

**THIRD SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,870 of 18th August, 2011

B. 23/11

BILL

FOR

AN ACT to recast the Port Operations (Registration and Licensing) Act 2005, to provide for further powers with regard to the licensing of port operators, and to confer on the Government the power to amend, suspend or revoke licences when it is in the public interest to do so, and to validate regulations made pursuant to the Act and validate the exercise of powers by the Minister under those regulations.

ENACTED by the Legislature of Gibraltar.

Title and commencement.

1. This Act may be cited as the Port Operations (Registration and Licensing) (Amendment) Act 2011 and comes into operation on the day of publication.

Amendment of Act

2. The Port Operations (Registration and Licensing) Act 2005 (“the principal Act”) is amended in accordance with the provisions of this Act.

Insertion of part heading.

3. Immediately prior to section 1 of the principal Act insert the following part heading—

**“PART 1
General”**

Amendment of section 2.

4. In section 2 of the principal Act—

- (a) in the definition of “port operations”, substitute “includes” for “excludes” after “the Authority, and”; and
- (b) after the definition of “port worker” insert the following definition—

““register” means the register maintained by the Authority pursuant to section 2A;”.

Insertion of new provisions.

5. After section 2 of the principal Act insert the following—

“Establishment of register.

2A.(1) The Authority shall establish and maintain a register in which details are kept of—

- (a) port operator licences issued under this Act;
 - (b) persons who are issued with a certificate of registration pursuant to section 3; and
 - (c) such other matters as the Authority considers ought to be entered in the register.
- (2) Any changes to a licence, including any temporary restriction, condition or other amendment, shall be entered in the register.
- (3) Any changes to a certificate of registration, including any temporary restriction or other amendment shall be entered in the register.

Inspection of register.

- 2B. Any person may inspect a register maintained under this Act on payment of the prescribed fee.

PART 2
Port operators

Restriction on engaging in port operations.

- 2C.(1) No person shall, within the Port, engage in port operations unless that person is licensed in respect of each individual activity or class of activity which he intends to undertake or engage in.
- (2) Subsection (1) shall not apply if the person referred to in that subsection is otherwise exempted under this Act.

Exemption from licence requirement.

- 2D.(1) In exceptional circumstances the Minister, and on the recommendation of the Captain of the Port, the Authority, may grant an exemption to a person who would otherwise need to be licensed as a port operator for a defined short period of time and for a specific purpose.
- (2) An exemption under subsection (1) shall be in writing and shall set out the nature and extent of the exemption.

Application for port operator licence.

- 2E.(1) An application for a port operator licence shall be made to the Authority—
- (a) in such manner and in such form as may be prescribed by regulations; and
 - (b) shall be accompanied by the prescribed fee.

- (2) A separate application shall be made for each activity or class of activity which individually or taken together comprise port operations.

Supply of additional information.

- 2F. The Authority may, before issuing a port operator licence, require a person to supply to the Authority such additional information relating to that person's business and such other matters as the Authority considers relevant for the purposes of this Act.

Representations to Authority.

- 2G. A person who wishes to make representations to the Authority in the context of an application under this Part may do so in such manner and in such form as may be prescribed by regulations.

Issue of licence.

- 2H.(1) Upon the consideration of an application under this Part, including any information provided to it, the Authority if it is satisfied that the applicant complies with the requirements of this Act and any prescribed provision, may issue a port operator licence in respect of the activity or class of activities to which the application relates.
- (2) A licence under subsection (1) may be issued subject to such terms, conditions or restrictions as the Authority deems appropriate.

Refusal of application for a licence.

- 2I. In addition to any case where the applicant has failed to satisfy any requirement of this Act or of any regulations made hereunder, the Authority may refuse to issue a port operator licence—
- (a) if, having required further information from the applicant it has not received that information;

- (b) if it considers that—
 - (i) the operational circumstances, the viability of a particular sector, the need to maintain levels of investment or the safety of the Port or the safety of the sector of port operations for which the application is made; or
 - (ii) the public interest of Gibraltar including (but limited to) the wider economic interests of Gibraltar,may be adversely affected if such a licence were issued; or
- (c) having regard to all the circumstances of the case it would be just to do so.

Discretionary and other powers of the Authority.

- 2J.(1) Notwithstanding any other provision in this Act, the Authority shall have an absolute discretion regarding whether to grant or refuse an application for a port operator licence.
- (2) The Authority shall regulate its own procedure for determining an application for a licence.

Renewal of licences.

- 2K.(1) A port operator who wishes to renew a port operator licence shall apply to the Authority and such application shall be made not less than thirty days before the 1st May or such other date as the Minister may specify by notice in the Gazette.
- (2) The Authority shall renew a licence held by a port operator on application unless it is satisfied that—
 - (a) he has not been regularly engaged in the relevant class of port operations during the preceding six months;

- (b) he has not complied with the provisions of this Act or any other matter prescribed by regulations;
 - (c) he has not complied with a condition contained in the licence;
 - (d) there has been a material change in the circumstances of the applicant since the licence was granted; or
 - (e) it would not be in the public interest to renew the licence.
- (3) The Authority shall not renew a licence held by a port operator if the Government has directed it not to do so on any ground or grounds upon which the Government can under section 2M (4) amend, suspend or revoke a port operator's licence.
- (4) An applicant whose request for renewal of a licence has been refused may apply for the grant of a fresh licence.

Renewal of licences: supplementary.

- 2L.(1) On application for the renewal of a port operator licence, the Authority shall presume that all evidence that the applicant needs to furnish on first application for a licence has been provided to the satisfaction of the Authority unless the contrary is shown to be the case.
- (2) Notwithstanding sub-section (1) above the Authority may require the applicant to provide additional or up-dated information relevant to its consideration of an application for renewal.

Amendment, suspension and revocation of licence.

- 2M.(1) The Authority may, on the application of the licensee or of its own motion—
- (a) amend a port operator licence including by imposing or removing any condition or restriction or in any

other way varying the extent or duration of the licence;

- (b) suspend the operation of such a licence; or
- (c) revoke such a licence.

(2) Where the Authority proposes to suspend or revoke a port operator licence of its own motion in accordance with subsection (1)(b) or (c), it shall only do so if it is satisfied that—

- (a) it would be proper to do so on the basis of the information available to it at the relevant time; and
- (b) that it would be proportionate to do so,

and in so satisfying itself the Authority may have regard to any or all of the following factors—

- (i) the protection of human health,
- (ii) public safety,
- (iii) the protection of the natural environment,
- (iv) any breach of a provision of the licence,
- (v) any breach of a provision of this Act or any regulations made hereunder, and
- (vi) an overriding public interest.

(3) Where the Authority proposes to suspend or cancel a port operator licence under subsection (1)(b) or (c) in circumstances where section 6 of the Constitution is engaged, it may only do so with the consent of the Government.

(4) The Government may, where it considers that it would be in the public interest to do so, amend, suspend or revoke a port operator licence, and where the Government exercises such a

power the Authority shall not take any steps under this section in relation to that licence.

- (5) In subsections (2) and (4) above, the public interest includes (but shall not be limited to)–
- (a) the wider economic interests of the Port or of Gibraltar;
 - (b) the environment of Gibraltar;
 - (c) the health and safety of the general public, any sector of it or of other users of the Port;
 - (d) the international reputation of Gibraltar;
 - (e) compliance with international regulations, norms or good safety or best practice.
- (6) The Authority or the Government, as the case may be, shall notify the licensee in writing of the exercise of its powers under this section as soon as it is reasonably practicable.

Port operators: supplementary.

- 2N.(1) The Authority may require a licensee to remedy forthwith any breach of any term or condition of his licence or of any provision of this Act or regulations made under it and shall provide written notification of the reasons for its decision at the earliest opportunity.
- (2) In the event of any dispute or grievance between licensees or any category of them in relation to the application of this Act or any regulations made under it, the Authority shall make an immediate adjudication in respect of the dispute or grievance.
- (3) A licensee shall accept and abide by the adjudication made by the Authority under subsection (2) and failure to do so shall be deemed to be a breach of the condition of the licence.

- (4) A licensee who is dissatisfied with an adjudication made under subsection (2) may appeal to the Minister within 7 days for a ruling on whether the adjudication was appropriate in the circumstances.
- (5) A licensee shall bring to the notice of the Authority as soon as possible any—
 - (a) relevant conviction against himself or any port worker employed by him; or
 - (b) material change in a licensee or company or a person employed by a licensee which could impact on an operator's good standing, financial standing or any other relevant matter.
- (6) Where malpractice has been established or where a port operator fails to comply with a notice issued under subsection (1), the Authority may suspend any licence issued under this Act for such a period of time as it may consider appropriate.
- (7) Where a person ceases to meet the conditions under which he was licensed, the Authority shall give him written notice of the defect and specify a time scale for the defect to be remedied, and the Authority may suspend the licence until such time as the defect is remedied and if it is not remedied within that time scale and the Authority is unwilling to extend time for remedying the defect, the licence shall be revoked by the Authority.

PART 3
Port workers"

Amendments of section 3.

- 6. In section 3 of the principal Act—
 - (a) in the section heading delete the words “and issue of port operator's licence”;
 - (b) subsection (1) is repealed;

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- (c) subsection (3)(a) is repealed; and
- (d) subsections (4) to (8) are repealed.

Amendment of section 4.

7. In section 4 of the principal Act delete the words “for a licence or” on both occasions those words appear.

Amendments of section 5.

8. In section 5 of the principal Act—

- (a) in the section heading delete the words “licences and”;
- (b) in subsection (1) delete the words “a licence or”; and
- (c) subsections (3) to (5) are repealed.

Repeal of section 7.

9. Section 7 of the principal Act is repealed.

Amendments of section 8.

10. In section 8 of the principal Act—

- (a) in the section heading delete the words “or licences”;
- (b) in subsection (1) delete the words “or licence” and “or licensee” wherever those words appear;
- (c) subsection (2) is repealed.

Repeal of section 9.

11. Section 9 of the principal Act is repealed.

Amendments of section 10.

12. In section 10 of the principal Act—

- (a) the section heading is replaced by the following section heading—

“Port workers: supplementary.”

- (b) subsection (1) is repealed;
- (c) in subsection (2) delete the words “remove from the relevant register and”;
- (d) subsection (3)(a) is repealed;
- (e) subsections (4) to (8) are repealed;
- (f) for subsection (9) substitute the following subsection—

“(9) The Authority may suspend the registration of any port worker for such a period of time as it may consider appropriate in a case where malpractice has been established.”;

- (g) in subsection (10) delete the words “or licensed” and “or licence” wherever those words appear;
- (h) subsection (11) is repealed.

Repeal of section 11.

13. Section 11 of the principal Act is repealed.

Amendment of section 12.

14. Section 12(3) of the principal Act is repealed.

Amendment of section 13.

15. In section 13 of the principal Act—

- (a) in subsection (1) for “6, 10(4) or 12” substitute “2C, 6 or 12”;
- (b) in subsection (6) for the words “remove that port operator’s name from the Register of port operators” substitute the words “suspend any licence issued to that port operator”;
- (c) in subsection (7) for the words “the name of the port operator shall not be removed from the register” substitute the words “the suspension shall not take effect”.

Amendment of section 14.

16. In section 14(1) of the principal Act for paragraphs (a) and (b) substitute the following paragraphs—

- “(a) aggrieved by the refusal of the Authority to issue a licence to a port operator or register a port worker under sections 2I, 2K, 3 or 5, as the case may be;
- (b) aggrieved by having his licence amended, suspended or revoked under section 2M(1) (other than under section 2M(4)), or not renewed under section 2K (other than under section 2K(3)); or”.

Amendments of section 16.

17. In section 16 of the principal Act—

- (a) for the word “Minister” substitute the word “Government”;
- (b) in paragraph (b) for the words “the Register of port operators and the Register” substitute the words “the licensing of port operators and the registration”; and
- (c) in paragraph (g) after the words “of any person” insert the words “and amending (whether by way of removal,

replacement, variation or otherwise) any condition so attached”.

Insertion of new section 19.

18. After section 18 of the principal Act insert the following section—

“Validity of regulations and the exercise of powers.

19.(1) This section applies to regulations made by the Minister under section 16 prior to the commencement of the Port Operations (Registration and Licensing) (Amendment) Act 2011.

(2) The exercise by the Minister of powers conferred upon him under regulations to which this section applies are hereby validated and declared to be lawfully done by him.”.

EXPLANATORY MEMORANDUM

This Bill amends the Port Operations (Registration and Licensing) Act 2005 so as to recast some of the provisions and thereby separate those relating to the establishment and maintenance of a register, the licensing of port operators and the registration of port workers.

In new section 2M provides for further powers in relation to port operator licences and in particular the factors which may be taken into consideration when such licences are amended, suspended or revoked by the Authority.

Under section 2M(3) where the actions of the Authority are likely to give rise to rights under section 6 of the constitution (relating to property rights), the Authority must first seek the Government’s consent.

Under section 2M(4) the Government is given a new power to take action in relation to a licence when it is in the public interest for the Government to act.

Clause 17 of the Bill amends section 16 of the Act so that the Government will be empowered to make regulations, in place of the Minister.

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Clause 18 of the Bill inserts a new section 19. The purpose of section 19 is to recognise and validate regulations already made by the Minister pursuant to section 16 of the principal Act. Subsection (2) also validates the exercise by the Minister, of powers granted to him under those regulations.

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