (b) within 6 months of completion of the trial, ensure that the European Commission is provided with a copy of the full results referred to in subsection (5)(f).
- (4) For the purposes of subsection (3)(a)(ii), the relevant port authorities are the authorities responsible for a port in a Member State to, or from, which a ship intends to operate during the intended trial.
- (5) A permit issued under subsection (2) shall include the following conditions—
 - (a) a limit on the period of the trial, such period not to exceed 18 months;
 - (b) that tamper-proof equipment is installed on the ship to monitor continuously funnel gas emissions and that such equipment must be used throughout the trial;
 - (c) that emission reductions must be achieved which are at least equivalent to those which would have been achieved by the use of the marine fuel required under, as appropriate, sections 12C or 12D;
 - (d) that proper waste management systems are in place during the trial in respect of any waste generated by the emission abatement technologies;
 - (e) that throughout the trial, the ship owner carries out an assessment of the impacts of waste generated by the emission abatement technologies on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries; and
 - (f) that within 5 months of completion of the trial, the ship owner—
 - (i) provides full results of the assessment referred to in paragraph (e) to the Minister; and
 - (ii) makes those results publicly available.

Use of approved emission abatement technologies.

12M.(1) The owner of a ship may apply in writing to the Minister for a permit to use approved emission abatement technologies—

- (a) if the ship is a Gibraltar registered ship; or
- (b) in respect of any other ship if that ship—
 - (i) operates or intends to operate within the territorial waters;
 - (ii) operates or intends to operate within a pollution control area; or
 - (iii) is or will be a ship at berth.

(2) A permit granted by the Minister pursuant to an application under subsection (1)—

- (a) shall be in writing;
- (b) subject to subsection (3), may include such conditions as the Minister considers to be appropriate to the trial in question; and
- (c) may be varied or revoked by the Minister.

(3) A permit granted under subsection (2) shall include the following conditions—

- (a) where appropriate, conditions that ensure compliance with the criteria referred to in Article 4c(3) of the Directive established by the European Commission for the use of emission abatement technologies in enclosed ports, harbours and estuaries;
- (b) that emission reductions are continuously achieved which are at least equivalent to those which would have

Motor Fuel (Composition and Content) (Amendment) Act 2009
[B. 39/09]

been achieved by the use of the marine fuel required under, as appropriate, sections 12J and 12K;

- (c) that the ship is fitted with continuous emission monitoring equipment; and
- (d) that there is a record that thoroughly demonstrates that any waste streams discharged into enclosed ports, harbours and estuaries have no impact on ecosystems, based on criteria communicated by the authorities of port states to the IMO.

- (4) For the purposes of this section, approved emission abatement technologies means those technologies that have been approved by the European Commission under Article 4c(2) of the Directive.

Enforcement Authority.

12N.(1) The Government may, by notice in the Gazette, appoint an enforcement authority.

- (2) The enforcement authority designated under subsection (1) shall enforce sections 12C, 12D, 12E, 12G, 12J, 12K and 12L(1).
- (3) Enforcement under subsection (2) shall include taking necessary measures of sampling, analysis and inspection of marine fuel.
- (4) For the purposes of subsection (3)—
 - (a) necessary measures include—
 - (i) sampling of the marine fuel for on-board combustion while being delivered to ships, following IMO guidelines, and analysis of its sulphur content;
 - (ii) sampling and analysis of the sulphur content of the marine fuel for on-board combustion

- contained in tanks, where feasible, and in sealed bunker samples on board ships; and
- (iii) inspection of ship's logbooks and bunker delivery notes;
- (b) sampling shall commence on the date on which the relevant limits on sulphur in marine fuel come into force under sections 12C, 12D, 12J and 12K;
- (c) sampling shall be carried out with sufficient frequency, in sufficient quantities, and in such a way that the samples are representative of the fuel examined and of the fuel being used by ships as provided for in sections 12J and 12K; and
- (d) the reference method for determining the sulphur content of marine fuel shall be as contained in Schedule 3.
- (4) The enforcement authority, acting with the consent of the Minister, may deny a ship entry to the port of Gibraltar if the authority has reasonable grounds to believe that a provision of this Part has not been complied with.
- (5) In relation to the enforcement of section 12G, the enforcement authority may take such action as it believes is appropriate—
- (a) against a supplier of marine fuel who supplies fuel that does not comply with the specification on the bunker delivery note; and
- (b) to ensure that marine fuel that is not so compliant is made compliant.

Compliance Notice.

- 12O.(1) The enforcement authority shall have the power to serve a notice ("a Compliance Notice") where it believes that a person—

Motor Fuel (Composition and Content) (Amendment) Act 2009
[B. 39/09]

- (a) is contravening one or more of the relevant provisions;
or
 - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or will be repeated.
- (2) A Compliance Notice shall—
- (a) state the reasons why the enforcement authority considers that a contravention of the type described in subsection (1) is occurring or has occurred;
 - (b) specify the relevant provision or provisions;
 - (c) require the person on whom it is served to remedy the contravention; and
 - (d) state the period within which the contravention shall be remedied.
- (3) A Compliance Notice may be withdrawn or varied.
- (4) For the purposes of subsection (2), a relevant provision means sections 12D, 12G or 12K.

Offences and penalties.

12P.(1) A person shall be guilty of an offence, if—

- (a) that person contravenes sections 12C, 12D, 12G, 12I, 12J or 12K, or causes or permits another person to do so;
- (b) that person fails to comply with a Compliance Notice or causes or permits another person to fail to so comply; or
- (c) that person makes a statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular, where the statement is made in

purported compliance with a requirement to furnish any information imposed by or under this Part.

- (2) A person guilty of an offence under subsection (1) shall be liable, on summary conviction, to a fine up to level 5 on the standard scale.
- (3) Where an offence under subsection (1) committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer; or
 - (b) to be attributable to any neglect on his part,

the officer as well as the body corporate shall be guilty of that offence and liable to be proceeded against and punished accordingly.

- (4) In subsection (3) “officer”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.
- (5) If the affairs of a body corporate are managed by its members, subsection (3) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.

Amendment to Part IV.

7. In Part IV (Final Provisions) of the Principal Act, immediately preceding section 13 insert—

“Derogation.

12N.(1) If, as a result of a sudden change in the supply of crude oil, petroleum products or other hydrocarbons, it becomes difficult to apply the limits on the maximum sulphur content referred to in Parts III and IIIA in Gibraltar, the Minister shall ensure that the European Commission is informed thereof.

Motor Fuel (Composition and Content) (Amendment) Act 2009
[B. 39/09]

- (2) Where, on the basis of the information supplied to it pursuant to subsection (1), the European Commission authorises higher sulphur content limits to apply in Gibraltar, the Minister may make regulations to amend the limits set out in Parts III and IIIA.
- (3) Regulations made under subsection (2) may not exceed the period authorised by the European Commission.”.

Amendment of section 13.

8. In section 13(2) of the Principal Act, after paragraph (d) insert—

- “(e) the further transposition of any matter relating or incidental to the Directive.”.

Amendment of Schedule 2.

9. In Schedule 2 to the Principal Act—

- (a) for paragraph (1) substitute—
 - “1. An operator of an existing plant, new plant or other combustion plant who wishes to rely on the exemption in section 10(2) may apply to the Licensing Authority for a sulphur content of liquid fuels licence if the operation of the plant does not require a licence under section 93C of the Public Health Act.”;
- (b) in paragraph 2(c) for “section 10(3) or (4)” substitute “section 10(2)”.

Amendment of Schedule 3.

10. In Schedule 3 to the Principal Act, in paragraph (a), for “gas oil” substitute “fuel”.

EXPLANATORY MEMORANDUM

This Bill amends the Motor Fuel (Composition and Content) Act 2001. The amendments reflect the changes made to Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels by Directive 2005/33/EC.

The amending Directive seeks to segregate the provisions that govern the sulphur content of fuels used in land based activities by providing a new regime for marine based activities.

This Bill inserts Part IIIA into the Motor Fuel (Composition and Content) Act 2001, and makes specific provision for the marine based controls required by the Directive.

Sections 12C and 12D of Part IIIA, respectively provide for the restriction on marketing of marine diesel oil and marine gas oil if their sulphur content exceeds permitted levels. Section 12D also restricts the use of marine gas oil and sets out the dates after which the sulphur content must be reduced.

Suppliers of marine fuels will be recorded on a register (section 12F) set up for that purpose. In addition, suppliers of marine fuels will have to specify the sulphur content of the fuel that they supply, in addition to providing the master of the vessel with a sealed sample of the fuel supplied (section 12E). In turn, the master of a ship must record the marine fuel used in the ship's logbook (section 12G). Where the logbook does not record such information entry into port may be denied (section 12H).

Section 12I restricts the use of certain fuels in areas that have been designated as Sulphur Oxide Emission Control Areas by the International Maritime Organisation pursuant to Annex VI of the MARPOL Convention.

The Bill also makes provision for the use of certain fuels by passenger ships sailing between Gibraltar and Community ports (section 12J) and those which are at berth (section 12K).

Obligations under Part IIIA are enforceable by an authority that is to be designated by the Minister.

Motor Fuel (Composition and Content) (Amendment) Act 2009

[B. 39/09]

Part IIIA also provides a regime for the issue of permits allowing for the trial and use of emissions abatement technology (sections 12L and 12M) in ships using fuel with a higher sulphur content than is otherwise permitted.

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