

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4782 GIBRALTAR Thursday 19th November 2020

LEGAL NOTICE NO. 412 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

GIBRALTAR MERCHANT SHIPPING (MONITORING, REPORTING AND VERIFICATION OF CARBON DIOXIDE) (EU EXIT) (AMENDMENT) 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 Monitoring, Reporting and Verification of Carbon Dioxide Emissions

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide) (EU Exit) (Amendment) Regulations 2020 and come into operation on 1 January 2021.

Interpretation.

2.(1) In these Regulations-

“Act” means the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“Company” means the shipowner or any other organisation or person, such as the manager or the bareboat charterer, which has assumed the responsibility for the operation of the ship from the shipowner;

“EU Regulation” means Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and amending.

(2) Expressions used in these Regulations have the same meaning as in the EU Regulation.

(3) In these Regulations a certificate of compliance includes a certificate issued under the EU Regulation as it has effect in EU law on and after exit day.

Application of these Regulations.

3.(1) These Regulations apply to ships above 5,000 gross tonnage to which the EU Regulation applies.

(2) These Regulations do not apply to warships, naval auxiliaries, fish catching or fish processing ships, wooden ships of primitive build, ships not propelled by mechanical means or government ships used for non-commercial purposes.

Requirement to carry a document of compliance.

4.(1) Subject to sub-regulation (4), a ship shall not enter or leave the port of Gibraltar unless there is in force, in respect of that ship, a valid document of compliance.

(2) The valid document of compliance must be carried on board the ship.

(3) The valid document of compliance must be produced on demand by the master to the Maritime Administrator or an officer authorised by him.

(4) Sub-regulation (1) does not apply to a ship which has not carried out a voyage arriving at or departing from a port under the jurisdiction of an EEA State during the relevant reporting period.

Penalties.

5.(1) A company is guilty of an offence if-

- (a) a ship enters or leaves the port in contravention of regulation 4(1);
- (b) anyone attempts to navigate that ship into or out of the port in contravention of that regulation; or
- (c) the document of compliance is not carried on board the ship in contravention of regulation 4(2).

(2) The company guilty of an offence under sub-regulation (1) is liable-

- (a) on summary conviction to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment to a fine.

(3) A master who fails to comply with regulation 4(3) is guilty of an offence and is liable on summary conviction to a fine not exceeding the statutory maximum.

(4) Any document required or authorised by virtue of any statutory provision to be served on a foreign company for the purposes of or the institution of (or otherwise in connection with the institution of) proceedings for an offence under this regulation against the company as owner of the ship is to be treated as served on the company if the document is served on the master of the ship.

(5) In this regulation foreign company means a company or body which is not one to which section 475 of the Companies Act 2014 applies so as to authorise the service of the document in question.

Power to detain.

6.(1) A ship may be detained if anyone attempts to navigate it out of the port in contravention of regulation 4.

(2) Section 208 of the Merchant Shipping Act (which relates to the detention of a ship) has effect in relation to the ship, subject to the modification that for-

- (a) “this Act”, substitute “the Gibraltar Merchant Shipping (Monitoring, Reporting and Verification of Carbon Dioxide Emissions) (EU Exit) (Amendment) Regulations 2020”;
- (b) “or any revenue officer” substitute “marine surveyor”; and
- (c) “owner” substitute “company”.

(3) An officer detaining the ship must serve on the master of the ship a detention notice which-

- (a) states the reason for the detention; and
- (b) requires the ship to comply with the terms of the detention notice until it is released by a competent authority.

(4) Where a ship is detained which is not a Gibraltar ship the Maritime Administrator must immediately inform, in writing-

- (a) the ship’s flag state administration; or, if this is not possible;
- (b) the Consul of the State of the flag administration; or, in the Consul’s absence;
- (c) the nearest diplomatic representative of the State of the flag administration.

(5) The written information referred to in sub-regulation (4) must set out all the circumstances of the decision to detain the ship.

(6) In this regulation “competent authority” means the Maritime Administrator.

Expulsion order.

7. Where an EEA State has informed the Maritime Administrator or the Gibraltar Port Authority that it has issued an expulsion order in respect of a ship in accordance with Article 20.3 of the EU Regulation, the Captain of the Port must refuse that ship's entry to the port of Gibraltar until the company fulfils its monitoring and reporting obligations under Articles 11 and 18 of the EU Regulation.

Power to permit prohibited ships to enter the port.

8.(1) Notwithstanding regulation 7, if this regulation applies, the Captain of the Port may allow a ship to have access to or enter the port of Gibraltar or an anchorage in Gibraltar.

(2) This regulation applies if the Captain of the Port-

- (a) considers that a circumstances mentioned in sub-regulation (3) applies in relation to the ship; and
- (b) is satisfied that adequate measures to ensure safe entry have been implemented by the company or master of the ship.

(3) The circumstances are-

- (a) force majeure;
- (b) overriding safety considerations;
- (c) the need to reduce or minimise the risk of pollution; or
- (d) the need to have deficiencies rectified.

Arbitration.

9.(1) Any question as to whether any of the matters specified in relation to a ship in a detention notice constituted a valid basis for the officer's opinion must, if the master or company so requires by a notice given to the officer within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the arbitrator.

(2) Where a notice is given by the master or company in accordance with sub-regulation (1), the giving of the notice does not suspend the operation of the detention notice.

(3) The arbitrator may have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether the ship was or was not liable to be detained.

(4) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the officer's opinion, the arbitrator must-

- (a) cancel the detention notice; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(5) In any case other than one described in sub-regulation (4) the arbitrator must affirm the detention notice in its original form.

(6) The decision of the arbitrator must include a finding whether there was or was not a valid basis for the detention of the ship.

(7) To be qualified for appointment as an arbitrator under this regulation a person must be-

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within sub-regulation (8); or
- (d) a person with special experience of shipping matters or of activities carried on in the port.

(8) For the purposes of sub-regulation (7)(c) a person falls within this sub-section if that person is a Barrister or Solicitor of at least 7 years' standing.

Compensation for unjustified detention.

10.(1) If on a reference under regulation 9 relating to a detention notice the arbitrator decides that the company has proved-

- (a) that the matter complained of did not constitute a valid basis for the opinion of the officer; and
- (b) that there were no reasonable grounds for the issue of the detention notice;

the arbitrator must award the company such compensation in respect of any loss suffered in consequence of the detention of the ship as the arbitrator thinks fit.

(2) Where a person making the reference to the arbitrator under regulation 9 and the arbitrator makes an award in his favour under sub-regulation (1), that person shall be entitled to compensation.

PART 2

Amendment of retained direct EU legislation.

Amendments of Commission Regulation (EU) 2015/757.

11.(1) Commission Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC(b) is amended in accordance with sub-regulations (2) to (19) below.

(2) Article 2 is amended by substituting “in Gibraltar” for “under the jurisdiction of a Member State”, wherever it appears.

(3) Article 3 is amended by substituting “in Gibraltar” in the definition of “ship at berth” for “under the jurisdiction of a Member State”..

(4) Article 4 is amended by substituting “in Gibraltar” for “under the jurisdiction of a Member State”, wherever it appears.

(5) Article 5 is amended in paragraph 2-

- (a) in the first sentence by substituting “Minister may make Orders” for the words from “Commission” to “Article 23” and by deleting the full stop after “standards”; and
- (b) in the second sentence, by substituting the word “and” for the words from “The Commission” to “Article 23”.

(6) Article 6 is amended-

- (a) in paragraph 2, by substituting “in Gibraltar” for “under the jurisdiction of a Member State”; and
- (b) in paragraph 5, by substituting “in the form specified in Orders made by the Minister.” for the words “determined by the Commission” to the end.

(7) Article 9 is amended-

- (a) in paragraph 1, by substituting “the port of Gibraltar” for “a port under a Member State’s jurisdiction”; and
- (b) in paragraph 2(a) by substituting “the port of Gibraltar” for “a port under the jurisdiction of a Member State”.

(8) Article 10 -

- (a) in paragraph (c), by substituting “domestic voyages” for “voyages between ports under a Member State’s jurisdiction”;
- (b) in paragraph (d), by substituting “the port of Gibraltar” for “ports under a Member State’s jurisdiction”;
- (c) in paragraph (e), by substituting “the port of Gibraltar” for “ports under a Member State’s jurisdiction”; and
- (d) in paragraph (f), by substituting “the port of Gibraltar” for “ports under a Member State’s jurisdiction”.

(9) Article 11 is amended in paragraph 1 by substituting “Minister” for the words from “Commission” to “concerned”.

(10) Article 12 is amended by substituting the following paragraph for paragraph 2 -

“2. The technical rules establishing the data exchange formats, including the electronic templates, shall be in the form specified by Orders made by the Minister.”.

(11) Article 15 is amended in paragraph 5-

- (a) in the first sentence by substituting “Minister may make Orders” for the words from “Commission” to “order”; and
- (b) in the second sentence, by substituting “The Minister” for the words “When adopting these acts, the Commission”.

(12) Article 16 is amended in paragraph 3-

- (a) in the first sentence, by substituting “Minister may make Orders” for the words from “Commission” to “order”;
- (b) in the second sentence by substituting “The Minister” for the words “When adopting these acts, the Commission”; and
- (c) in the third sentence, by deleting “in those delegated acts”.

(13) Article 17 is amended-

- (a) in paragraph 4 by substituting “Minister” for “Commission”; and
- (b) in paragraph 5-

- (i) by substituting the words “Minister may make Orders specifying” for the words from “Commission” to “acts”; and
- (ii) by deleting the second sentence.

(14) Article 18 is amended by substituting “the port of Gibraltar” for “a port under the jurisdiction of a Member State”.

(15) Article 19 is deleted.

(16) Article 20 is deleted.

(17) Article 21 is amended-

- (a) in the heading by deleting the words “and Commission report”;
- (b) in paragraphs 1, 2, 3 and 4, by substituting “Minister” for “Commission”, wherever it appears; and
- (c) by deleting paragraphs 5 and 6.

(18) Article 22 is amended-

- (a) in paragraph 1-
 - (i) by substituting “Minister” for “Commission”, and
 - (ii) by deleting the words from “without prejudice” to the end;
- (b) in paragraph 2, by substituting “Minister” for the words from “Commission” to “States”; and
- (c) in paragraph 3-
 - (i) by substituting “Minister” for “Commission”; and
 - (ii) by deleting the words after “Regulation” to the end.

(19) Article 23 is amended -

- (a) by substituting “ORDERS” for the current title;
- (b) by substituting the following paragraph for paragraph 1-
 - “1. Any power of the Minister to make Orders shall be exercisable by notice in the Gazette”.; and
- (c) by deleting paragraphs 2 to 5.

(20) Article 24 is deleted.

Amendments of Commission Implementing Regulation (EU) 2016/1927.

12.(1) Commission Implementing Regulation (EU) 2016/1927 of 4 November 2016 on templates for monitoring plans, emissions reports and documents of compliance pursuant to Regulation (EU) 2015/757 of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport, and amending Directive 2009/16/EC(a) is amended in accordance with sub-regulations (2) to (5) below.

(2) Article 3 is amended, in paragraph 1 by substituting “published by the Minister and available on the gov.gi website” for the words from “available” until the end of the sentence.

(3) Article 4 is amended in paragraph 1 by substituting “published by the Minister and available on the gov.gi website” for the words “available in Thetis MRV”.

(4) Annex is amended by deleting the word “EU” , wherever it appears.

(5) Part D of Annex II is amended by substituting “the port of Gibraltar” for “ports under a Member State’s jurisdiction”, wherever it appears.

Dated: 19th November 2020.

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

EXPLANATORY MEMORANDUM

(This Memorandum is not part of the Regulations)

Currently there is no domestic legislation for monitoring, reporting and verification of carbon dioxide emissions in Gibraltar. However, in order to make amendments to the EU Regulation, a standalone domestic legislation is required.

These Regulations address the failures of retained direct EU legislation to operate effectively and other deficiencies arising from the withdrawal of Gibraltar from the European Union.

Part 1 of these Regulations makes provision for domestic legislation for monitoring, reporting and verification of carbon dioxide emissions in BGTW.

Part 2 seeks to amend the Commission Regulation (EU) 2015/757 of the European Parliament and of the Council of 29 April 2015 on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport and the Commission Implementing Regulation (EU) 2016/1927 of 4 November 2016 on templates for monitoring plans, emissions reports and documents of compliance pursuant to Regulation (EU) 2015/757 of the European Parliament and of the Council on the monitoring, reporting and verification of carbon dioxide emissions from maritime transport which are direct retained EU legislation.