

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4777 GIBRALTAR Thursday 5th November 2020

LEGAL NOTICE NO. 386 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

GIBRALTAR MERCHANT SHIPPING (MANNING, TRAINING AND CERTIFICATION FOR SEAFARERS) (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-

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Manning, Training and Certification for Seafarers) (Amendment) (EU Exit) Regulations 2020 and come into operation on 1 January 2021.

Amendments to the Gibraltar Merchant Shipping (Manning, Training and Certification for Seafarers) Regulations 2006.

Amendment of the long title.

2. The Long title of the Gibraltar Merchant Shipping (Manning, Training and Certification for Seafarers) Regulations 2006 (the Principal Regulations) is amended by deleting the following words-

“and for the purposes of re-enacting the implementing legislation for Directive 2001/25/EC of the European Parliament and of the Council of 4 April 2001 on the minimum level of training of seafarers as amended by Directive 2002/84/EC of the European Parliament and of the Council of 5 November 2002 amending the Directives on maritime safety and prevention of pollution from ships, and for transposing into the law of Gibraltar Directive 2003/103/EC of the European Parliament and of the Council of 17 November 2003, and Commission Directive 2005/23/EC of 8 March 2005”.

Amendments of regulation 2.

3. Regulation 2 of the Principal Regulations is amended –

(a) by substituting the words “the Schedule” for the words “Schedule1” in the definition of “able seafarer deck”;

- (b) by substituting the words “the Schedule” for the words “Schedule1” in the definition of “certificate of competency”;
- (c) by substituting the words “the Schedule” for the words “Schedule1” in the definition of “able seafarer deck”;
- (d) by deleting the definition of “Commission”;
- (e) by substituting the words “the Schedule” for the words “Schedule1” in the definition of “electro-technical officer”;
- (f) by substituting the words “the Schedule” for the words “Schedule1” in the definition of “electro-technical rating”;
- (g) by substituting the words “the Schedule” for the words “Schedule1” in the definition of “GMDSS radio operator”;
- (h) by deleting the definition of “host Member State”;
- (i) by deleting the definition of “Member State”;
- (j) by deleting the words ““Party” or” in the definition of “Party” or “party State”;
- (k) by substituting the word “party” for the word “Member” in the definition of “recognition”; and
- (l) by inserting the following definition after the definition of “recognition”-
 - ““recognition of endorsement” means any recognition of endorsement issued under regulation 30 or 30B in accordance with the form set out in section A-I/2, paragraph 3 of the STCW Code;”;
- (m) by inserting the following definition after the definition of “STCW Convention”;
 - “third party State” means a State which is–
 - (a) a party State immediately before exit day; and
 - (b) not an EEA State;”.

Amendment of regulation 3.

4. Regulation 3(1)(b)(ii) of the Principal Regulations is amended by substituting the word “party” for the word “Member”.

Amendment of regulation 6.

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

Amendments of regulation 13A.

6. Regulation 13A of the Principal Regulations is amended-

- (a) in sub-regulation (9), by substituting the words “the Annex to the STCW Convention” for the words “Schedule 1”;
- (b) in sub-regulation (12)(d), by substituting the words “party State” for the words “third country”;
- (c) in sub-regulation (16) by substituting the words “the Schedule” for the words “Schedule 1” appearing twice in paragraphs (b) and (d); and
- (d) in sub-regulation (18)(b) by substituting the words “party States” for the words “Member States or other Parties to the STCW Convention”.

Repeal of regulation 13B.

7. Regulation 13B of the Principal Regulations is deleted.

Insertion of heading for regulation 21B.

8. The Principal Regulations are amended by inserting the following heading before the text of regulation 21B-

“Certification for Electro-technical officer.”.

Amendment of regulation 21C.

9. Regulation 21C(5) of the Principal Regulations is amended by substituting the word “party” for the word “Member”.

Amendments of regulation 26B.

10. Regulation 26B of the Principal Regulations is amended-

- (a) in sub-regulations (3)(a) by substituting the words “date of 3rd January 2013” for the words “entry into force of this Directive”; and
- (b) words) in sub-regulations (6)(a) by substituting the “date of 3rd January 2013” for the words “entry into force of this Directive”.

Amendment of regulation 27.

11. Regulation 27(5)(b) of the Principal Regulations is amended by substituting the words “party States” for the words “Member States or other Parties to the STCW Convention”.

Amendment of regulation 28.

12. Regulation 28 of the Principal Regulations is amended-

- (a) in sub-regulation (2), by substituting the words “recognition of endorsement” for the words “certificate of equivalent competency”;
- (b) in sub-regulation (8)(c), by substituting the words “party State” for the words “third country”; and
- (c) in sub-regulation (11), by substituting the words “party State recognised by the IMO” for the words “third country recognised by the Commission”.

Amendments of regulation 29.

13. Regulation 29 of the Principal Regulations is amended –

- (a) by substituting the words “an EEA State” for the words “a Member State” in the heading; and
- (b) by substituting the words “an EEA State” for the words “a Member State” after the words “both issued by” in the text of the regulation.

Amendments of regulation 30.

14. Regulation 30 of the Principal Regulations is amended-

- (a) by substituting the words “party State” for the word “third country” in the heading;
- (b) in sub-regulation (1)-
 - (i) by substituting the words “party State” for the word “third country”; and
 - (ii) by substituting the word “IMO” for the word “Commission”;
- (c) in sub-regulation (2)-
 - (i) by substituting the words “party State” for the word “third country”; and
 - (ii) by substituting the words “party State to the IMO” for the word “third country to the Commission”;

- (d) in sub-regulation (3) by substituting the words “party State” for the word “third country”;
- (e) in sub-regulation (4)-
 - (i) by substituting the word “IMO” for the word “Commission”; and
 - (ii) by substituting the words “party State” for the word “third country”;
- (f) in sub-regulation (5)-
 - (i) by substituting the words “party State” for the word “third country”; and
 - (ii) by substituting the words “such recognition had not, before exit day, been withdrawn by the European Commission” for the words “Commission has subsequently withdrawn it”;
- (g) in sub-regulation (6)-
 - (i) by substituting the words “party State” for the word “third country” in line 1;
 - (ii) by substituting the following paragraph for paragraph (a)-
 - “(a) the party State has been identified by the IMO as having demonstrated that full and complete effect is given by it to the provisions of the STCW Convention;”;
 - (iii) by substituting the word “IMO” for the word “Commission” in paragraph (b); and
 - (iv) by substituting the words “party State” for the word “third country” in paragraph (c)(i);
- (h) in sub-regulation (7), by substituting the words “party State” for the word “third country”; and
- (i) by inserting the following sub-regulations after sub-regulation (7)-
 - “(8) Subject to sub-regulations (10) and (11), where the Administration recognises a certificate under this regulation, the Administration must, on application of the holder of a certificate, issue recognition of endorsement attesting to its recognition.
 - (9) The Administration must not issue recognition of endorsement to an applicant unless the applicant can demonstrate possession of adequate language proficiency, in accordance with the requirements in sections A-II/1, A-III/1, A-IV/2 and A-II/4 of the STCW Code.

- (10) Where the Administration recognises the standard of competence or proficiency required for the issue of a certificate by a third party State as satisfying only in part the standard required for officers qualified for the purpose of Parts 2 and 3 of these Regulations, the Administration may specify additional standards which are to be attained, and the means by which such standards may be demonstrated, for the issue of recognition of endorsement.
- (11) Any recognition of endorsement issued under this regulation must be in the form set out in section A-I/2, paragraph 3 of the STCW Code.”.

Insertion of new regulations 30B and 30C.

15. The Principal Regulations are amended by inserting the following regulations after regulation 30A-

“Recognition of a party State on or after exit day.

30B.(1) This regulation applies where the Administration proposes, on or after exit day, to make a decision to recognise a party State to which regulation 29 or 30 does not apply in order to facilitate the recognition of certificates described in sub-regulation (5) issued by or under the authority of that party State.

(2) The Administration must, before making a decision described in sub-regulation (1) -

(a) collect all relevant information in order to carry out an assessment of the training and certification systems in the party State to which the decision would apply in order to verify whether that party State-

(i) meets all the requirements of the STCW Convention regarding standards of competence, training and certification and quality standards; and

(ii) has taken appropriate measures to prevent fraud involving certificates; and

(b) set in process the agreement of an undertaking with the country to which the decision would apply to ensure that prompt notification is given to the Administration of any significant change in the arrangements for training and certification provided in accordance with the STCW Convention.

(3) The assessment described in paragraph (a) of sub-regulation (2) may include an inspection of facilities and procedures.

(4) Where the Administration is satisfied that the requirements of sub-regulation (2) have been met, the Administration may-

- (a) make a decision to recognise that party State; and
 - (b) recognise the certificates described in sub-regulation (5) issued by or under the authority of that party State.
- (5) The certificates are-
- (a) a certificate of competency issued to a master or an officer;
 - (b) a certificate of competency issued to a GMDSS radio operator; or
 - (c) a certificate of proficiency in training for tanker cargo operations issued to a master or an officer.
- (6) Subject to sub-regulation (7), where the Administration recognises a certificate described in sub-regulation (5), the Administration may, on application of the holder of the certificate, issue recognition of endorsement attesting to its recognition.
- (7) The Administration must not issue recognition of endorsement to an applicant unless the applicant can demonstrate possession of adequate language proficiency, in accordance with the requirements in sections A-II/1, A-III/1, A-IV/2 and A- II/4 of the STCW Code.
- (8) Where, pursuant to sub-regulation (4)(b), the Administration recognises the standard of competence or proficiency required for the issue of a certificate by a party State as satisfying only in part the standard required for officers qualified for the purpose of Part 2 and 3 of these Regulations, the Administration may specify additional standards which are to be attained, and the means by which such standards may be demonstrated, for the issue of recognition of endorsement.
- (9) For the purposes of this regulation “certificate of competency” means a certificate issued and endorsed for masters, officers and GDMSS radio operators in accordance with the provisions of chapters II, III, IV or VII in Attachment I to the Final Act of the 2010 Manila Conference of Parties to the STCW Convention.

Withdrawal of recognition.

- 30C.(1) The Administration may, in the circumstances described in sub-regulation (2) and subject to sub-regulation (3), withdraw recognition of a party State which issued a certificate described in regulation 29, 30 or 30B.
- (2) The circumstances are that, following an evaluation of the party State which issued the certificate that may include an inspection of facilities and procedures, the Administration is no longer satisfied that the requirements of the STCW

Convention regarding standards of competence, training and certification and quality standards are fully complied with.

- (3) Where there are indications that a party State may no longer comply with the requirements described in sub-regulation (2), the Administration must notify the party State that recognition of that party State's certificates will be withdrawn six months after such notification is given unless adequate measures are taken to ensure compliance with all relevant requirements of the STCW Convention.
- (4) Where the Administration withdraws recognition of a party State in accordance with sub-regulation (1)-
 - (a) certificates of equivalent competency issued on the basis of that recognition before the date of the decision to withdraw recognition remain valid; and
 - (b) an officer holding any recognition of endorsement may not be issued with recognition of endorsement of a higher grade based on a certificate issued by that party State except where an officer qualifies for a certificate solely on the basis of additional sea service.”.

Amendments of regulation 31.

16. Regulation 31 of the Principal Regulations is amended-

- (a) by inserting in the heading the words “through IMO” after the word “recognition”;
- (b) in sub-regulation (1), by substituting the words “party State” for the words “third country”;
- (c) in sub-regulation (2)-
 - (i) by substituting the words “party State” for the words “third country”; and
 - (ii) by substituting the word “IMO” for the word “Commission”;
- (d) in sub-regulation (3)-
 - (i) by substituting the words “party State” for the words “third country”;
 - (ii) by substituting the words “IMO and the other party State” for the words “Commission and the other Member State”;
- (e) in sub-regulation (4), by substituting the word “IMO” for the word “Commission”; and

- (f) in sub-regulation (5), by substituting the words “party State” for the words “third country”.

Amendment of regulation 32.

17. Regulation 32 of the Principal Regulations is amended in sub-regulation (2), by substituting the word “IMO” for the word “Commission”.

Amendments of regulation 34.

18. Regulation 34 of the Principal Regulations is amended-

- (a) in sub-regulation (1), by substituting the words “party State” for the words “Member State or another Part to the STCW Convention”;
- (b) in sub-regulation (2), by substituting the words “party State” for the words “Member State or another Part to the STCW Convention”;
- (c) in sub-regulation (3)-
 - (i) by substituting the words “party States” for the words “Member States or of Parties to the STCW Convention”; and
 - (ii) by substituting the words “party States” for the words “Member States or Parties”;
- (d) in sub-regulation (4)-
 - (i) by substituting the words “party State” for the words “Member State or of another Party to the STCW Convention”; and
 - (ii) by substituting the words “party State” for the words “the Member State or the Party to the STCW Convention”;
- (e) by deleting in sub-regulation (7)-
 - (i) by substituting the words “party State” for the words “Member State or a Party to the STCW Convention”; and
 - (ii) by substituting the words “party States” for the words “Member States or Parties”; and
- (f) by substituting the word “IMO” for the word “Commission” in sub-regulation (9).

Amendments of regulation 35.

19. Regulation 35 of the Principal Regulations is amended sub-regulation (3) by substituting the words “IMO” for the word “Commission”.

Amendments of regulation 42A.

20. Regulation 42A of the Principal Regulations is amended-

- (a) by substituting the word “party” for the word “Member” in sub-regulation (9)(b); and
- (b) by substituting the word “party” for the word “Member” in sub-regulation (10).

Amendment of regulation 44.

21. Regulation 44 of the Principal Regulations is amended in sub-regulation (2A)(f) by substituting the words “party State” for the words “third country”.

Repeal of regulation 44A.

22. Regulation 44A of the Principal Regulations is deleted.

Amendments of Schedule 1.

23. Schedule 1 of the Principal Regulations is amended-

- (a) by substituting the word “SCHEDULE” for the words “SCHEDULE 1” in the title of the Schedule;
- (b) in Regulation II/5, by substituting-
 - (i) in paragraph 3, the word “party” for the word “Member”;
 - (ii) in paragraph 4, the word “party” for the word “Member”;
 - (iii) in paragraph 5 -
 - (aa) the word “party” for the word “Member”; and
 - (bb) the words “date of 3rd January 2013” for the words “entry into force of the present Directive”;
- (c) in Regulation III/5, by substituting-
 - (i) in paragraph 3, the word “party” for the word “Member”;

- (ii) in paragraph 4 -
 - (aa) the word “party” for the word “Member”; and
 - (bb) the words “date of 3rd January 2013” for the words “entry into force of the present Directive”;
- (d) in Regulation III/6, by substituting -
 - (i) in paragraph 3, the word “party” for the word “Member”;
 - (ii) in paragraph 4—
 - (aa) the word “party” for the word “Member”, and
 - (bb) the words “date of 3rd January 2013” for the words “entry into force of this Directive”;
 - (iii) in paragraph 5, by substituting the word “party” for the word “Member”;
- (e) in Regulation III/7, by substituting -
 - (i) in paragraph 3, the word “party” for the word “Member”;
 - (ii) in paragraph 4 –
 - (aa) the word “party” for the word “Member”, and
 - (bb) the words “date of 3rd January 2013” for the words “entry into force of this Directive”;
 - (iii) in paragraph 5, the word “party” for the word “Member”;
- (f) in paragraph 2 of Regulation IV/1, by substituting the word “party” for the word “Member”;
- (g) in paragraph 1 of Regulation IV/2, by substituting the word “party” for the word “Member”;
- (h) in paragraph 7 of Regulation V/1-1, by substituting the word “party” for the word “Member”;
- (i) in paragraph 5 of Regulation V/1-2, by substituting the word “party” for the word “Member”;
- (j) in paragraph 2 of Regulation VI/5, by substituting the word “party” for the word “Member”;

- (k) in Regulation VI/6, by substituting –
 - (i) in paragraph 3-
 - (aa) the word “party” for the word “Member”, and
 - (bb) the words “date of 3rd January 2013” for the words “entry into force of this Directive”;
 - (ii) in paragraph 6 –
 - (aa) the word “party” for the word “Member”, and
 - (bb) the words “date of 3rd January 2013” for the words “entry into force of this Directive”;
- (l) in Regulation VII/1, by substituting-
 - (i) in paragraph 1, the word “party” for the word “Member”;
 - (ii) in paragraph 1.5 the words “regulation 13A of these Regulations” for the words “Article 5 of this Directive”;
 - (iii) in paragraph 2,
 - (aa) the word “party” for the word “Member”, and
 - (bb) by substituting the word “IMO” for the word “Commission”; and
- (m) in paragraph 1 of Regulation VII/3, by substituting the word “party” for the word “Member”.

Deletion of Schedule 2.

24. The Principal Regulations are amended by deleting Schedule 2.

Dated: 5th November 2020.

V. DARAYANANI,
Minister with responsibility for the Port and Shipping.

EXPLANATORY MEMORANDUM

These Regulations are made by the Minister 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 in order to 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 the Gibraltar Merchant Shipping (Manning, Training and Certification for Seafarers) Regulations 2006 which gave effect to requirements of the International Maritime Organization's Convention on Standards of Training, Certification and Watchkeeping for Seafarers and implemented, in part, Directive 2012/35/EU (amending Directive 2008/106/EU) on the minimum level of training for seafarers. The effect of the amendments is to enable continued recognition of certificates issued both by EEA States and other states that are a party to the STCW Convention where those states were so recognised before exit day. The amendments create a mechanism for the future recognition of parties to the STCW Convention by the Gibraltar Maritime Administration, and a power for the Administration to withdraw recognition in certain circumstances.