

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4777 GIBRALTAR Thursday 5th November 2020

LEGAL NOTICE NO. 385 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

GIBRALTAR MERCHANT SHIPPING (RECOGNISED ORGANISATIONS) (AMENDMENT) (EU EXIT) REGULATIONS 2020

In exercise of the powers conferred on him by section 11 of and paragraph (1) of Schedule 3 to the European Union (Withdrawal) Act 2019, the Minister has made the following Regulations-

PART 1

Preliminary

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Recognised Organisation) (Amendment) (EU Exit) Regulations 2020 and come into operation on 1 January 2020.

Transitional provision and savings.

2.(1) Any organisation which was-

- (a) recognised under Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations; and
- (b) authorised to act on behalf of the Administration,

immediately before exit day, continues to be recognised under Regulation (EC) 391/2009.

(2) For the purposes of the first paragraph of Article 5 of Regulation (EC) 391/2009, the Maritime Administrator may take into account matters which occurred before exit day and which in his opinion, amount to a failure to fulfil the minimum criteria set out in Annex 1.

(3) For the purposes of paragraph 1 of Article 6 of Regulation (EC) 391/2009, the Maritime Administrator may take into account matters mentioned in subparagraphs (a) and (b) of paragraph 1 of Article 6 which occurred before exit day.

(4) For the purposes of Article 7 of Regulation (EC) 391/2009, the Maritime Administrator may take into account matters mentioned in paragraph 1 of Article 7 which occurred before exit day.

(5) For the purposes of Article 5 and Article 6 of Commission Regulation (EU) 788/2014, the Maritime Administrator may take into account matters mentioned in those Articles which occurred before exit day.

Interpretation.

3. In these Regulations-

“Administration” shall have the meaning assigned to it by regulation 2(1) of the Gibraltar Merchant Shipping (Organisation for Inspection, Survey and Certification of Ships) Regulations 2011;

“EU retained legislation” means the following EU legislation as amended in Part 3 of these Regulations-

- (a) Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations;
- (b) Commission Regulation (EU) 788/2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation (EC) 391/2009; and
- (c) Commission Decision 2009/491/EC on criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment; and

“Maritime Administrator” shall have the meaning assigned to it by section 2 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993.

PART 2

Amendments to the Gibraltar Merchant Shipping (Organisation for Inspection, Survey and Certification of Ships) Regulations 2011.

4. The Gibraltar Merchant Shipping (Organisation for Inspection, Survey and Certification of Ships) Regulations 2011 are amended –

- (a) in the long title by deleting the following entries -

“and for the purposes of transposing into the law of Gibraltar Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations and of implementing Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations”;

- (b) in regulation 2(1) –
- (i) by substituting “these Regulations and the EU retained legislation” for “the Directive” in the definition of “Administration”;
 - (ii) by deleting the definition of “Commission”;
 - (iii) by substituting the following definition for the definition “EU Regulation”-

““Regulation (EC) No 391/2009” means Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations, as amended from time to time;”;
 - (iv) by deleting the definition of “Member State”;
 - (v) in the definition of “organisation”-
 - (aa) by substituting “these Regulations” for “the Directive”, and
 - (bb) by substituting “these Regulations and the EU retained legislation” for “the Directive”;
 - (vi) by substituting “these Regulations and the EU retained legislation” for “the EU Regulation” in the definition of “recognised organisation”;
 - (vii) by deleting the definition of “ship flying the flag of a Member State”; and
 - (viii) by substituting “EU retained legislation” for “Directive and EU Regulation” in sub-regulation (2);
- (c) in regulation 3(4)(a) by substituting “the Administration of the United Kingdom” for “an Administration of any Member State”;
- (d) in regulation 6(1)-
- (i) by deleting “in a State”; and
 - (ii) by substituting “Gibraltar or in the United Kingdom” for “the European Economic Area” appearing twice;
- (e) in regulation 6(2)-
- (i) by substituting “IMO” for “Commission”; and
 - (ii) by substituting “Gibraltar or in the United Kingdom” for “the European Economic Area”;

- (f) in regulation 7(4) by substituting “the IMO” for “the Commission;
- (g) in regulation 8(2) by substituting “IMO” for “Commission and for information purposes to the Member States”;
- (h) in regulation 9-
 - (i) in sub-regulation (2), by substituting “IMO” for “Commission and to other Member States”;
 - (ii) in sub-regulation (3)-
 - (aa) by substituting “IMO” for “Commission”, and
 - (bb) by substituting “EU retained legislation” for “EU Regulation” appearing twice;
 - (iii) in sub-regulation (4) by substituting “IMO” for “Commission and sent for information purposes to the Member States”; and
- (i) in the Schedule –
 - (i) in paragraph 4 of Part B, by deleting “to the Commission”; and
 - (ii) in paragraph 5 of Part B, by substituting “the Administration” for “Member States and the Commission.”

PART 3

Amendments to the EU retained legislation

Amendments of Regulation (EC) 391/2009.

5.(1) Regulation (EC) 391/2009 on common rules and standards for ship inspection and survey organisations is amended in accordance with sub-regulations (2) to (18) below.

(2) Article 2 is amended-

- (a) in paragraph (a), after “conventions” by inserting “and “Gibraltar ship” means a ship registered under Part III of the Gibraltar Merchant Shipping (Registration) Act 1993”;
- (b) in paragraph (b), by deleting “in all Member States.”;
- (c) in paragraph (f), by substituting “the Administration” for “a Member State”; and
- (d) in paragraph (g), by substituting “the Administration” for “a flag State”.

(3) Article 3 is amended-

- (a) in paragraph 1–
 - (i) by substituting “Organisations which wish to be recognised under this Regulation” for “Member States which wish to grant an authorisation to any organisation which is not yet recognised”;
 - (ii) by substituting “Administration” for “Commission”;
- (b) in paragraph 2, by substituting “Administration” for “Commission, together with the respective Member States submitting the request,”;
- (c) in paragraph 3–
 - (i) by substituting “Administration” for “Commission”;
 - (ii) by deleting “, in accordance with the regulatory procedure referred to in Article 12(3),”.

(4) Article 4 is amended-

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in paragraph 1, by substituting “Administration” for “in accordance with the regulatory procedure referred to in Article 12(3)”;
- (c) in paragraph 4, by substituting “Administration” for “ Commission, acting in accordance with the regulatory procedure referred to in Article 12(3)”;
- (d) in paragraph 5, by substituting “Gazette” for “in the Official Journal of the European Union”.

(5) Article 5 is amended-

- (a) in the first paragraph by substituting “Administration” for “Commission”;
- (b) by deleting the third paragraph.

(6) Article 6 is amended-

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in paragraph 1, by deleting “, in accordance with the advisory procedure referred to in Article 12(2),”;
- (c) in the second sub-paragraph of paragraph 3, by substituting “has” for “and the Member States concerned have”;

- (d) for paragraph 4 by substituting the following paragraph-
- “4.(1) A recognised organisation may appeal to the court against a decision by the Administration to require a recognised organisation to pay a fine or periodic penalty payment.
- (2) An appeal must be brought within the period of 28 days beginning with the date on which the recognised organisation is notified of the Administration’s decision under Article 6(1) or (2).
- (3) On appeal, the court may–
- (a) allow the appeal and cancel the fine or periodic penalty payment;
- (b) allow the appeal and reduce the fine or periodic penalty payment;
- (c) dismiss the appeal and increase the fine or periodic penalty payment;
- (d) dismiss the appeal.
- (4) An appeal–
- (a) is to be a re-hearing of the Administration’s decision to impose a fine or a periodic penalty payment; and
- (b) may be determined having regard to matters of which the Administration was unaware.
- (5) Sub-paragraph (4) has effect despite any provision of rules of court.
- (6) In this paragraph, a reference to “the court” is a reference to the court of the Stipendiary Magistrate but the Stipendiary Magistrate may transfer the proceedings under this paragraph to the Supreme Court.”.
- (7) Article 7 is amended-
- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) by deleting paragraph 2(b);
- (c) in paragraph 3 by substituting “The Administration may decide to withdraw recognition from a recognised organisation only” for the words from “Withdrawal of recognition” to “Article 12(3) and”.

(8) Article 8 is amended -

(a) at each place it occurs, by substituting “Administration” for “Commission”;

(b) for the first sentence in paragraph 1, by substituting the following-

“1. All the recognised organisations must be assessed by the Administration on a regular basis at least every two years to verify that they meet the obligations under this Regulation and fulfil the minimum criteria set out in Annex I.”;

(c) in paragraph 2–

(i) after “performance of the recognised organisation”–

(aa) by deleting the comma;

(bb) by inserting “and”;

(ii) by deleting the words from “and to the reports” to the end of the paragraph;

(d) in paragraph 3, by deleting the second sentence after the word “performance”;

(e) in paragraph 4, by substituting “Administration” for “Committee referred to in Article 12(1)”.

(9) Article 9 is amended-

(a) in paragraph 1, by substituting “Administration” for “Commission”;

(b) in paragraph 2–

(i) before the word “ship” in the third line, by inserting “Gibraltar”;

(ii) for “Commission” by substituting “Administration’s”.

(10) Article 10 is amended-

(a) in paragraph 1–

(i) in the fourth sub-paragraph by substituting “which comply with the Gibraltar Merchant Shipping (Marine Equipment) Regulations 2016” for the words after “equipment”;

(ii) in the fifth sub-paragraph by substituting “Administration” for “Commission and the Member States”;

- (b) by deleting paragraph 2;
 - (c) in paragraph 4–
 - (i) in the first sub-paragraph–
 - (aa) by substituting “Administration” for the words from “all Member States” to “Commission”;
 - (bb) by substituting “Gibraltar ships classed by them including” for “their classed fleet,”;
 - (cc) by deleting “irrespective of the flag the ships fly”;
 - (ii) in the second sub-paragraph–
 - (aa) by substituting “Gibraltar ships classed by them” for “their classed ships, irrespective of the flag the ships fly”;
 - (bb) by substituting “Administration” for the words from “to the common” to “control”;
 - (d) in paragraph 5–
 - (i) by inserting “Gibraltar” after “certificates to a”;
 - (ii) by deleting “irrespective of its flag,”;
 - (iii) by substituting “ Administration” for “competent administration of the flag State”
 - (iv) by substituting “an” for “its” .
- (11) Article 11 is amended -
- (a) in paragraph 1, by substituting “continue to” for the words “set up by 17 June 2011 and”;
 - (b) in paragraph 5, by substituting “Administration” for “interested parties, including flag States and the Commission”;
 - (c) in paragraph 6, by substituting “Administration” for “Commission”;
 - (d) by deleting paragraph 7.
- (12) Article 12 is deleted.

(13) Article 13 is amended -

(a) by substituting the following paragraph for paragraph 1–

“1. The Minister may by Regulations modify the minimum criteria set out in Annex I.”

(b) after paragraph 1 by inserting the following paragraph–

“1A. The power in paragraph 1 may only be exercised where the Minister considers it necessary in order to-

(a) take account of developments at international level and in particular in the International Maritime Organization; or

(b) improve the effectiveness of this Regulation.”;

(c) by deleting paragraph 2.

(14) Article 14 is amended-

(a) in paragraph 1–

(i) in clause (a), by substituting “The Minister may by Regulations make provision for:” for the first line;

(ii) after “classed” and before “ships” by inserting “Gibraltar”;

(iii) by deleting the second sub-paragraph;

(b) by substituting the following paragraph for paragraph 2 -

“2. The Minister may by Regulations make provision for-

(a) criteria to establish the amount of a fine or periodic penalty payment that may be imposed pursuant to Article 6;

(b) a decision-making procedure to impose a fine or periodic penalty payment;

(c) criteria against which the recognition of a recognised organisation may be withdrawn pursuant to Article 7.”;

(c) by substituting the following paragraphs for paragraph 3 –

- “3. The Minister may by Regulations provide for the interpretation of the minimum criteria in Annex I and in particular may establish objectives for the general minimum criteria referred to in point 3, Part A of Annex I.
4. The power to make Regulations in paragraphs 1 and 3 may only be exercised where the Minister considers it necessary in order to-
- (a) take account of developments at international level and in particular in the International Maritime Organization; or
 - (b) improve the effectiveness of this Regulation.” .

(15) Article 15 is deleted.

(16) Article 16 is amended –

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in the second paragraph, by substituting “Administration shall adapt the” for “Member States shall adapt their”.

(17) Articles 17 to 19 and the final sentence following Article 19 are deleted.

(18) Part B of Annex I is amended –

- (a) in paragraph 4, by deleting “to the Commission”; and
- (b) in paragraph 5, by substituting “the Administration” for “Member States and the Commission”.

Amendments of Commission Regulation (EU) 788/2014.

4.(1) Commission Regulation (EU) 788/2014 laying down detailed rules for the imposition of fines and periodic penalty payments and the withdrawal of recognition of ship inspection and survey organisations pursuant to Articles 6 and 7 of Regulation (EC) 391/2009 is amended in accordance with sub-regulations (2) to (25) below.

(2) Article 1 is amended -

- (a) in the first paragraph, by substituting “Administration” for “Commission”;
- (b) in the second paragraph, by deleting all the words after “organisation”.

(3) Article 2 is amended by deleting the second subparagraph.

(4) Article 3 is amended, at each place it occurs, by substituting “Administration” for “Commission”.

(5) Article 5 is amended, at each place it occurs, by substituting “Administration” for “Commission”.

(6) Article 6 is amended, by substituting “Administration” for “Commission”.

(7) Article 7 is amended, at each place it occurs, by substituting “Administration” for “Commission”.

(8) Article 8 is amended, at each place it occurs, by substituting “Administration” for “Commission”.

(9) Article 9 is amended by substituting “Administration’s” for “Commission’s”.

(10) Article 10 is amended-

(a) in paragraph 1, for the words from “Upon” to “adopt” by substituting “The Administration may make”;

(b) in paragraph 3, by substituting “Administration” for “Commission”.

(11) Article 11 is deleted.

(12) Article 12 is amended-

(a) at each place it occurs, by substituting “Administration” for “Commission”;

(b) in paragraph 1, by deleting “and notify the Member State concerned”;

(c) in paragraph 2(b), by deleting “or by the European Maritime Safety Agency acting on the Commission’s behalf”;

(d) in paragraph 3, by deleting “and the Member State concerned”.

(13) Article 13 is amended, at each place it occurs, by substituting “Administration” for “Commission”.

(14) Article 14 is amended-

(a) in paragraph 1, by substituting “Administration” for “Commission”;

(b) by substituting the following paragraph for paragraph 2-

“2. The Administration may invite any other persons with a legitimate interest in the infringement to take part in the oral hearing.”;

(c) in paragraph 3, by deleting the second sentence;

(d) in paragraph 5, by deleting the words “and to Member States concerned”.

(15) Article 15 is amended-

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in paragraph 1–
 - (i) for “adopt” by substituting “make”,
 - (ii) for “it” by substituting “the Administration”.

(16) Article 16 is amended-

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in paragraph 4, by deleting “or the European Maritime Safety Agency”;
- (c) by substituting the following paragraph for paragraph 5-

“5. For the purposes of paragraph 4, internal documents of the Administration may include documents or parts of documents pertaining to the internal deliberations of the Administration.”.

(17) In Article 18 is amended -

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in paragraph 2, by deleting the words from “, the European Maritime Safety Agency” to “supervision”, and “by them”.

(18) Article 19 is amended -

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in paragraph 4, for “adopted” by substituting “made”;
- (c) by deleting paragraphs 5 and 6.

(19) Article 20 is amended -

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) by deleting paragraph 2;
- (c) in paragraph 3, by deleting “or informing the Member States”.

(20) Article 21 is amended-

- (a) in the first line by substituting “Administration” for “Commission”;
- (b) by substituting “service of a notice demanding payment of the debt” for “establishing a recovery order and issuing a debit note”;
- (c) by deleting the words “in accordance with” to “Commission Delegated Regulation (EU) No 1268/2012”.

(21) Article 22 is amended-

- (a) at each place it occurs, by substituting “Administration” for “Commission”;
- (b) in paragraph 2-
 - (i) in the first line by deleting the words “or the European Maritime Safety Agency”;
 - (ii) in the fifth line by deleting “or the Agency”;
- (c) in paragraph 4-
 - (i) before “proceedings” by inserting “judicial”;
 - (ii) by deleting “pending before the Court of Justice of the European Union”.

(22) Article 23 is amended-

- (a) in paragraph 1, by substituting “commence judicial proceedings or arbitration” for “start a recovery procedure”;
- (b) in paragraph 2, by substituting “Administration” for the word from the first “Commission” to the second “Commission”;
- (c) in paragraph 4(b), by substituting “Court seized of the action or an arbitration tribunal” for “Court of Justice of the European Union”.

(23) Article 24 is amended-

- (a) in paragraph 1, by substituting “Administration’s” for “Commission’s”;
- (b) at each place it occurs, by substituting “Administration” for “Commission”.

(24) Article 25 and Article 27 and the final sentence following Article 27 are deleted.

(25) Annex is amended in the second column of the entry relating to Article 10(5) of Regulation (EC) No 391/2009, by substituting “Administration” for “flag State”.

Amendment of Commission Decision 2009/491/EC.

6.(1) Commission Decision 2009/491/EC on criteria to be followed in order to decide when the performance of an organisation acting on behalf of a flag State can be considered an unacceptable threat to safety and the environment, is amended in accordance with sub-regulations (2) to (4) below.

(2) Article 2 is amended by substituting “Administration” for “a flag State” .

(3) Article 3 is amended -

(a) at each place it occurs, by substituting “Administration” for “Commission”;

(b) in paragraph 1–

(i) by substituting “the Administration” for “a flag State”;

(ii) by deleting “that come to its knowledge”.

(4) Article 4 is amended -

(a) by deleting paragraph 1;

(b) in paragraph 2–

(i) in the first line by substituting “The Minister may by Regulations” for the words “Where” to “Directive 94/57/EC”

(ii) by substituting the following paragraph for sub-paragraph (b)-

“(b) determine the circumstances in which a recognised organisation’s authorisation may be suspended or withdrawn.”.

Repeal of Commission Implementing Regulation (EU) 1355/2014.

7. Commission Implementing Regulation (EU) 1355/2014 amending Regulation (EC) 391/2009 with regard to the adoption by the International Maritime Organization (IMO) of certain Codes and related amendments to certain conventions and protocols is repealed.

Dated: 5th November 2020

VIJAY DARYANANI,
Minister with responsibility for the Port and Shipping.

EXPLANATORY MEMORANDUM

(This Memorandum is not part of these Regulations)

These Regulations seek to amend the Gibraltar Merchant Shipping (Organisation for Inspection Survey and Certification) Regulations 2011 and the relevant EU retained legislation. They address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of Gibraltar from the European Union.

These Regulations amend provisions of retained EU law relating to inspection and survey organisations and the regime for recognising them as “recognised organisations”. The amendments in these Regulations ensure that the existing regulatory framework for recognised organisations in Gibraltar continues to function effectively and that Gibraltar continues to comply with its international obligations in relation to the International Maritime Organization’s (IMO) Code for Recognized Organizations.

The Regulations amend provisions of Regulation (EC) 391/2009 enabling the making of tertiary legislation supplementing or amending the Regulation by substituting powers for the Minister to make Regulations. The Regulations also amend provisions of Commission Decision 2009/491/EC enabling the making of tertiary legislation amending Annex I of the Decision. The Regulations also revoke Commission Implementing Regulation (EU) 1355/2014 which amended the definition of “international conventions” in Article 2(a) of Regulation (EC) 391/2009.