

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4836 GIBRALTAR Thursday 25th March 2021

LEGAL NOTICE NO.195 OF 2021.

EUROPEAN UNION (WITHDRAWAL) ACT 2019

GIBRALTAR MERCHANT SHIPPING (SURVEY, CERTIFICATION AND SAFETY) (AMENDMENT) (EU EXIT) REGULATIONS 2021

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 (Survey, Certification and Safety) (Amendments) (EU Exit) Regulations 2021 and shall be deemed to have come into operation on 1 January 2021.

PART 1

Amendments and revocation of retained EU law

Amendments to Regulation (EC) No. 725/2004

2.(1) Regulation (EC) No. 725/2004 (the Principal Regulation) is amended in accordance with regulations 3 to 13 below.

Amendments of Article 1.

3. Article 1 of the Principal Regulation is amended-

- (a) in paragraph 1, by substituting the word “enhance” for the words “introduce and implement Community measures aimed at enhancing”; and
- (b) in paragraph 2, by substituting the words “interpretation and implementation” for the words “harmonised interpretation and implementation and Community monitoring”.

Amendments of Article 2.

4. Article 2 of the principal Regulation is amended-

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

“1. ‘the special maritime security measures’ means Chapter XI-2 of the Annex to the SOLAS Convention, as amended from time to time (but this is subject to the provision made by Article 10 about the application of those measures by virtue of Article 3).”;

(b) by deleting paragraph 2;

(c) by substituting the following paragraph for paragraph 3 -

“3. ‘Part A of the ISPS Code’ means the Preamble and the mandatory requirements forming Part A of the International Code for the Security of Ships and of Port Facilities, as amended from time to time (but this is subject to the provision made by Article 10 about the application of Part A of the Code by virtue of Article 3).”;

(b) by substituting the following paragraph for paragraph 4 -

“4. ‘Part B of the ISPS Code’ means the guidelines forming Part B of the International Code for the Security of Ships and of Port Facilities, as amended from time to time.”;

(c) by deleting paragraphs 6 and 7;

(d) in paragraph 8, by substituting the words “in Gibraltar to a port facility outside Gibraltar,” for the words “of a Member State to a port facility outside that Member State.”;

(e) in paragraph 9-

(i) by substituting the word “Gibraltar” for the words “a Member State”; and

(ii) by substituting the word “Gibraltar” for the words “within that Member State.”.

Amendments of Article 3.

5. Article 3 of the principal Regulation is amended-

(a) by substituting the word “Scope” for the words “Joint measures and scope” in the heading;

(b) by substituting the following paragraphs for paragraph 1 to 4 -

“1. In respect of international shipping, the special maritime security measures and Part A of the ISPS Code are to have the force of law in Gibraltar.

2.(1) In respect of domestic shipping, the special maritime security measures and Part A of the ISPS Code are to have effect in relation to-

- (a) Class A passenger ships;
- (b) their companies; and
- (c) the port facilities serving them,

as they have effect (in accordance with paragraph 1 and Article 10(1) and (5)) in relation to the corresponding international shipping matters.

(2) In subparagraph (1) 'the corresponding international shipping matters' means-

- (a) the ships mentioned in paragraph 1.1 of regulation 2 of the special maritime security measures,
- (b) their companies, and
- (c) the port facilities mentioned in paragraph 1.2 of that regulation.

3.(1) In respect of domestic shipping, the special maritime security measures and Part A of the ISPS Code are to have effect in relation to-

- (a) Class B passenger ships which are certified to carry more than 250 passengers,
- (b) tankers operating domestic services, and
- (c) the companies of ships within point (a) or (b),

as they have effect (in accordance with paragraph 1 and Article 10(1) and (5)) in relation to the ships mentioned in paragraph 1.1 of regulation 2 of the special maritime security measures and their companies.

(2) But in the application of the special maritime security measures and Part A of the ISPS Code by virtue of subparagraph (1)-

- (a) regulation 6 of the special maritime security measures (ship security alert system) does not have effect in relation to the ships and companies mentioned in subparagraph (1)(a) to (c);
- (b) nothing in those measures and that Part requires a declaration of security to be completed or signed on behalf of the ships mentioned in subparagraph (1)(a) and (b),

and the special maritime security measures and Parts A and B of the ISPS Code are to be read with any modifications that are appropriate in accordance with points (a) and (b) of this subparagraph.

- (3) In this paragraph ‘tanker’ means a cargo ship constructed or adapted for the carriage in bulk of liquid cargoes of a flammable nature.

“3A.(1) In this Article ‘Class A passenger ship’ and ‘Class B passenger ship’ mean, respectively, a Class A passenger ship and a Class B passenger ship within the meaning of Article 4 of Directive 2009/45/EC of the European Parliament and of the Council of 6 May 2009 on safety rules and standards for passenger ships (as that Directive had effect as last amended by Commission Directive 2010/36/EU).

- (2) For the purposes of subparagraph (1), Article 4 of that Directive is to be interpreted as requiring the Administration to-

(a) establish, and update when necessary, a list of sea areas under Gibraltar jurisdiction delimiting the zones for all year round operation and, where appropriate, restricted periodical operation of the classes of ships, using the criteria set out in paragraph 1 of that Article;

(b) publish that list in its updated version in accordance with regulation 5 of the Gibraltar Merchant Shipping (Safety Rules and Standards for Passenger Ships on Domestic Voyages) Regulations 2011; and

(c) ensure that public database of such list is available on the internet site of the Administration.

4. In exercising any functions under, or in connection with the implementation of, the special maritime security measures or Part A of the ISPS Code (as they have effect in accordance with paragraphs 1 to 3) the Maritime Administrator must take fully into account the guidelines contained in Part B of the ISPS Code.”;

(a) in paragraph 5, by substituting the words “ The following paragraphs of Part B of the ISPS Code must be complied with as if they were mandatory” for the words from “Member States shall confirm to the following paragraphs of Part B of the ISPS Code”;

(b) in paragraph 8, by substituting the words “the Administration” for the words “Member States”; and

(c) after paragraph 8 by inserting the following paragraph-

“9. In this Article ‘company’ means a Company as defined in Regulation IX-1 of the SOLAS Convention.”.

Deletion of Articles 4 and 5.

6. Articles 4 and 5 of the principal Regulation are deleted.

Amendments of Article 6.

7. Article 6 of the principal Regulation is amended-

- (a) in the heading, by deleting the words “of a Member State”;
- (b) by substituting the following paragraph for paragraph 1-

“When a ship which is subject to the requirements of the special maritime security measures (by virtue of Article 3 of this Regulation or otherwise) announces its intention to enter the port of Gibraltar, the Administration must require that the information referred to in paragraph 2.1 of regulation 9 (ships intending to enter a port of another Contracting Government) of the special maritime security measures is provided. The Administration shall analyse, as far as necessary, the information provided and, where necessary, apply the procedure provided for in paragraph 2 of regulation 9 of those special measures.”, and

- (c) in paragraph 3 by substituting the words “special maritime security measures” for the words “special measures to enhance maritime security of the SOLAS Convention”

Amendments of Article 7

8. Article 7 of the principal Regulation is amended-

- (a) in paragraph 1-
 - (i) by substituting “The Administration” for “Member States” and “in Gibraltar” for “on their territory”,
 - (ii) in point (a), by substituting “Administration” for “competent authority for maritime security for the port concerned”, and
 - (iii) in point (b)-
 - (aa) by substituting “special maritime security measures” for “special measures to enhance maritime security of the SOLAS Convention”, and
 - (bb) by substituting “Administration” for “competent authority for maritime security”, in each place it occurs.

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

“2. When an international scheduled service is operated between Gibraltar and one or more EEA States, the Administration may, on the request of the company operating the service, grant an exemption to the service in accordance with the conditions laid down in paragraph 1.”.

(c) in paragraph 3-

- (i) by substituting “The Administration must periodically”, for “Member States shall periodically”, and
- (ii) by substituting “the Administration must immediately” for “Member States shall immediately”.

(d) by deleting paragraph 4;

(e) in paragraph 5-

- (i) by substituting “the Administration” for “a Member State”, and
- (ii) by substituting “special maritime security measures” for “special measures to enhance maritime security of the SOLAS Convention”.

Amendments of Article 8

9.(1) Article 8 of the principal Regulation is amended-

(a) in the heading, by substituting “the port of Gibraltar” for “Member State ports”;

(b) in paragraph 1-

- (i) by substituting “special maritime security measures” for “special measures to enhance maritime security of the SOLAS Convention”, and
- (ii) by substituting “of Gibraltar by the Administration” for the words from “either” to the end;

(c) by deleting paragraph 2.

Deletion of Article 9.

10. Article 9 of the principal Regulation is deleted.

Amendments of Article 10.

11.(1) Article 10 of the principal Regulation is amended-

(a) in the heading, by substituting “Power to exclude” for “Integration of”;

(b) by substituting the following paragraphs for paragraphs 1 and 2-

“1.(1) Subparagraph (2) applies if the Minister determines by Regulations made under paragraph 5 that an amendment made to the special maritime security measures or to Part A of the ISPS Code is to be excluded in relation to international shipping.

(2) For the purposes of the application of the special maritime security measures and Part A of the ISPS Code by virtue of Article 3(1) of this Regulation (application in respect of international shipping), the amendment is to be treated as not having been made.

2.(1) Subparagraph (2) applies if the Minister determines by Regulations made under this subparagraph that an amendment made to the special maritime security measures or to Part A of the ISPS Code (which would not otherwise be excluded, by virtue of being excluded in relation to international shipping: see paragraphs 2(1) and 3(1) of Article 3) is to be excluded in relation to domestic services.

(2) For the purposes of the application of the special maritime security measures and Part A of the ISPS code by virtue of Article 3(2) and (3) of this Regulation (application in respect of domestic services), the amendment is to be treated as not having been made.”.

(a) by deleting paragraphs 3 and 4;

(b) by substituting the following paragraph for paragraph 5 -

“5. If it appears to the Minister that there is a manifest risk that an amendment to the special maritime security measures or to Part A of the ISPS Code will lower the standard of maritime security, the Minister may by Regulations determine that the amendment is to be excluded in relation to international shipping.”.

(c) by deleting paragraphs 6, 7 and 8.

Deletion of Articles 11 to 15.

12. Articles 11 to 15 of the Principal Regulation are deleted including the concluding sentence “This Regulation shall be binding in its entirety and directly applicable in all Member States.”.

Deletion of Annexes 1 to 3.

13. Annexes 1 to 3 of the Principal Regulation are deleted.

PART 2

Amendments of subsidiary legislation

Amendments to the Gibraltar Merchant Shipping (Survey, Certification and Safety) Regulations 2004.

14. The Gibraltar Merchant Shipping (Survey, Certification and Safety) Regulations 2004 are amended –

(a) in regulation 2(1)-

- (i) by substituting the words “revised Resolution A.1118(30) of 6 December 2017 in its up-to-date version as in force at the time of reference;” for the words “Resolution A. 913 (22)” in the definition of “audit”;
- (ii) by inserting the words “as amended by the Gibraltar Merchant Shipping (Survey, Certification and Safety) (Amendments) (EU Exit) Regulations 2021;” after the words “facility security” in the definition of “EC Regulation”;
- (iii) by inserting the words and brackets “(disregarding for this purpose any amendment so far as it is excluded by Article 10(1) or (2) of the EC Regulation);” after the words “time of reference” in the definition of “ISPS Code”; and
- (iv) by inserting the words and brackets “(disregarding for this purpose any amendment so far as it is excluded by Article 10(1) or (2) of the EC Regulation);” after the words “time of reference” in the definition of “SOLAS Convention”; and

(b) by deleting regulation 90.

PART 3
Revocation

Revocation of Commission Regulation (EC) No. 324/2008.

15. Commission Regulation (EC) No. 324/2008 of 9 April 2008 laying down procedures for conducting Commission inspections in the field of maritime security is revoked.

Dated: 25th March 2021.

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

EXPLANATORY MEMORANDUM

(This Memorandum 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 Gibraltar from the European Union.

Part 1 of these Regulations amend Regulation (EC) No 725/2004 (OJ L 129, 29.4.2004, p. 6) which provides for the interpretation, implementation and monitoring of the ship and port facility security provisions of the 1974 Convention of the Safety of Life at Sea (SOLAS Convention), including the supplementary International Ship and Port Facility Security Code (ISPS Code). This Part amends the principal Regulation to omit unnecessary definitions including ‘focal point for maritime security’ which is defined by reference to ‘Member State’. It restates provisions to preserve the current application of Regulation (EC) No 725/2004, makes certain provisions more accessible and removes those which oblige Gibraltar to provide information to the Commission. It replaces references which relate to Gibraltar as the UK being an EU Member State, to ensure that existing regulatory requirements continue to apply when the UK is no longer an EU Member State. It also amends Regulation (EC) No 725/2004 to transfer from the Commission to the Minister a limited power to exclude amendments to SOLAS and the ISPS Code in respect of international shipping, and more generally in respect of domestic shipping.

Part 2 of these Regulations make amendments the only relevant subsidiary legislation entitled the Gibraltar Merchant Shipping (Survey, Certification and Safety) Regulations 2004 which are consequential on the amendments made to Regulation (EC) No 725/2004.

Part 3 revokes Commission Regulation (EC) No 324/2008 (OJ L 98, 10.4.2008, p.5) which relates to procedures for conducting Commission inspections in the field of maritime security.