

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4830 GIBRALTAR Thursday 4th March 2021

LEGAL NOTICE NO. 165 OF 2021.

GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT 1993

GIBRALTAR MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (AMENDMENT) REGULATIONS 2021

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 has made the following Regulations—

Short title.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Maritime Labour Convention) (Amendment) Regulations 2021.

Commencement.

2. These Regulations come into operation on the day of publication, except for regulations 4(a), 9 and 10, which come into operation on such day as the Minister may appoint by notice in the Gazette.

Amendments to the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013.

3. The Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 (“the Principal Regulations”) are amended in accordance with regulations 4 to 12 below.

Amendments to regulation 2.

4. Regulation 2(1) of the Principal Regulations is amended—

(a) by inserting the following definition after the definition of “Maritime Administrator”-

“Maritime Labour Notice” means a notice issued under section 3A of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;” and

(b) in the definition of “workforce agreement” by substituting “Schedule 2” for “the Schedule.”.

Amendment to regulation 6.

5. Regulation 6 of the Principal Regulations is amended in sub-regulation (6)(a)(i) by substituting “Schedule 1” for “the Schedule.”.

Substitution of regulation 15.

6. The Principal Regulations are amended by substituting the following regulations for regulation 15 -

“Hours of work and rest on Gibraltar ships.

- 15.(1) The shipowner, master and employer of a seafarer on board a Gibraltar ship must ensure that the normal working hours’ standard for the seafarer is, in principle, based on an eight-hour day with one day of rest each week and rest on public holidays.
- (2) The shipowner, master and employer of a seafarer on board a Gibraltar ship must ensure that the minimum hours of rest are-
 - (a) 10 hours in any 24-hour period; and
 - (b) 77 hours in any 7-day period.
- (3) The 10 hours of rest mentioned in sub-regulation (2)(a) may be divided into no more than 2 periods, one of which is to be at least 6 hours in length, and the interval between consecutive periods of rest must not exceed 14 hours.
- (4) Sub-regulations (2) and (3) are subject to regulation 15A.
- (5) The shipowner, master and employer of a seafarer on board a Gibraltar ship must ensure that-
 - (a) musters, fire-fighting and lifeboat drills are conducted in a manner that minimises the disturbance of rest periods and does not induce fatigue; and
 - (b) if the seafarer’s normal period of rest is disturbed by call-outs to work, the seafarer has an adequate compensatory rest period.
- (6) If-
 - (a) no collective agreement, workforce agreement or arbitration award relates to the application of sub-regulation (5) to a seafarer; or
 - (b) the Maritime Administrator considers that the provisions of such an agreement or award as referred to in paragraph (a) are inadequate to ensure that the seafarer has sufficient rest,

the Maritime Administrator may, as he considers necessary, determine the requirements with which the shipowner, master and employer of the seafarer must comply as respects sub-regulation (5) in order to ensure that the seafarer has sufficient rest.

- (7) The master of a Gibraltar ship—
- (a) may require a seafarer to perform any hours of work necessary for the immediate safety of the ship, of persons on board the ship or of cargo on board the ship, or for the purpose of giving assistance to other ships or persons in distress at sea;
 - (b) in accordance with paragraph (a), may suspend the schedule of hours of rest until the normal situation has been restored; and
 - (c) must, as soon as possible after a normal situation has been restored, ensure that any seafarer who has performed work in a scheduled rest period is provided with an adequate period of rest.

Authorised exceptions to minimum hours of rest.

15A.(1)The Maritime Administrator may authorise a collective agreement or workforce agreement which-

- (a) provide exceptions to the minimum hours of rest mentioned in regulation 15(2)(b); and
 - (b) provide for exceptions to regulation 15(3).
- (2) A collective agreement or workforce agreement under sub-regulation (1)(a) must require that-
- (a) there are at least 70 hours total rest in any period of 7 days;
 - (b) the exceptions provided for in the agreement do not apply in relation to a period of more than two consecutive weeks; and
 - (c) where the exceptions apply in relation to two periods separated by an interval, the interval is at least twice the duration of the longer of the two periods.
- (3) A collective agreement or workforce agreement under sub-regulation (1)(b) must require that the 10 minimum hours of rest mentioned in regulation 15(2)(a) are divided into three periods-
- (a) one of the three periods is at least 6 hours long and neither of the two other periods are less than one hour long;

- (b) intervals between consecutive periods do not exceed 14 hours each; and
- (c) the exceptions provided for in the collective agreement or workforce agreement do not apply in relation to more than two 24 hours periods in any 7 days period.

Exception for emergencies.

15B.(1) The master of a ship to which this regulation applies may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to another ship or to a person in distress at sea.

- (2) As soon as practicable after the normal situation has been restored the master must ensure that any seafarer who has performed work in hours of rest scheduled in the table posted under regulation 17(1)(c) is provided with an adequate rest period.”.

Insertion of new regulation.

7. The principal Regulations are amended by inserting the following regulation after regulation 19B-

“Lapse of right to be repatriated.

19C.(1) The entitlement to repatriation of a seafarer may lapse if the seafarer does not claim it within a reasonable period of time as may be determined by the Maritime Administrator, except where that seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against the ship.

- (2) The terms “piracy” and “armed robbery against ships” shall have the same meaning as in Standard A2.1, paragraph 7 of the MLC.”.

Amendments to regulation 38.

8. Regulation 38 of the principal Regulations is amended by substituting the following sub-regulations for sub-regulation (2)-

“(2) Notwithstanding sub-regulation (1)(c), where a renewal MLC inspection has been completed-

- (a) within a period of three months before the expiry of a Maritime Labour Certificate, the new Maritime Labour Certificate must be issued as being valid from the date of completion of the renewal MLC inspection for a period not exceeding five years from the date of expiry of the existing certificate; and

- (b) more than three months before the expiry date of the existing Maritime Labour Certificate, the new Maritime Labour Certificate shall be valid for a period not exceeding five years starting from the date of completion of the MLC renewal inspection.

(2A) Notwithstanding sub-regulation (1)(c), where, after a renewal MLC inspection completed prior to the expiry of a Maritime Labour Certificate, the ship is found to continue to meet the requirements of these Regulations, but a new certificate cannot immediately be issued to and made available on board that ship, the Maritime Administrator may-

- (a) extend the validity of the certificate for a further period not exceeding five months from the expiry date of the existing certificate; and
- (b) endorse the certificate accordingly.

(2B) The new certificate shall be valid for a period not exceeding five years starting from the date provided for in sub-regulation (2).”.

Amendments to regulation 44.

9. Regulation 44 of the Principal Regulations is amended in-

- (a) sub-regulation (1) by inserting “or a Maritime Labour Notice” after “these Regulations”;
- (b) sub-regulation (2)(a) by inserting “or a Maritime Labour Notice” after “these Regulations”; and
- (c) sub-regulation (2)(b) by inserting “or a Maritime Labour Notice” after “these Regulations.”.

Amendments to regulation 45.

10. Regulation 45 of the Principal Regulations is amended in-

- (a) sub-regulation (2) by inserting “or a Maritime Labour Notice” after “of the MLC”;
- (b) sub-regulation (3) by inserting “or a Maritime Labour Notice” after “of the MLC”;
- (c) sub-regulation (4)(a) by inserting “or a Maritime Labour Notice” after “of the MLC”; and

- (d) sub-regulation (4)(b)(ii) by inserting “or a Maritime Labour Notice” after “of the MLC.”.

Amendments to Schedule.

11. The Schedule of the Principal Regulations is amended-

- (a) in the heading by substituting “SCHEDULE 1” for “SCHEDULE”; and
- (b) in the right hand corner immediately under that heading by inserting the reference to “Regulation (6)(6)(a)(i).”.

Insertion of new Schedule.

12. The Principal Regulations are amended by adding the following Schedule after Schedule 1 (re-numbered)-

“SCHEDULE 2

Regulation 2(1)

WORKFORCE AGREEMENTS

1. An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied–
 - (a) the agreement is in writing;
 - (b) it has effect for a specified period not exceeding five years;
 - (c) it applies either–
 - (i) to all of the relevant members of the workforce, or
 - (ii) to all of the relevant members of the workforce who belong to a particular group;
 - (d) the agreement is signed–
 - (i) in the case of an agreement of the kind referred to in sub-paragraph (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in sub-paragraph (c)(ii), by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature); or

(ii) if the employer employed 20 or fewer individuals on the date referred to in sub-paragraph (d)(i) above, either by the appropriate representatives in accordance with that sub-paragraph or by the majority of the individuals employed by him; and

(iii) before the agreement was made available for signature, the employer provided all the employees to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it in full.

2. For the purposes of this Schedule—

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“relevant members of the workforce” are all of the employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are employees duly elected to represent the relevant members of the workforce, “representatives of the group” are employees duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of a group are members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no employee who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group;
- (e) the employees entitled to vote may vote for as many candidates as there are representatives to be elected; and

- (f) the election is conducted so as to secure that—
- (i) so far as reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are fairly and accurately counted.

4. In this Schedule “employee” means an individual who has entered into or works under a contract of employment.”.

Dated: 4th March 2021.

V DARYANANI,
For the Government.

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

These Regulations amend the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 for the purpose of implementing Regulation 2.3 and Standards 2.3 of the Maritime Labour Convention, 2006 and also implementing the Amendments of 2016 and 2018 to that Convention.

These Regulations also amend previous implementing legislation.