

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4782 GIBRALTAR Thursday 19th November 2020

LEGAL NOTICE NO. 411 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

GIBRALTAR MERCHANT SHIPPING (PASSENGER'S RIGHTS) (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

Domestic Provisions for Counting and Registration of Persons On Board Passenger Ships

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Passenger's Rights) (Amendment) (EU Exit) Regulations 2020 and come into operation on 1 January 2021.

Amendments to the Gibraltar Merchant Shipping (Counting and Registration of persons on board passenger ships) Regulations 2004.

Amendment of the long title.

2. The Long title of the Gibraltar Merchant Shipping (Counting and Registration of persons on board passenger ships) Regulations 2004 (the Principal Regulations) is amended by deleting the following words-

“for the purposes of transposing into the law of Gibraltar Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community as amended by Article 8 of Directive 2002/84/EC of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships,”.

Amendments of regulation 2(1).

3. Regulation 2(1) of the Principal Regulations is amended-

- (a) in the definition of “Community ship” by substituting “EU” for “Community”;
- (b) by substituting the following definition for the definition of “domestic voyage”-

““domestic voyage” means a voyage in sea areas either-

(a) from the port of Gibraltar to the same or another port within Gibraltar; or

(b) from a port of a Member State to the same or another port within that Member State;”;

(c) by substituting the following definition for the definition of “international voyage”-

““international voyage” means, in the case of Gibraltar, a voyage by sea from a port in Gibraltar to a port outside Gibraltar, or conversely, and in all other cases, a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;”;

(d) by substituting the following definition for the definition of “Member State”-

““Member State” means any State within the European Union;”.

Amendment of regulation 3.

4. Regulation 3 of the Principal Regulations is amended by substituting the following sub-regulation for sub-regulation (1)-

“(1) These Regulations shall apply to –

(a) Gibraltar passenger ship wherever it may be; and

(b) other passenger ship while it is within BGTW.”.

Amendment of regulation 4.

5. Regulation 4 of the principal Regulations is amended by substituting the following paragraph for paragraph (a) in sub-regulation (1)-

“(a) in the case of a passenger ship engaged on a voyage of more than 20 miles from the port of departure and that ship departs from the port of Gibraltar or a port located in a Member State or in the United Kingdom; or

(aa) in the case of Gibraltar passenger ship, departs from a port located outside the European Union, the United Kingdom or Gibraltar and is bound for the port of Gibraltar,

uses a system of individual passenger boarding cards in respect of passengers;”.

Amendments of regulation 6.

6. Regulation 6 of the Principal Regulations is amended-

(a) by substituting the following heading for the heading of regulation 6-

“Non-EU ships on voyages from outside the European Union to Gibraltar.”;

and

(b) by substituting the following words for the words from “a Community ship” to the words “to Gibraltar”-

“an EU ship, United Kingdom ship or Gibraltar ship on any voyage from any landing point outside the territory comprising the European Union and the United Kingdom”.

Amendments of regulation 8.

7. Regulation 8 of the Principal Regulations is amended-

(a) by substituting “territory comprising the European Union and the United Kingdom” for “territory of the European Community” in sub-regulation (1)(b)(i);

(b) by substituting “IMO” for the “Commission” occurring twice in sub-regulations (2) and (5).

PART 2

Amendment and revocation of retained direct EU legislation

Revocation of Council Decision 2002/762/EC.

7. Council Decision 2002/762/EC of 19 September 2002 authorising the Member States, in the interest of the Community, to sign, ratify or accede to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 is revoked.

Amendments of Regulation (EC) No 392/2009.

8.(1) Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents is amended in accordance with sub-regulations (2) to (9).

(2) Article 1 is amended-

(a) in paragraph 1 in the first sub-paragraph in line 1, by deleting “Community”;

(b) in the 2nd sub-paragraph of paragraph 1, by substituting “Gibraltar” for “a single Member State”; and

- (c) by deleting paragraph 2.
- (3) Article 2 is amended-
- (a) in the first paragraph, by substituting “Gibraltar” for “a single Member State”;
 - (b) in points (a), (b) and (c), by substituting “Gibraltar” for “a single Member State” in each place that it appears”; and
 - (c) by deleting the 2nd paragraph.
- (4) Article 3 is amended in paragraph 1, by deleting “16 and Articles”.
- (5) Article 6 is amended in paragraph 1-
- (a) by substituting “£18,500.” for “EUR 21,000.”; and
 - (b) in the 2nd paragraph, by substituting “Gibraltar” for “the Community”..
- (6) Article 7 is amended-
- (a) at the beginning of the first paragraph, by substituting “the Package Travel, Package Holidays and Package Tours Act 1994” for the words “Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.”;
 - (b) in the second paragraph, by substituting “Gibraltar” for “a Member State”, on both occasions it appears; and
 - (c) by deleting the third paragraph.
- (7) Article 8 is deleted.
- (8) Article 9 is amended-
- (a) in paragraph 1-
 - (i) in the first paragraph, by substituting “The Minister may make Regulations” for “Measures designed”;
 - (ii) in the first paragraph, by deleting the words from “, shall be adopted” to the end of the paragraph; and
 - (iii) by deleting the second paragraph; and

(b) in paragraph 2-

- (i) by substituting “The Minister may make Regulations” for Measures designed”; and
- (ii) by deleting the words from “shall be adopted” to the end of the paragraph.

(9) Articles 10, 11 and 12 are deleted.

Amendments of Regulation (EU) No 1177/2010.

9.(1) Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (the EU Regulation 1177 of 2010) is amended in accordance with sub-regulations (2) to (19).

(2) Article 2 is amended-

(a) in paragraph 1-

- (i) by substituting “Gibraltar” for “the territory of a Member State”, wherever it appears; and
- (ii) in point (b), by substituting “Gibraltar carrier” for “Union carrier”;

(b) by deleting paragraphs 3 and 4; and

(c) in paragraph 5, by substituting the word “Nothing” for the words “Directive 2006/87/EC and to Directive 2009/45/EC”.

(3) Article 3 is amended-

(a) by deleting point (b);

(b) by substituting the following point for point (e) -

“(e) ‘Gibraltar carrier’ means a carrier established in Gibraltar or offering transport by passenger services operated to or from Gibraltar;”;

(c) in point (q), by deleting the words “within the meaning of Article 2(2) and (3) of Directive 90/314/EEC”; and

(d) in point (s), by substituting the word “Gibraltar” for words “the territory of a Member State”.

(4) Article 4 is amended-

- (a) in paragraph 1, for “national law”, substitute “any enactment or rule of law”; and
- (b) in paragraph 2, by deleting the words from “or on the place” to the end of the paragraph.

(5) Article 8 is amended in paragraph (1)(a), by substituting “law, or any enactment or rule of law,” for “Union or national law”.

(6) Article 9 is amended in paragraph 1, by substituting “the body designated under regulation 8 of the Gibraltar Merchant Shipping (Passengers’ Rights) Regulations 2015” for “national enforcement bodies”.

(7) Article 11 is amended in paragraph 5 by deleting the word “national”.

(8) Article 17 is amended in paragraph 2, by substituting “£70” for “EUR 80”.

(9) Article 19 is amended in paragraph 6, by substituting “£5” for “EUR 6”.

(10) Article 21 is amended-

- (a) by substituting “any enactment or rule of law” for “national law”; and
- (b) by substituting “the Supreme Court of Gibraltar” for “national courts, including under Directive 90/314/EEC”.

(11) Article 23 is amended-

- (a) in paragraph 2, by substituting, “body designated under regulation 8 of the Gibraltar Merchant Shipping (Passengers’ Rights) Regulations 2015” for the words “Commission in all the official languages of the institutions of the European Union”; and
- (b) in paragraph 3, by substituting “under regulation 8 of the Gibraltar Merchant Shipping (Passengers’ Rights) Regulations 2015” for the words “by the Member State concerned pursuant to Article 25(1)”.

(12) The EU Regulation 1177 of 2010 is amended by substituting the following Article for Article 25 -

“Article 25

Enforcement bodies

1. Regulation 8 of the Gibraltar Merchant Shipping (Passengers’ Rights) Regulations 2015 designates the body responsible for the enforcement of this Regulation.

2. Any passenger may submit a complaint about an alleged infringement of this Regulation to the body designated under regulation 8 of the Gibraltar Merchant Shipping (Passengers' Rights) Regulations 2015. That body must provide passengers with a substantiated reply to their complaint within a reasonable period of time, under the provisions in Article 24.
3. The passenger must, as a first step, submit the complaint covered by this Regulation to the carrier or terminal operator. The body designated under regulation 8 of the Gibraltar Merchant Shipping (Passengers' Rights) Regulations 2015 is the appeal body for complaints not resolved under Article 24.”.

(13) Article 26 is amended, by substituting “body designated under regulation 8 of the Gibraltar Merchant Shipping (Passengers' Rights) Regulations 2015 must publish a report on its” for the words “bodies designated pursuant to Article 25 shall publish a report on their”.

(14) Article 27 is deleted.

(15) The EU Regulation 1177 of 2010 is amended by substituting the following Article for Article 28-

“The Merchant Shipping (Passengers' Rights) Regulations 2013 lay down rules on penalties applicable to the infringement of the provisions of this Regulation.”

(16) Articles 29 and 31 are deleted.

(17) Article 31 is amended by deleting third paragraph that begins with the words “This Regulation shall be” to the end.

(18) Annex I is amended in paragraph 2, by substituting “the Package Travel, Package Holidays and Package Tours Act 1994” for “Directive 90/314/EEC”.

(19) Annex III is amended in paragraph 1 by substituting “any enactment or rule of law” for “national regulations”.”.

Revocation of Council Decisions 2012/22/EU and 2012/23/EU

10. The following are revoked-

- (a) Council Decision 2012/22/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, with the exception of Articles 10 and 11 thereof; and
- (b) Council Decision 2012/23/EU of 12 December 2011 concerning the accession of the European Union to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974, as regards Articles 10 and 11 thereof.

PART 3

Transitional Provision *Insurance certificates issued by EU Member States*

11.(1) An insurance certificate that is issued, before exit day, by or under the authority of a Member State that is not a State Party will be accepted as evidence of the insurance required by regulation 5 of the Gibraltar Merchant Shipping (Carriage of Passengers by Sea) Regulations 2020”).

(2) In this regulation-

- (a) “insurance certificate” means a certificate in the form prescribed in regulation 6(1) of the Gibraltar Merchant Shipping (Carriage of Passengers by Sea) Regulations 2020; and
- (b) “State Party” has the same meaning as in the Gibraltar Merchant Shipping (Carriage of Passengers by Sea) Regulations 2020.

Dated: 19th November 2020.

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

EXPLANATORY MEMORANDUM *(This note is not part of the Regulations)*

These Regulations are made 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 the UK and Gibraltar from the European Union.

These Regulations make amendments to legislation in the field of maritime passengers’ rights and, in particular, amend legislation relating to ticketing, liability for accidents, compensation for delay and cancellations, assistance for people with reduced mobility. They also revoke legislation in relating to pollution damage from bunker oil.

Part 1 amends the Gibraltar Merchant Shipping (Counting and Registration of persons on board passenger ships) Regulations 2004. These amendments are consequential to the amendments being made in Part 2.

Part 2 revokes Council Decision 2002/762/EC which authorised the accession to International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001. It amends Regulation

(EC) No. 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accident and revokes Council Decisions 2012/22/EU and 2012/23/EU which relate to that Regulation. It also amends Regulation (EU) No. 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea.

Part 3 makes transitional provision for Insurance certificates issued by EU Member States.