

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5004 GIBRALTAR Thursday 20th October 2022

B. 18/22

BILL

FOR

AN ACT to designate Admiralty Waters and to regulate activities, operations and vessel movements in relation to such waters, and the approaches thereto; to designate an area as His Majesty's Naval Base Gibraltar; to provide for the appointment of a King's Harbour Master; and for matters connected thereto.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Admiralty Waters and Naval Base (Gibraltar) Act 2022.

Commencement.

2. This Act comes into operation immediately after the Admiralty Waters (Gibraltar) Order, 1972 (S.I. 1972/2207) ceases to have effect.

Interpretation.

3. In this Act, unless the context otherwise requires-

“Admiralty Waters” means a body of water, seabed and subsoil as described and delineated in red on the extract from Admiralty Chart 45 set out in the Schedule;

“British Gibraltar Territorial Waters” means the area of sea, the seabed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

“Captain of the Port” has the same meaning as in the Port Act;

“direction” means a direction made by the King's Harbour Master under section 8(1);

“King's Harbour Master” means the person appointed under section 6 of this Act;

“master” means the person having command or charge of a vessel;

“Minister” means the Minister with responsibility for the Port;

“Naval Base” means His Majesty’s Naval Base Gibraltar, including any buildings, basins, quays, docks and jetties inside the perimeter fence and delineated in blue on the extract from Admiralty Chart 45 set out in the Schedule;

“obstruction to navigation” means a vessel or other object described in section 9;

“power-driven” in relation to a vessel means any vessel propelled by machinery;

“Senior Officer” means the person whose title, at the commencement this Act, is the Commander British Forces (Gibraltar) or such other person who replaces that person from time to time;

“small boat” means a vessel of an overall length of less than 20 metres;

“underway” in relation to a vessel means that such vessel is not at anchor, made fast to the shore or aground; and

“vessel” includes every description of watercraft, seaplane, non-displacement craft, submersible, personal watercraft, sailboard and craft of every kind however navigated, propelled or moved.

Power to vary limits of Admiralty Waters and the Naval Base.

4. The Minister may, with the consent of the Governor, from time to time by order amend the Schedule to vary the limits of Admiralty Waters and the Naval Base.

Control of Admiralty Waters.

5. Control over Admiralty Waters is vested in the Senior Officer and is exercised on behalf of the Senior Officer by the King’s Harbour Master.

King’s Harbour Master.

6.(1) The Senior Officer may, for the purposes of section 5, appoint a King’s Harbour Master.

(2) In addition to any instruction that may be issued by the Senior Officer the King’s Harbour Master must discharge such functions, duties and obligations as may be provided for under this Act and any subsidiary legislation made hereunder.

Navigation in Admiralty Waters.

7.(1) A vessel must not enter, depart or navigate within Admiralty Waters without the permission of the King’s Harbour Master.

(2) A permission granted under subsection (1) may be subject to conditions.

Power to issue permits and directions.

8.(1) The King's Harbour Master may issue permits and written or oral directions for the purposes of controlling any activity in Admiralty Waters.

(2) A permit or direction may apply to all vessels, to individual vessels or to classes or categories of vessel and to any person or persons on board those vessels.

(3) A permit or direction may in particular relate to-

- (a) the movement of vessels;
- (b) mooring or unmooring;
- (c) equipment (nature and use);
- (d) the manning of ships;
- (e) the safety or security of personnel, equipment and vessels within Admiralty Waters and the Naval Base.

(4) The King's Harbour Master may attach conditions to a permit.

(5) If there is no person on board a vessel to comply with directions given by the King's Harbour Master, the King's Harbour Master may take such steps as are necessary to ensure that the vessel complies with those directions.

(6) The steps referred to in subsection (5) may include boarding the vessel and moving it.

(7) The owner and master of a vessel to which subsection (5) applies are liable for any expenses incurred by the King's Harbour Master in taking the steps referred to in that subsection.

Removal of wrecks and obstructions.

9.(1) The owner or master of any vessel or other object that sinks in, or becomes an obstruction to, Admiralty Waters must inform the King's Harbour Master immediately of that fact.

(2) Other than in a case of urgency the King's Harbour Master may issue a written direction requiring the owner or master of an obstruction to remove or destroy the obstruction in accordance with the provisions of the direction, and such direction must state the period by which it must be complied with.

(3) A direction under subsection (2), other than in the case of urgency, must be in writing and served on the owner or master of the obstruction but where the owner or master cannot be ascertained the direction must be published in the Gazette.

(4) If -

- (a) the King's Harbour Master is of the opinion that in the circumstances the removal of the obstruction is urgent; or
- (b) the period for compliance with a written direction has elapsed,

the King's Harbour Master may remove or destroy the obstruction and recover any expenses reasonably incurred in connection with the removal or destruction from the owner or master of the obstruction.

(5) No person may use explosives for the removal or destruction of an obstruction without the permission of the King's Harbour Master.

(6) Where the circumstances permit, the King's Harbour Master may detain and, in the case of non-payment of expenses on demand, sell the obstruction and out of the proceeds of the sale pay those expenses and expenses of the sale, paying the surplus (if any) to the owner or person entitled thereto on demand, and any deficiency may be recovered as a civil debt from the owner or person in charge.

(7) A sale referred to in subsection (6) must not take place (except in the case of property of a perishable nature) until at least seven clear days' notice of the intended sale has been given by advertisement in the Gazette.

(8) For the purpose of this section, the owner of an obstruction is the person owning it at the time it became an obstruction, notwithstanding any subsequent sale, transfer, or abandonment.

(9) A person who fails to comply with subsection (1) or subsection (5) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Duty to keep approaches to Admiralty Waters clear.

10.(1) The Captain of the Port must ensure that the approaches to Admiralty Waters are kept clear from any wreck or other obstruction that may affect vessels entering or exiting Admiralty Waters.

(2) Where the Captain of the Port is informed of a wreck or obstruction that may affect the approaches to Admiralty Waters the Captain of the Port must inform the King's Harbour Master as soon as is reasonably practicable and must keep the King's Harbour Master informed of the steps that are being taken in order to remove the wreck or obstruction.

(3) Nothing in this section limits the powers of the Captain of the Port under the Port Act or any other enactment.

Equipment placed by the King's Harbour Master.

11.(1) The King's Harbour Master may place moorings, buoys, lights, marks, marker buoys, other aids to navigation, security and other booms, and such other equipment as may be required for any purpose in connection with maritime or air operations, in such positions within Admiralty Waters as may be considered necessary for the requirements of safety and operational security.

(2) A person must not interfere with any item referred to in subsection (1) without the permission of the King's Harbour Master.

(3) A person who fails to comply with subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Pilotage.

12.(1) A vessel over 50 metres in length must not navigate in Admiralty Waters unless it is piloted by a pilot who is an authorised pilot or a licensed pilot under sections 9 or 10 of the Gibraltar Pilotage Act 2016.

(2) A pilot referred to in subsection (1) must comply with any direction given by the King's Harbour Master whilst navigating within Admiralty Waters.

(3) Section 17 of the Gibraltar Pilotage Act 2016 shall apply in respect of any loss, or damage caused through any act, omission, neglect or default of a pilot acting in accordance with this section.

Fines and penalties.

13.(1) A person is guilty of an offence if that person fails to comply with-

- (a) any direction given by the King's Harbour Master;
- (b) any conditions attached to a permit issued by the King's Harbour Master; or
- (c) the conditions attached to any permission given by the King's Harbour Master.

(2) The master of a vessel is guilty of an offence if-

- (a) the vessel infringes-
 - (i) a direction given by the King's Harbour Master;
 - (ii) any conditions attached to a permit issued by the King's Harbour Master; or

(iii) the conditions attached to any permission given by the King's Harbour Master; or

(b) the master fails to prevent a member of the vessel's crew or a passenger on the vessel committing an offence under subsection (1).

(3) A person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Recovery of sums.

14.(1) All expenditure incurred and sums recoverable under this Act or any regulations made hereunder are recoverable under the small claims procedure in the Supreme Court notwithstanding that the amount claimed exceeds £10,000.

(2) Production during court proceedings of a certificate purporting to be signed by the Senior Officer or King's Harbour Master that such work was undertaken or such expenditure was incurred shall be prima facie proof of the claim.

Power to make regulations.

15.(1) The Minister may, with the consent of the Governor, make such regulations as may be necessary for carrying out the purposes of this Act.

(2) Regulations may in particular make provision in Admiralty Waters (or their approaches), and to the extent provided for below, in the Naval Base, for-

- (a) the regulation and control of all vessels entering or leaving Admiralty waters and their movement or mooring in such waters;
- (b) the exclusion or admission of merchant and other private vessels from and into Admiralty Waters;
- (c) the delegation of the duties of the King's Harbour Master, including delegation to an official of the Government of Gibraltar;
- (d) the safety or security of personnel, equipment and vessels within Admiralty Waters and the Naval Base;
- (e) the defining of dangerous or offensive goods (including petroleum); the conditions under which these may be carried or stored; the loading or unloading of such goods including the necessary supervision of such loading or unloading and the fees to be charged for such supervision; the mooring in Admiralty Waters of vessels carrying or in which may be stored such goods.

(3) Regulations made under this section may create either summary or indictable offences, or both, and section 23(b) of the Interpretation and General Clauses Act does not apply to any such regulations.

Port Act to continue to apply.

16. Except to the extent that it is inconsistent with this Act or any direction issued by the King's Harbour Master, the Port Act continues to apply to every merchant or other private vessel within Admiralty Waters.

Consequential amendments.

17.(1) The Port Act is amended as follows-

(a) in section 2(1)-

(i) for the definition "Admiralty Waters" substitute-

""Admiralty Waters" has the meaning given in the Admiralty Waters and Naval Base (Gibraltar) Act 2022,"

(ii) after the definition "Bay of Gibraltar" insert-

""BGTW" means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;"

(iii) for the definition of "Port Waters" substitute-

""Port Waters means those waters within BGTW which are not Admiralty Waters";

(b) in section 3-

(i) for ":" substitute ".",

(ii) omit "Provided that no part of Admiralty Waters, other than Port Waters, shall be included within the limits of the Port without the consent of Her Majesty signified by Order in Council";

(c) for section 5 substitute-

"5. All vessels in the port shall be under the control of the Captain of the Port."

(2) The Port Rules are amended as follows-

(a) in section 2(1) before the definition of "animals" insert-

““Admiralty Waters” has the meaning given in the Admiralty Waters and Naval Base (Gibraltar) Act 2022;”;

- (b) in rule 150 omit “, other than Port Waters”;
- (c) in paragraph 8 of Schedule 4 for “or the Admiralty Waters (Gibraltar) Regulations, 1972” substitute “, the Admiralty Waters and Naval Base (Gibraltar) Act 2022 or any regulations made thereunder”.

(3) Section 2 of the Gibraltar Port Authority Act 2005 is amended as follows-

- (a) before the definition “Authority” insert ““Admiralty Waters” has the meaning given in the Admiralty Waters and Naval Base (Gibraltar) Act 2022”;
- (b) in paragraph (a) of the definition of the “Port” for “including Admiralty and Port Waters as defined from time to time in any relevant Order in Council” substitute “including Admiralty Waters and Port Waters”;
- (c) after the definition “Port” insert-

““Port Waters” has the meaning given in the Port Act”.

(4) For the definition “port waters” in regulation 2 of the Gibraltar Merchant Shipping (Prevention of Pollution from Ships) Regulations 2009 substitute-

““Port Waters” has the meaning given in the Port Act;”.

(5) In section 2 of the Port Operations (Registration and Licensing) Act 2005-

- (a) before the definition “ancillary service” insert-

““Admiralty Waters” has the meaning given in the Admiralty Waters and Naval Base (Gibraltar) Act 2022;”;
- (b) in paragraph (a) of the definition of the “Port” for “including Admiralty and Port Waters as defined from time to time in any relevant Order in Council” substitute “including Admiralty Waters and Port Waters”;
- (c) after the definition “port operator” insert-

““Port Waters” has the meaning given in the Port Act;”.

(6) The Maritime Security Act is amended in section 1(3) as follows-

- (a) for the definition “harbour area” delete “(as defined in the Admiralty Waters (Gibraltar) Order 1972)” substitute “as defined in the Port Act”; and

(b) after the definition “harbour operations” insert-

““King’s Harbour Master” has the meaning given in the Admiralty Waters and Naval Base (Gibraltar) Act 2022;”;

(c) omit the definition “Queen’s Harbour Master”.

(7) In section 218(3) of the Public Health Act for “Admiralty Waters (Gibraltar) Order 1972” substitute “Admiralty Waters and Naval Base (Gibraltar) Act 2022”.

(8) The Merchant Shipping Act is amended as follows-

(a) in section 2(1) after the definition “home-trade passenger ship” insert-

““King’s Harbour Master” means the person appointed as the King’s Harbour Master under the Admiralty Waters and Naval Base (Gibraltar) Act 2022;”;

(b) in section 167-

(i) on each occasion the words “Senior Naval Officer” appear substitute “King’s Harbour Master”,

(ii) omit subsection (4).

(9) In section 2 of the Quarantine Act, in the definition “port” for “the waters known as the Admiralty Waters, delimited in the Admiralty Waters (Gibraltar) Order 1972” substitute “Admiralty Waters, as defined in the Admiralty Waters and Naval Base (Gibraltar) Act 2022”.

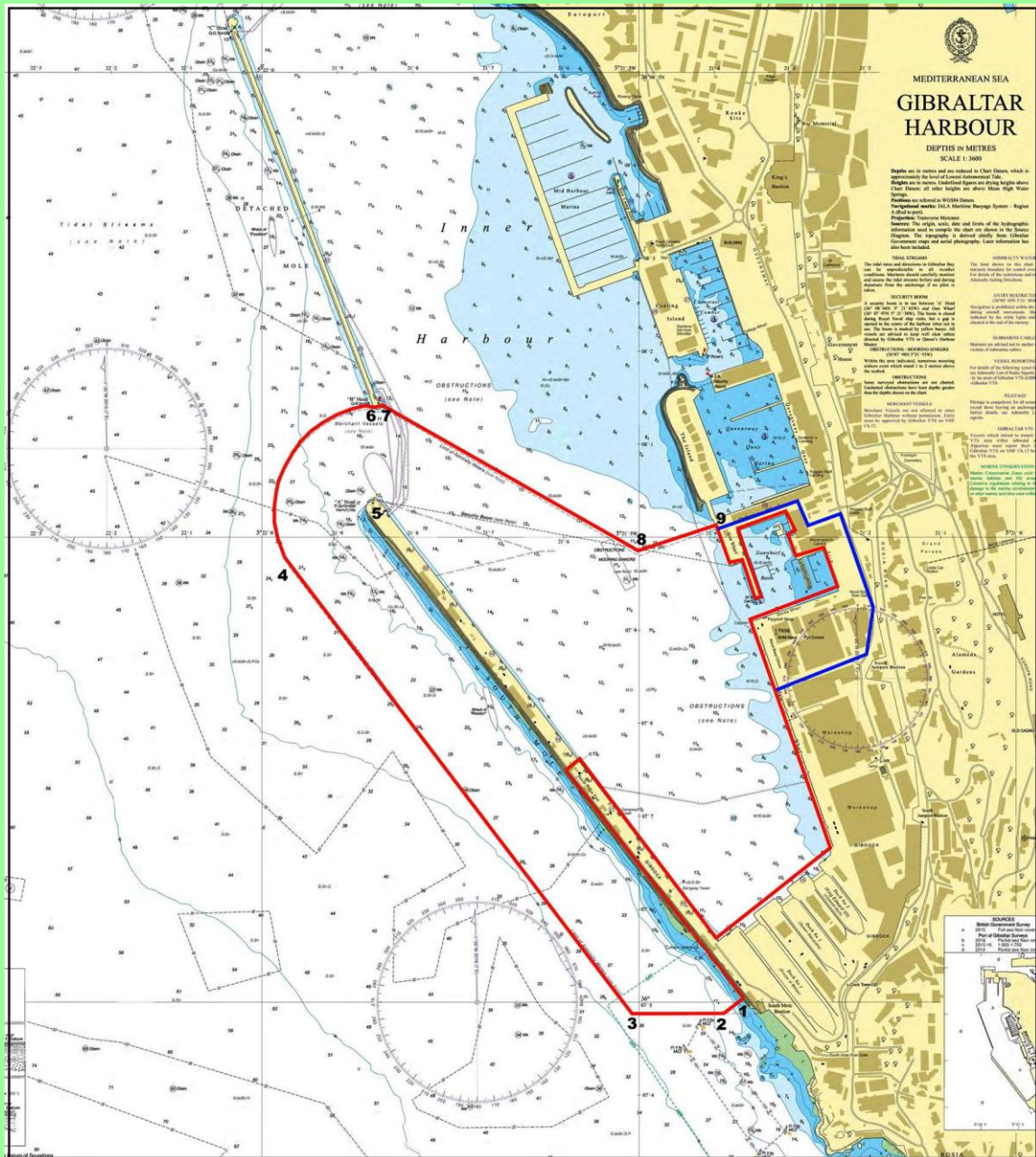
Schedule
Admiralty Waters

In this Schedule-

“Admiralty Waters” means all the water area inside and bounded by the shore and lines drawn as follows (the points being marked on the extract from Admiralty Chart 45)-

- (a) from a point on the high-water line south of South Mole Bastion at 36° 07.500’N 05° 21.360’W (Point 1), then
- (b) in a line in a direction 240° (true) to 36° 07.488’N 05° 21.387’W (Point 2), then
- (c) a line in a direction 270° (true) to 36° 07.488’N 05° 21.510’W (Point 3), then
- (d) a line in a direction 322° (true) to 36° 07.967’N 05° 21.963’W (point 4), then (e) a circular limit, radius 210 metres, centred on 36° 08.025’N 05° 21.843’W (point 5) to 36° 08.1383’N 05° 21.8505’W (Point 6) on “B” Head, then
- (f) along the shoreline (MHWS) of “B” Head to 36° 08.1396’N 05° 21.841’W (Point 7), then
- (g) a line in a direction 120° (true) to 36° 07’.980N 005° 21’.500W (Point 8), then
- (h) a line in a direction 071° (true) to 36° 08.009’N 05° 21.397’W (Point 9) on Ordnance Wharf/Gun Wharf, then
- (i) along the shoreline (MHWS) including Gunwharf Basin, Main Wharf, the entrances to Dock No 1, Dock No 2, Dock No 3 and South Mole to the point of commencement (Point 1) south of South Mole Bastion; and

“Gunwharf Basin” means the water bounded by the Ordnance Wharf, Water Sports Centre, Slip, Stores Wharf and Gunwharf as delineated on the extract from Admiralty Chart 45 in the Schedule.



ADMIRALTY WATERS (Amended)

Extract from UK Admiralty Chart 45
 Edition 8, published 13 October 2016
 Correct to NM 5523/2017

World Geodetic System 1984 datum (WGS 84)

EXPLANATORY MEMORANDUM

This Bill provides for the designation of Admiralty Waters. Control over Admiralty Waters vests in a Senior Officer but is exercised on the Senior Officer's behalf by the King's Harbour Master ("KHM").

The KHM has powers to issue permits and directions for the purpose of ensuring the safety of all vessels and activities that may take place in Admiralty Waters, and to a more limited extent in the Naval Base. The KHM has powers to issue such permits and directions where the circumstances so require.

Admiralty Waters and the Naval Base are delineated in the Schedule.