

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4790 GIBRALTAR Friday 4th December 2020

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LEGAL NOTICE NO.432 OF 2020

## EUROPEAN UNION (WITHDRAWAL) ACT 2019

### GIBRALTAR MERCHANT SHIPPING (SHIP REGISTRATION) (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 (Ship Registration) (Amendment) (EU Exit) Regulations 2020 and come into operation on 1 January 2021.

#### **Part 1**

*Amendments to the Gibraltar Merchant Shipping (Registration) Act, 1993.*

#### **Amendments of the Gibraltar Merchant Shipping (Registration) Act, 1993.**

2. Section 2 of the Gibraltar Merchant Shipping (Registration) Act, 1993 (the Principal Act) is amended in the definition of “qualified person” by substituting “specified by Regulations as referred to in section 7(3)” for “defined by section 7(3)”.

3. Section 7 of the principal Act is amended by substituting the following subsection for subsection (3)-

“(3) For the purposes of this section “qualified persons” are those persons as may be specified by the Minister by Regulations made under this Act.”.

4. Section 14 of the principal Act is amended in subsection (3)(b)(ii)(aa) by substituting “the Regulations as referred to in section 7(3)” for “section 7(3)(b)”.

5. Section 38(1) of the principal Act is amended by substituting the following paragraph for paragraph (b)-

“(b) the registration in that register of pleasure yachts which are owned by persons who are specified as qualified persons by Regulations referred to in section 7(3)”.

**Part 2**

*Amendments to the Gibraltar Merchant Shipping (Ship Registration) Regulations, 1997.*

**Amendments of the Gibraltar Merchant Shipping (Ship Registration) Regulations, 1997.**

6. Gibraltar Merchant Shipping (Ship Registration) Regulations, 1997 (the Principal Regulations) is amended in accordance with regulations 7 to 19 below.

**Amendments of regulation 2.**

7. Regulation 2 of the Principal Regulations is amended-

(a) by inserting the following definitions before the definition of “EEA”-

““Act” means the Gibraltar Merchant Shipping (Registration) Act, 1993 (Act No. 12 of 1995);

“approved countries” means approved countries specified in Schedule 9;

“declaration of entitlement” means a declaration required by regulation 19;”;

(b) by inserting the following definition after the definition of “EEA State”-

““Gibraltar ship” means a ship which-

(a) is registered under section 6(1)(a) of the Gibraltar Merchant Shipping (Registration) Act, 1993;

(b) is a Government ship within the meaning of Part VII of that Act; or

(c) is not registered under the law of a country outside Gibraltar but is wholly owned by persons each of whom has a Gibraltar connection;”;

(c) by inserting the words “for the purposes of regulations 28, 29, 41 and 42” after the words “Schedule 2” in the definition of “relevant country”;

(d) by inserting the following definitions after the definition of “responsible individual”-

““sanctioned ship” means a ship if-

(a) were an application for registration in the Register to be made in respect of it, the Registrar would be required to refuse registration because of regulation 2A; or

(b) a termination direction has been issued in relation to the ship;

“section” means a section of the Act;”;

(e) by substituting a semi-colon “;” for the full-stop “.” after the definition of “ship”;  
and

(f) by inserting the following definition after the definition of “ship”-

““termination direction” means a direction to terminate the registration of a ship given to the Registrar under regulation 2A(3).”.

### **Insertion of new regulations 2A to 2C.**

8. The Principal Regulations are amended by inserting the following regulations after regulation 2-

#### **“Registration of sanctioned ships.**

2A.(1) The Registrar must refuse to register a ship if, on the basis of the information given to the Registrar by the Maritime Administrator or accompanying the application for registration, the ship appears to the Registrar to be a sanctioned ship.

(2) For the purposes of sub-regulation (1), a ship is sanctioned ship if that is -

(a) a specified ship;

(b) disqualified ship;

(c) prescribed country ship; or

(d) a ship de-registered by a country other than the United Kingdom or Gibraltar.

(3) The Minister may direct the Registrar to terminate the registration of-

(a) a disqualified ship;

(b) a specified ship;

(c) a prescribed country ship;

(d) a ship for the time being designated by the Security Council or the Committee as a ship in respect of which a UN Security Council Resolution provides for de-registration or de-flagging; or

(e) a ship de-registered by a country other than the United Kingdom or Gibraltar.

- (4) For the purposes of this regulation, a ship is a “prescribed country ship” if-
- (a) the legal title to the ship, or to any share in the ship, is vested in a person connected with the prescribed country;
  - (b) a person connected with the prescribed country has a beneficial interest in the ship or in any share in the ship; or
  - (c) a person connected with the prescribed country is a charterer of the ship on bareboat charter terms.
- (5) For the purposes of this regulation-
- (a) any reference to registering a ship is to registering the ship in the register of Gibraltar ships maintained by the Registrar;
  - (b) a ship is “de-registered by a country other than the United Kingdom or Gibraltar” if, in compliance with paragraph 12 of resolution 2397 (de-registration of ships involved in breaches of sanctions), the entry relating to the ship has been removed from a register of ships maintained in a country other than the United Kingdom or Gibraltar.
- (6) In this regulation-
- (a) “disqualified ship” shall have the meaning assigned to it by section 25(6) of the Sanctions Act 2019;
  - (b) “prescribed country” means a country referred to in sections 21 and 25 of the Sanctions Act 2019; and
  - (c) “specified ship” shall have the meaning assigned to it by section 30(1) of the Sanctions Act 2019.”.

**Gibraltar connection.**

2B. For the purposes of these Regulations, a person has a “Gibraltar connection” if the person is-

- (a) a registered Gibraltar under the Gibraltarian Status Act;
- (b) an individual who is habitually resident in Gibraltar; or
- (c) a body corporate which is established under the law of Gibraltar and has its principal place of business in Gibraltar.

**Qualified persons.**

2C.(1) For the purposes of section 7 of the Act the following persons are specified as qualified persons–

- (a) British citizens;
- (b) British Overseas Territories citizens;
- (c) British overseas citizens;
- (d) persons who under the British Nationality Act 1981, are British subjects;
- (e) persons who under the Hong Kong (British Nationality) Order 1986, are British Nationals (Overseas);
- (f) citizens of the Republic of Ireland and such other countries as may be prescribed;
- (g) Commonwealth citizens;
- (h) citizens of an approved country specified in Schedule 9;
- (i) bodies corporate incorporated in any relevant British possession;
- (j) nationals of an EEA State, but where an individual otherwise qualified under this subsection is not resident in Gibraltar he shall have appointed a representative person;
- (k) bodies corporate incorporated in a Commonwealth State or in an approved country specified in the Regulations as referred to in paragraph (h);
- (l) bodies corporate or legal entities incorporated, established or registered –
  - (i) under the law of Gibraltar, or
  - (ii) under the law of an EEA State, and either having a place of business in Gibraltar or having appointed a representative person,
  - (iii) a foreign maritime entity.

(2) A person who is not qualified under sub-regulation (1) to be the owner of a Gibraltar ship may nevertheless be one of the owners of such a ship if–

- (a) a majority interest in the ship (within the meaning of section 7(2) of the Act) is owned by persons who are qualified to be the owners of Gibraltar ships; and

(b) the ship is registered on a register kept under section 6(1) of the Act.”.

**Amendment of regulation 4.**

9. Regulation 4 of the Principal Regulations is amended by inserting the following sub-regulation after sub-regulation (3)-

“(3A) The Registrar shall be entitled to amend the Register where-

- (a) a clerical error has occurred; or
- (b) sufficient evidence is produced to satisfy him that the entry is incorrect,

and on making the amendment he shall issue a new certificate of registry or permission, if necessary.”.

**Amendment of regulation 18.**

10. Regulation 18 of the Principal Regulations is amended

(a) by inserting the following sub-regulation after sub-regulation (1)-

“(1A) Every application for registration of a ship must confirm that the ship is not a sanctioned ship.”; and

(b) in sub-regulation (2)(c) by substituting “the United Kingdom or of an EEA State, as provided for in regulation 2C(1)(I)(ii)” for “legislation of Gibraltar or of an EEA State, as provided for in section 7(3)(b)(i)(bb)”.

**Amendment of regulation 19.**

11. Regulation 19 of the Principal Regulations is amended by substituting the following paragraph for paragraph (c)-

“(c) in the case of a body corporate or other legal entity purporting to be a qualified person, a statement of the circumstances of incorporation or creation in Gibraltar, the United Kingdom or in an EEA State or of registration under Part XII of the Companies Act 2014, Part XIII of the Companies Act 2014 or Schedule 2 of the Act”.

**Amendment of regulation 27.**

12. Regulation 27 of the Principal Regulations is amended by inserting the following sub-regulations after sub-regulation (1)-

“(1A) Application for renewal of registration under sub-regulation (1) shall be accompanied by-

- (a) a declaration that there have been no changes to any registered details of the ship that have not been notified to the Registrar; and
- (b) confirmation that the ship is not a sanctioned ship.

(1B) Where no application for renewal is made the Registrar shall notify each and every mortgagee of the expiration of the ship's registration.”.

**Amendment of regulation 28.**

13. Regulation 28 of the Principal Regulations is amended by inserting the following sub-regulation after sub-regulation (2)-

“(3) Every application for the registration of a transfer or transmission of a registered ship or a share in a registered ship shall be accompanied by-

- (a) confirmation that the ship is not a sanctioned ship; and
- (b) where the application is made on behalf of a body corporate, the documents mentioned in regulation 18(1) and (1A).”.

**Amendments of regulation 34.**

14. Regulation 34 of the Principal Regulations is amended-

- (a) by inserting the following sub-regulation after sub-regulation (1)-

“(1A) Every application for bareboat registration shall confirm that the ship is not a sanctioned ship.”;

- (b) in sub-regulation (2)(b) by substituting “ the United Kingdom or of an EEA State, as provided for in regulation 2C(1)(I)(ii) for “legislation of Gibraltar or of an EEA State, as provided for in section 7(3)(b)(i)(bb)”.

**Amendment of regulation 35.**

15. Regulation 35 of the Principal Regulations is amended by substituting the following paragraph for paragraph (b)-

“(b) a statement of the circumstances of incorporation or creation of the body corporate or other legal entity in Gibraltar, the United Kingdom or in an EEA State as provided for in regulation 2C(1)(I)(ii) or of registration under Parts XII or XIII of the Companies Act 2014, Part XIII of the Companies Act 2014 or Schedule 2 of the Act;”.

**Amendment of regulation 36.**

16. Regulation 36 of the Principal Regulations is amended in sub-regulation (1) by substituting “Subject to regulation 2A, where” for “Where”.

**Amendment of Schedule 2.**

17. Schedule 2 of the Principal Regulations is amended by substituting “Regulations 28, 29, 41 and 42” for “regulation 2” immediate below the heading “Schedule 2” in the right corner.

**Substitution of Schedule 3.**

18. The Principal Regulations are amended by substituting the following Schedule for Schedule 3-

**“SCHEDULE 3**

Regulation 16

**ACCEPTED CLASSIFICATION SOCIETIES**

Lloyds Register

British Technical Committee of American Bureau of Shipping

Bureau Veritas

DNV-GL

Registro Italiano Navale

Nippon Kaiji Kyokai (Class NK).”.

**Addition of new Schedule 9.**

19. The Principal Regulations are amended by adding the following new Schedule after Schedule 8-

**“SCHEDULE 9**

Regulation 2.

*APPROVED COUNTRIES*

The approved countries are-

(a) Argentina;

(b) Aruba;



- (c) Bahrain;
- (d) Brazil;
- (e) the Canary Islands;
- (f) China;
- (g) the Faroe Islands;
- (h) Haiti;
- (i) Israel;
- (j) Japan;
- (k) Liberia;
- (l) Madeira;
- (m) the Marshall Islands;
- (n) Monaco;
- (o) Panama;
- (p) South Korea;
- (q) Switzerland;
- (r) Suriname;
- (s) the United Arab Emirates; and
- (t) the United States of America.”.

### **Part 3**

*Amendments to the Gibraltar Merchant Shipping (Pleasure Yachts) Regulations, 1997.*

#### **Amendments of the Gibraltar Merchant Shipping (Pleasure Yachts) Regulations, 1997.**

20. Gibraltar Merchant Shipping (Pleasure Yachts) Regulations, 1997 (the Principal Regulations) is amended in accordance with regulations 21 to 28 below.

#### **Amendments of regulation 2.**

21. Regulation 2 of the Principal Regulations is amended-

(a) by substituting the following definition for the definition of “Acts”-

““Act” means the Gibraltar Merchant Shipping (Registration) Act, 1993 (Act No. 12 of 1995);”;

(b) by inserting the following definition after the definition of “approved”-

““approved countries” means approved countries specified in Schedule 10;”;

(c) by inserting the following definitions after the definition of “representative person”-

““sanctioned pleasure yacht” means a pleasure yacht if-

- (a) were an application for registration in the Register to be made in respect of it, the Registrar would be required to refuse registration because of the provisions of regulation 2A; or
- (b) a termination direction has been issued in relation to the ship;

“sanctioned small ship” means a small ship, if-

- (a) were an application for registration in the Register to be made in respect of it, the Registrar would be required to refuse registration because of the provisions of regulation 2A; or
- (b) a termination direction has been issued in relation to the ship;”;

(d) by inserting the following definition after the definition of “standard scale”-

““termination direction” means a direction to terminate the registration of a pleasure yacht given to the Registrar under regulation 2A(3);”.

### **Insertion of new regulation 2A.**

22. The Principal Regulations are amended by inserting the following regulation after regulation 2-

#### **“Registration of sanctioned pleasure yacht.**

2A.(1) The Registrar must refuse to register a pleasure yacht if, on the basis of the information given to the Registrar by the Maritime Administrator or accompanying the application for registration, the pleasure yacht appears to the Registrar to be a sanctioned pleasure yacht.

(2) For the purposes of sub-regulation (1), a ship is sanctioned pleasure yacht if that fall within the category of a -

- (a) specified ship;
- (b) disqualified ship;
- (c) prescribed country ship; or
- (d) ship de-registered by a country other than the United Kingdom or Gibraltar.

(3) The Minister may direct the Registrar to terminate the registration of a pleasure yacht if that pleasure yacht falls within the category of a-

- (a) disqualified ship;
- (b) specified ship;
- (c) prescribed country ship;
- (d) a ship for the time being designated by the Security Council or the Committee as a ship in respect of which a UN Security Council Resolution provides for de-registration or de-flagging; or
- (e) a ship de-registered by a country other than the United Kingdom or Gibraltar.

(4) For the purposes of this regulation, a ship is a “prescribed country ship” if-

- (a) the legal title to the ship, or to any share in the ship, is vested in a person connected with the prescribed country;
- (b) a person connected with the prescribed country has a beneficial interest in the ship or in any share in the ship; or
- (c) a person connected with the prescribed country is a charterer of the ship on bareboat charter terms.

(5) For the purposes of this regulation-

- (a) any reference to registering a pleasure yacht is to registering the pleasure yacht in the register of Gibraltar ships maintained by the Registrar;
- (b) a pleasure yacht is “de-registered by a country other than the United Kingdom or Gibraltar” if, in compliance with paragraph 12 of resolution 2397 (de-registration of ships involved in breaches of sanctions), the entry relating to the pleasure yacht has been removed from a register of pleasure yachts maintained in a country other than the United Kingdom or Gibraltar.

(6) In this regulation-

- (a) “disqualified ship” shall have the meaning assigned to it by section 25(6) of the Sanctions Act 2019;
- (b) “prescribed country” means a country referred to in sections 21 and 25 of the Sanctions Act 2019 and “prescribed country ship” shall be construed accordingly; and
- (c) “specified ship” shall have the meaning assigned to it by section 30(1) of the Sanctions Act 2019.”.

**Amendment of regulation 4.**

23. Regulation 4(3)(a) of the Principal Regulations is amended by inserting the following entries after entry no. “vii”-

- “(viii) a Commonwealth citizen not falling within sub-paragraph (i) to (vii) above;
- (ix) a citizen of an approved country as specified in Schedule 10;”.

**Amendment of regulation 15.**

24. Regulation 15 of the Principal Regulations is amended by inserting the following sub-regulation after sub-regulation (1)-

- “(1A) Every application for registration of a pleasure yacht must confirm that the ship is not a sanctioned pleasure yacht.”.

**Amendment of regulation 16.**

25. Regulation 16 of the Principal Regulations is amended by substituting the following paragraph for paragraph (c)-

- “(c) in the case of a body corporate or other legal entity purporting to be a qualified person, a statement of the circumstances of incorporation or creation in Gibraltar, the United Kingdom or in an EEA State as provided for in regulation 4(3)(b)(i)(bb) or of registration under Part XII or Part XIII of the Companies Act 2014 or Schedule 1;”.

**Amendments of regulation 80.**

26. Regulation 80(4) of the Principal Regulations is amended by-

- (a) substituting a semi-colon (;) for the full-stop (.) at the end of paragraph (h);
- (b) inserting the following paragraph after paragraph (h)-
  - “(i) Commonwealth citizens not falling within paragraphs (a) to (h).”.

**Amendment of regulation 81.**

27. Regulation 81 of the Principal Regulations is amended by inserting the following sub-regulation after sub-regulation (1)-

“(1A) Every application for registration of a small ship must confirm that the ship is not a sanctioned small ship.”.

**Addition of new Schedule 10.**

28. The Principal Regulations are amended by adding the following new Schedule after Schedule 9-

**“SCHEDULE 10**

Regulation 2.

***APPROVED COUNTRIES***

The approved countries are-

- (a) Argentina;
- (b) Aruba;
- (c) Bahrain;
- (d) Brazil;
- (e) the Canary Islands;
- (f) China;
- (g) the Faroe Islands;
- (h) Haiti;
- (i) Israel;
- (j) Japan;
- (k) Liberia;
- (l) Madeira;
- (m) the Marshall Islands;
- (n) Monaco;

- (o) Panama;
- (p) South Korea;
- (q) Switzerland;
- (r) Suriname;
- (s) the United Arab Emirates; and
- (t) the United States of America.”.

Dated: 4<sup>th</sup> December 2020.

V DARYANANI,  
Minister with responsibility for the Port and Maritime Services.

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

These Regulations are made in exercise of the powers conferred on the Minister by section 11 of and paragraph (1) of Schedule 3 to the European Union (Withdrawal) Act 2019. They address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of Gibraltar from the European Union.