

Regulations made under ss. 98 and 118.

**GIBRALTAR MERCHANT SHIPPING (PORT WASTE
RECEPTION FACILITIES) REGULATIONS, 2002**

(LN. 2002/098)

31.7.2003 (*LN.2003/079*)

Amending enactments	Relevant current provisions	Commencement date
LN. 2003/128	rr. 1, 3(2)(c) and (3), 8, 8(a), (c), 12(1), 13(2) and (3), 14(2) and 17(2)	31.7.2003

Transposing:
Directive 2000/59/EC

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In exercise of the powers conferred on it by sections 98 and 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993, and for the purposes of transposing into the law of Gibraltar Directive 2000/59/EC on port reception facilities for ship-generated waste and cargo residues, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Port Waste Reception Facilities) Regulations, 2002 and come into operation on a date to be appointed by the Minister with responsibility for Transport.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“Administration” means the Maritime Administrator in the case of Gibraltar, and in other cases the Administration of the relevant flag State;

“cargo residues” means the remnants of any cargo material on board in cargo holds or tanks which remain after unloading procedures and cleaning operations are completed and includes excesses and spillage from loading or unloading;

“Convention” means the International Convention for the Prevention of Pollution from ships 1973 as amended by Protocol of 1978 (Marpol 73/78), relating to that Convention in its up-to-date version;

“Directive” means Directive 2000/59/EC¹ of the European Parliament and Council on port reception facilities for ship-generated waste and cargo residues as amended;

“garbage” means all kinds of victual, domestic and operational waste excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except sewage originating from ships;

“inspector” means an inspector appointed under section 56 of the Act;

“Member State” means any State within the European Economic Area, and includes Gibraltar;

¹ O.J. L332, 28.12.2000, p.81.

“MEPC Circular” means a circular of that description issued by the Marine Environment Protection Committee of the International Maritime Organization;

“Minister” means the Minister with responsibility for Transport;

“noxious liquid substance” means a substance listed as such in either MEPC Circular 2/CIRC.1 or a Category A, B, C or D substance;

“Act” means the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 (No. 13 of 1995);

“oil” shall have the meaning assigned to it in the Merchant Shipping (Oil Pollution) Regulations, 1999;

“oily mixtures” means a mixture with any oil content;

“operational waste” means all cargo-associated waste and maintenance waste;

“owner” in relation to a ship, means the owner, charterer, manager or operator of a ship;

“Port” means—

- (a) that area of water and the foreshore adjacent thereto as is commonly known and recognised as the Port, roadstead and anchorage ground of Gibraltar including Admiralty and Port Waters as defined from time to time in any other law of Gibraltar;
- (b) all that area of land defined as being part of the Port in the Port Act; and
- (c) the area within Gibraltar territorial waters commonly known as the Eastern Anchorage, within the co-ordinates specified in the schedule;

“port authority” means the port authority in Gibraltar who has been functioning in the name of Gibraltar Port Authority;

“prescribed wastes” means any waste of the following descriptions—

- (a) cargo residues;
- (b) noxious liquid substances; and
- (c) ship-generated waste;

“recreational craft” means a ship of any type, regardless of the means of propulsion, which is intended for sports or leisure purposes;

- (2) Subject to subregulation (1), words and expressions used in these Regulations shall have the same meaning assigned to them in the Directive.
- (3) Any direction given under these Regulations shall be in writing.

Application of these Regulations.

3.(1) These Regulations apply to—

- (a) the port; and
- (b) all ships entering port Waters subject to subregulations (2), (3), and (4) or operating within port Waters.

(2) These Regulations do not apply to—

- (a) war ships;
- (b) naval auxiliaries; and
- (c) ships owned or operated by a State and used, for the time being, only on government non-commercial service.

(3) Regulations 12 and 14(4) do not apply to a ship which is a fishing vessel or recreational craft authorised to carry no more than 12 passengers.

Requirement to ensure adequate port waste reception facilities.

4.(1) The port authority shall ensure the availability of waste reception facilities adequate to meet the needs of ships normally using the port without causing undue delay to ships.

(2) In subregulation (1) “adequate” means capable of receiving the types and quantities of prescribed wastes from ships normally using the port taking into account the operational needs of the users of the port, its size and

geographical location, the types of ships calling there and any exemptions provided for under regulation 15.

(3) For the purposes of subregulation (1) the powers of the port authority to ensure the availability of adequate waste reception facilities may include power to join with any other person in providing them, and references in these Regulations to the provision of such facilities by the port authority may be construed accordingly; and any such power may also include power to arrange for the provision of such reception facilities by any other person.

Direction to provide adequate port waste reception facilities.

5. Where it appears to the Minister, after consultation with the port authority, that—

- (a) the port has no waste reception facilities; or
- (b) if the port has such facilities, those facilities are not adequate,

the Minister may direct the port authority to provide, or arrange for the provision of, such waste reception facilities as may be specified in the direction.

Procedure for reporting inadequacies to the Administration.

6.(1) When inadequate reception facilities are encountered in the Port, the master of the ship, in the first instance, shall bring such inadequacies to the notice of the port authority with a view to resolving them locally.

(2) If the problems of inadequate reception facilities are still not resolved by the port authority or even if they are resolved, the matter must then be reported to the Administration using the form set out in Schedule 1.

(3) The Administration shall investigate each report received and where, in its opinion, the allegation of inadequate facilities is justified, it shall take up the matter of the alleged inadequacy directly with the port authority.

Requirements regarding waste reception and handling plans.

7.(1) The port authority shall develop a waste reception and handling plan with respect to the provision of waste reception facilities and the use of those facilities by ships using the port and shall submit the plan to the Minister for approval.

(2) In developing a waste reception and handling plan the port authority shall consult—

- (a) persons appearing to the port authority to represent the interests of—
 - (i) persons using the port,
 - (ii) persons using the waste reception facilities at the port; and
- (b) such other persons, if any, as the port authority thinks fit.

(3) Plans developed in accordance with this regulation shall comply with the provisions in Schedule 2 to these Regulations.

Requirements regarding waste reception and handling plans: time for submission of plans.

8. The port authority shall submit its waste reception and handling plans for the port to the Minister—

- (a) as soon as possible or at the latest within nine months from the commencement of these Regulations;
- (b) within twelve months, in the case of any significant change to the operation of the port since the most recent plan was approved by the Minister pursuant to regulation 9(1) or prepared by him pursuant to regulation 10; or
- (c) no later than two years after the most recent plan was approved by the Minister pursuant to regulation 9(1) or prepared by him pursuant to regulation 10.

Approval and implementation of waste reception and handling plans.

9.(1) The Minister may either—

- (a) reject a plan submitted in accordance with regulation 7; or
- (b) approve the plan with or without modifications.

(2) A plan which has been approved by the Minister pursuant to subregulation (1) or prepared by the Minister pursuant to regulation 10 shall be implemented by the port authority.

Power of the Minister to prepare a waste reception and handling plan.

10. If the Minister is satisfied that a person who is required to prepare a waste reception and handling plan is not taking any steps necessary in connection with the preparation of the plan the Minister may prepare such a plan.

Direction to implement a waste reception and handling plan.

11. The Minister may direct the port authority to take such steps as are specified for the purposes of securing the implementation of a waste reception and handling plan approved pursuant to regulation 9(1) for the port.

Notification.

12.(1) The master of a ship bound for the port of Gibraltar shall complete a notice in the form in Schedule 3.

(2) The information in the notice referred to in subregulation (1) shall be notified by the master or his agent to the port authority or any other entity appointed by the Minister for the purpose-

- (a) at least 24 hours before the arrival of the ship in the port of Gibraltar;
- (b) as soon as it is known that the ship is to call at Gibraltar, if the information is available less than 24 hours prior to arrival;
- (c) where the duration of the voyage is less than 24 hours, at the latest upon departure from the previous port.

(3) A copy of the notice referred to in subregulation (1) shall be retained on board the ship until at least the next port of call is reached.

(4) The master of a ship bound for the port of Gibraltar shall-

- (a) if the previous port of call of the ship was a port in a Member State, and

- (b) the Administration requests it,

produce to the Administration a copy of the notice retained in accordance with subregulation (3).

(5) The master of a Gibraltar registered ship calling at a port of another Member State shall

- (a) if the previous port of call of the ship was a port in a Member State, and

- (b) the Administration of that Member State requests it,

produce to the Administration a copy of the notice retained in accordance with subregulation (3).

Delivery of ship-generated waste.

13.(1) Subject to subregulation (2), the master of a ship shall ensure that before the ship leaves the port of Gibraltar all ship-generated waste is delivered to a waste reception facility.

(2) Subject to subregulations (3) and (4), a ship may proceed to the next port of call without delivering ship-generated waste if it follows from the information notified under regulation 12(2) that there is sufficient dedicated storage capacity for all the ship-generated waste that has been accumulated and will be accumulated during the intended voyage of the ship to the port of delivery.

(3) Where the Administration is not satisfied that there is sufficient dedicated storage capacity for all ship-generated waste that has been accumulated and which will accumulate during the intended voyage of a ship to the port of delivery, if there are good reasons to believe that adequate facilities are not available at the intended port of delivery, or the intended port of delivery is not known to him, he may give a direction to the master or owner of the ship requiring the ship-generated waste to be delivered before the ship leaves the port.

(4) Subregulation (2) applies without prejudice to more stringent delivery requirements for ships contained in any other enactment.

Charges for ship-generated waste.

**GIBRALTAR MERCHANT SHIPPING (PORT WASTE
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This version is out of date

14.(1) The Minister shall set charges for ships to which this regulation applies to cover the costs of waste reception facilities for ship-generated waste in the port (including the treatment and disposal of such waste) irrespective of actual use of the facilities, and such charges shall be of a level—

- (a) to ensure that each ship to which this regulation applies makes a significant contribution to such costs;
- (b) so that the part of the costs not covered by the contribution made under paragraph (a), if any, shall be covered on the basis of the types and quantities of ship-generated waste actually delivered by the ship; and
- (c) to provide no incentive for ships to discharge ship-generated waste into the sea.

(2) In setting charges due under this regulation the Minister may charge different fees to take into account the category, type, size or particular characteristics of the ship and he may also authorise the Captain of the Port to reduce or remit such fees.

(3) The Minister may set lower charges for any ship the environmental management, design, equipment and operation of which are such that the master can demonstrate the ship produces reduced quantities of ship-generated waste.

(4) Any ship using the port of Gibraltar shall pay the charges set under subregulation (1) to the port authority.

(5) The Minister shall publish by notice in the Gazette charges set under subregulation (1), and the basis on which they have been calculated.

Exemptions.

15.(1) The Minister may grant an exemption from regulation 4 in respect of the port authority to the extent that that regulation requires the port authority to ensure the availability of waste reception facilities for noxious liquid substances.

(2) The Minister may grant an exemption from regulation 7 in respect of the port authority to the extent that that regulation requires the port authority to develop a waste reception and handling plan with respect to the provision of waste reception facilities for noxious liquid substances.

(3) The Minister may grant an exemption from regulations 12, 13 and 14 in respect of any ship where—

- (a) the ship is engaged in scheduled traffic with frequent and regular port calls; and
- (b) there is sufficient evidence of an arrangement ensuring the delivery of ship-generated waste and payment of charges in a harbour or terminal along the ship's route.

(4) Any exemption granted under this regulation shall be given in writing.

(5) The Minister may, on giving reasonable notice, alter or cancel any exemption granted under this regulation.

(6) The Administration shall cause a report of exemptions granted under this regulation to be provided, at least once a year on a regular basis, to the Commission.

Delivery of cargo residues.

16.(1) The master of a ship calling at the port of Gibraltar shall ensure that cargo residues are delivered to a waste reception facility in accordance with the Convention.

(2) Any charges made for such delivery shall be payable by the user of the facility.

Informing next port of call.

17.(1) Where—

- (a) a ship has not complied with the requirement in regulation 12(2) to notify the port authority; or
- (b) the port authority has clear evidence that a ship has proceeded to sea without having complied with regulation 13(1) or 16(1),

the port authority shall immediately inform the Administration.

(2) Where there is clear evidence that a ship has proceeded to sea without having complied with regulation 13(1) or 16(1) the Administration

shall, if the next port of call of the ship is a port of a Member State, inform the Administration of the State in which the port is situated about the ship and the evidence.

(3) Where the Administration has been informed by another Administration of a ship in respect of which there is clear evidence of the type mentioned in subregulation (1) the Administration shall inspect the ship on its arrival in the port of Gibraltar.

Inspection and detention of ships.

18.(1) When a ship is in the port of Gibraltar, the Maritime Administrator may direct a surveyor or inspector to inspect the ship to determine whether ship-generated waste or cargo residues have been delivered in accordance with regulation 13(1) or 16(1).

(2) In selecting a ship, which is a not fishing vessel or recreational craft authorised to carry no more than 12 passengers, for inspection under these Regulations, the Administration shall pay particular attention to—

- (a) ships which have not complied with the notification requirements under regulation 12; and
- (b) ships for which the examination of the information provided by the master in accordance with regulation 12 has revealed other grounds to believe that the ship does not comply with these Regulations.

(3) Where the surveyor or inspector is satisfied that ship-generated waste or cargo residues have not been delivered in accordance with regulation 13(1) or 16(1), he shall detain the ship until such waste or residues have been delivered in accordance with these Regulations and where the ship is not registered in Gibraltar, he shall prepare a report addressed to the Government of the State in which the ship is registered.

(4) If a ship is detained under subregulation (2), the surveyor or the inspector shall forthwith notify the Consul or, in his absence, the diplomatic representative in the United Kingdom of the State of the flag administration, of all the circumstances in which intervention was deemed necessary.

(5) In arriving at the quota for inspections under this regulation the provisions of regulations 5(1) and 5(6) of the Gibraltar Merchant Shipping (Port State Control) Regulations, 2002 shall have effect.

Enforcement of detention.

19.(1) The Maritime Administrator shall be satisfied that the non-compliance of regulation 13(1) or 16(1) by the ship will be rectified or that they will be complied with by delivering the ship-generated waste or cargo residues in accordance with these Regulations.

(2) Without prejudice to subregulation (3) of regulation 18, the Maritime Administrator may detain a ship and prevent it from proceeding to sea if he thinks that the non-delivery of the ship-generated waste or cargo residues may pose a danger to the ship, persons, property or the environment, until such time as the waste or residues have been delivered to the extent that it no longer poses any danger to life, property or the environment.

(3) A detention notice issued for the purposes of detaining a ship under these Regulations may—

- (a) include a direction that a ship shall remain in a particular place, or shall move to a particular anchorage or berth;
- (b) specify circumstances when the master of the ship may move his ship from a specified place for reasons of safety or prevention of pollution; and
- (c) inform the master of the ship of his rights under regulation 22.

(4) The detention notice or stoppage of an operation shall not be lifted until the Maritime Administrator establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the health and safety of passengers or crew, or risk to other ships, or without there being an unreasonable threat or harm to the marine environment.

(5) Where the Maritime Administrator detains a ship under these Regulations, he may take into custody and retain the principal documents of the ship until the detention notice is lifted.

(6) When carrying out inspections under these Regulations, the surveyor or the inspector shall make all possible efforts to avoid a ship being unduly detained or delayed.

(7) Where a ship in respect of which a notice of detention has been served—

- (a) proceeds to sea, otherwise than in accordance with such a notice, before it is released by the Administration; or
- (b) fails to comply with a direction given under subregulation (3)(a),

the owner and master of the ship shall each be guilty of an offence.

Penalties.

20.(1) Any master of a ship who fails to comply with

- (a) any requirement of regulation 12(2), (4) or (5);
- (b) the requirement under regulation 13(1); or
- (c) the requirement under regulation 16(1),

shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(2) Where there is a contravention of

- (a) any requirement of regulation 12(2), (4) or (5);
- (b) the requirement under regulation 13(1); or
- (c) the requirement under regulation 16(1),

in respect of a ship, the owner of that ship shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(3) Where an offence is committed under regulation 19(7), the owner and master of the ship shall each be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Offences by body corporate.

21.(1) Where a body corporate is guilty of an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as

well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, the preceding subregulation shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) Where an offence under these Regulations committed by a partnership entity is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Reference of detention notices to Supreme Court.

22. Where a ship is detained under these Regulations, section 132J of the Merchant Shipping Act shall apply to such detention as it applies in relation to the Act.

Delegation of powers.

23. The Minister may, for administering the provisions of these Regulations, delegate by notice in the Gazette such of his powers to the Administration as he may deem fit and proper.

SCHEDULE 1

Regulation 6(2)

FORM FOR REPORTING ALLEGED INADEQUACY OF OILY WASTE, NOXIOUS LIQUID SUBSTANCES AND GARBAGE RECEPTION FACILITIES

The Master of a ship having difficulties discharging waste to reception facilities should forward the information below, together with supporting documentation, to the Maritime Administrator, Registry of Ships, Government of Gibraltar, Duke of Kent House, Cathedral Square, Gibraltar. Tel: (+350) 47771, Fax: (+350) 47770.

1. Ship's Particulars

Name of Ship:

Owner or operator:

Distinctive number or letters:

Port of Registry:

Type of ship: oil tanker, chemical tanker, passenger ship, Cargo ship other (specify):

2. Port Particulars

Country:

Name of Port or Area:

Location/Terminal Name:

Name of company operating reception facility (if applicable):

Unloading port,, loading port, shipyard

Date of incident:

3. Type and Amount of Waste for Discharge to Facility

3.1 Oily Waste

Type of oily waste: bilge water, sludge from fuel
oil purifier, scale and sludge from tanker cleaning,
ballast water, tank washings or other (specify):
.

Amount of waste for discharge to facility: m³

3.2. Noxious Liquid Substances (NLS)

Type of NLS residue/water mixture for discharge to facility from prewash of
a Category A, B, C substance or . . .
. other (specify):

Substance is designated as solidifying. or high viscosity.
.

Name of noxious liquid substance involved:

Amount of NLS residue/water mixture for discharge to facility: m³

3.3 Garbage

Type and amount of garbage for discharge to facility:

Food waste m³, cargo associated waste m³
Maintenance waste m³, or other (specify):
. m³

4. Type and Amount of Waste Not Accepted by the Facility:

.
.
.
.

5. Special Problems Encountered:

reception denied,
undue delay,
inconvenient location of facilities,
use of facility not technically possible,

other.

Specify particulars of problems identified above:

.....
.....
.....
.....

6. Action Taken by the Port:

Did you bring this inadequacy to the attention of the port?

Did the port address your concern and resolve it to your satisfaction?

Have you seen the port waste management plan?

Does the plan fully meet your waste disposal requirements?

Does it encourage the disposal of your waste ashore?

Remarks: (e.g. details of request made for use of reception facility, information received from port authorities or operators of reception facilities giving reasons concerning point 4 and names of port officials contacted in respect of this difficulty)

.....

.....
Date of completion of form

.....
Signature of Master

SCHEDULE 2

Regulation 7(3)

REQUIREMENTS FOR WASTE RECEPTION
AND HANDLING PLANS

1. Waste reception and handling plans shall cover all types of prescribed wastes originating from ships normally visiting the port and shall be developed in accordance with the size of the port and the types of ship calling at the port.
2. The plans shall address the following elements—
 - (a) an assessment of the need for waste reception facilities, in the light of the need of the ships normally visiting the port;
 - (b) a description of the type and capacity of waste reception facilities;
 - (c) a detailed description of the procedures for the reception and collection of prescribed wastes;
 - (d) a description of the charging system;
 - (e) procedures for reporting alleged inadequacies of waste reception facilities;
 - (f) procedures for on-going consultations with persons using the port, waste contractors and other interested parties; and
 - (g) the type and quantities of prescribed wastes received and handled.
3. The plans for the port shall also include—
 - (a) a summary of relevant legislation and formalities for delivery;
 - (b) identification of a person or persons to be responsible for the implementation of the plan;
 - (c) a description of the pre-treatment equipment and processes in the port, if any;

- (d) a description of methods of recording actual use of the waste reception facilities;
- (e) a description of methods of recording amounts of prescribed wastes received;
- (f) a description of how the prescribed wastes are disposed of.

4. The procedures for reception, collection, storage, treatment and disposal should conform in all respects to an environmental management scheme suitable for the progressive reduction of the environmental impact of these activities. Such conformity is presumed if the procedures are in compliance with Regulation (EC) No 761/2001 of the European Parliament and of the Council of 19 March 2001 allowing voluntary participation by Organisations in a Community eco-management and audit scheme (EMAS)⁴.

5. The following information is to be made available to persons using the port—

- (a) brief reference to fundamental importance of proper delivery of prescribed wastes;
- (b) location of waste reception facilities applicable to each berth, with a diagram or map;
- (c) list of prescribed wastes normally dealt with;
- (d) list of contact points, the operators and the services offered;
- (e) description of procedures for delivery;
- (f) description of charging system; and
- (g) procedures for reporting alleged inadequacies of waste reception facilities.

⁴ O.J. L114, 24.4.2001,p.1.

SCHEDULE 3

Regulation 12(1)

INFORMATION TO BE NOTIFIED

INFORMATION TO BE NOTIFIED BEFORE ENTRY INTO THE
PORT OF GIBRALTAR.

1. Name, call sign and, where appropriate, IMO identification number of the ship:
2. Flag State:
3. Estimated time of arrival (ETA):
4. Estimated time of departure (ETD):
5. Previous port of call:
6. Next port of call:
7. Last port and date when ship-generated waste was delivered:
8. Are you delivering
all some none (*)
of your waste into port reception facilities?
9. Type and amount of waste and residues to be delivered and/or remaining on board, and percentage of maximum storage capacity:

(*) Tick appropriate box

If delivering all waste, complete second column as appropriate.

If delivering some or no waste, complete all columns.

Type	Waste to be delivered	Maximum dedicated storage capacity m3	Amount of waste retained on board m3	Port at which remaining waste will be delivered	Estimated amount of waste to be generated between notification and next port of call m3
1. Waste oils					
Sludge					
Bilge water					
Others (specify)					
2. Garbage					
Food waste					
Plastic					
Other					
Cargo-associated waste (1) (specify)					
Cargo residues (1) (specify)					

(1) May be estimates

Notes:

- This information may be used for port State control and other inspection purposes.
- This form is to be completed unless the ship is covered by an exemption in accordance with regulation 15.

I confirm that the above details are accurate and correct and there is sufficient dedicated onboard capacity to store all waste generated between notification and the next port at which waste will be delivered.

Date

Time

Gibraltar Merchant Shipping (Safety, etc.)

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1995-13

**Subsidiary
2002/098**

Signature