

# **1995-13**      Gibraltar Merchant Shipping (Safety, etc.)

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Subsidiary Legislation made under s.118.

## **Gibraltar Merchant Shipping (Seafarers' Hours of Work and Medical Examination) Regulations, 2003**

**LN.2003/003**

*Commencement*                      **1.3.2003**

**Transposing:**

Directive 1999/63/EC

Directive 1999/95/EC

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2003/003

*In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993 and all other enabling powers, and for the purposes of transposing into the law of Gibraltar Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) and Directive 1999/95/EC concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports, the Government has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Seafarers' Hours of Work and Medical Examination) Regulations, 2003 and come into operation on a date, being a date after thirty days from publication, 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 corresponding authority of the relevant flag State;

“authorised” means authorised by the Administration;

“collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers associations and relating to one or more of the following matters—

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment between workers or group of workers;
- (d) matters of discipline;

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- (e) a worker's membership or non-membership of a trade union;
- (f) facilities for official trade unions; and
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers' associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures;

“company” includes the owner or charterer of a ship or any other entity for the time being responsible for the management of a ship in respect of the safe operation of the ship and protection of the marine environment;

“complaint” means any information or report submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in the safety or health hazards to its crew;

“fishing boats” has the meaning assigned to it in section 2 of the Act;

“hours of rest” means time outside hours of work and does not include short breaks;

“hours of work” means time during which a seafarer is required to perform work on the business of the ship;

“Maritime Administrator” means the person appointed under section 3 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“medical fitness certificate” means a certificate attesting to a person's fitness for the work for which he is to be employed at sea and which is issued under regulation 12 or a certificate accepted by the Administration under Instruction No.11 of the STCW Regulations;

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

“Merchant Shipping Notice” means a Notice described as such, issued by the Maritime and Coastguard Agency of the United Kingdom and reference to—

- (a) Merchant Shipping Notice MSN 1725(M);

- (b) Merchant Shipping Notice MSN 1753(M);
- (c) Merchant Shipping Notice MSN 1765(M); or
- (d) Merchant Shipping Notice MSN 1767(M)

includes reference to any Merchant Shipping Notice amending or replacing that Notice which is considered by the Administration to be relevant from time to time;

“Minister” means the Minister with responsibility for Transport;

“night” means a period—

- (a) the duration of which is not less than nine consecutive hours; and
- (b) which includes the period between midnight and 5 a.m (local time);

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

“offshore installation” means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

“pleasure vessel” means—

- (a) any vessel which is—
  - (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or
  - (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

- (b) any vessel which is wholly owned by or on behalf of a members' club formed for the purposes of sport or pleasure which, at the time it is being used, is used for the

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sport or pleasure of members of that club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club;

and no payments other than those mentioned above are made by or on behalf of users of the vessel, other than by the owner, and in this definition, "immediate family" means in relation to an individual, the husband or the wife of the individual, and a brother, sister, ancestor or lineal descendant of that individual or that individual's husband or wife;

"seafarer" means any person, including a master, who is employed or engaged in any capacity on board a ship, on the business of the ship, but does not include persons who are training in a sail training vessel or persons who are not engaged in the navigation of, or have no emergency safety responsibilities on, such a vessel;

"sea-going ship" means a ship certified by the Administration for navigation at sea;

"ship" means any sea-going vessel, whether publicly or privately owned, which is ordinarily engaged in commercial maritime operations;

"shipowner" means the owner of the ship or any other organisation or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the attendant duties and responsibilities;

"STCW Regulations" means the Gibraltar Merchant Shipping (Manning, Training, Certification and Related Seafarers' Matters) Regulations, 2002;

"trade union" has the meaning assigned to it in section 2 of the Trade Unions and Trade Disputes Act;

"UK-MCA" means the Maritime and Coastguard Agency of the United Kingdom.

"workforce agreement" means an agreement between an employer and his employees or their representatives in respect of which the conditions set out in the Schedule to these Regulations are satisfied.

(2) Subject to subregulation (1), words and expressions used in these Regulations shall have the same meaning assigned to them in Directive 1999/63/EC or Council Directive 1999/95/EC, as appropriate.

**Application of these Regulations.**

3.(1) These Regulations apply to any Gibraltar registered ship and regulations 18 and 20 apply to sea-going ships of Member States other than any Gibraltar registered ship when they are in Gibraltar waters—

- (a) in the port or at an offshore installation; or
- (b) anchored off the port or such an installation.

(2) These Regulations do not apply to—

- (a) war ships;
- (b) naval auxiliaries;
- (c) a vessel which is owned or operated by a Member State and used for non-commercial purposes;
- (d) a Gibraltar Government vessel used for non-commercial purposes;
- (e) fishing boats;
- (f) pleasure vessels not engaged in trade; and
- (g) wooden ships of primitive build.

**Removal of doubt as to ships.**

4.(1) For the purposes of these Regulations, a ship that is on the register of two States is deemed to be registered in the territory of the State whose flag it flies.

(2) In the event of doubt as to whether or not any ships are to be regarded as seagoing ships or engaged in commercial maritime operations, the question shall be determined by the Administration after consultation with the organisation of the shipowners and seafarers concerned.

**General duty of company, person employing a seafarer, master, etc.**

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5. Subject to regulation 6(6) below, it shall be a duty of every company, shipowner, an employer of a seafarer and a master of a ship to ensure that a seafarer is provided with at least the minimum hours of rest.

**Minimum hours of rest.**

6.(1) Subject to subregulation (6) below, the minimum hours of rest shall not be less than—

- (i) ten hours in any twenty-four hour period; and
- (ii) seventy-seven hours in any seven-day period.

(2) Subject to subregulation (6) below, hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed fourteen hours.

(3) Musters, fire-fighting and lifeboat drills, and other drills shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

(4) In respect of situations when a seafarer is on call, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to perform work.

(5) If no collective agreement or workforce agreement exists or if the Administration determines that the provisions in the collective agreement or workforce agreement in respect of the matters or situation referred to in subregulations (3) and (4) are inadequate, it shall determine, by order in writing, such provisions to ensure that the seafarers concerned have sufficient rest.

(6) The Administration may, with due regard to the general principles of the protection of the health and safety of seafarers, authorise any collective agreement or workforce agreement permitting exceptions to the limits set out in subregulations (1) and (2) above, and such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods, or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ship on short voyages.

**Powers of the master in certain cases.**

7.(1) The master may require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.



(2) Where the master so requires under subregulation (1), he may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

(3) The master shall, as soon as practicable after the normal situation has been restored, ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

**Posting-up of table.**

8.(1) The master of a ship or a person authorised by the master, shall ensure that a table of scheduled hours of rest complying with subregulation (2) is posted-up in a prominent and easily accessible place in the ship.

(2) A table under subregulation (1) shall—

- (a) contain the information specified in Merchant Shipping Notice MSN 1767 (M);
- (b) be in the format specified in that Merchant Shipping Notice, or in a format substantially like it; and
- (c) be in English and in the working language of the ship if that is not English.

**Prohibition of work at night under certain age.**

9.(1) Subject to subregulation (2), no seafarer under the age of eighteen shall work at night.

(2) A seafarer of age 16 or 17 may work at night if the work forms part of an established programme of training the effectiveness of which would be impaired by the prohibition in subregulation (1).

(3) No person shall employ any other person under the age of sixteen to work on a ship.

**Records of seafarers' hours of rest.**

10.(1) The master of a ship or a person authorised by the master shall, for the purpose of monitoring compliance with regulation 6, maintain, in accordance with the provisions of this regulation, records of seafarers' daily hours of rest.

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(2) The procedures for keeping records referred to in subregulation (1) (including the intervals at which the information is to be recorded) and the format of such records shall comply with the requirements specified in Merchant Shipping Notice MSN 1767 (M).

(3) The seafarer shall be entitled to receive a copy of the records pertaining to him which shall be endorsed by the master, or a person authorised by the master, and by the seafarer in question.

(4) The records of seafarers' daily hours of rest shall be in English and in the working language of the ship if that is not English.

(5) The company and the master shall ensure that a copy of these Regulations (including relevant Merchant Shipping Notices) and any collective agreement or workforce agreement relevant to the ship which are authorised under regulation 6(6) are carried at all times on board the ship in an easily accessible place.

(6) The master of the ship shall examine and endorse, every seven days, the records of seafarers' daily hours of work and of their daily hours of rest in order to ensure that the provisions of these Regulations governing hours of work and hours of rest are sufficiently complied with.

(7) If, during any examination referred to in subregulation (6) or otherwise, the records or other evidence indicate any infringement of the provisions of these Regulations, measures, including, if necessary, the revision of the manning of the ship, shall be taken so as to avoid future infringements.

**Manning of ships.**

11.(1) Every ship to which these Regulations apply shall be sufficiently, safely and efficiently manned.

(2) When determining, approving or revising manning levels, the Administration shall take into account the need to avoid or minimize, as far as possible, excessive hours of work and the need to ensure sufficient rest and limit fatigue.

(3) Every seafarer shall possess a certificate attesting to his fitness for the work for which he is to be employed at sea.

(4) For the purposes of this regulation, the relevant provisions of the STCW Regulations shall have effect.

**Valid medical certificates for seafarers.**

12.(1) Subject to subregulation (2), no person shall employ a seafarer in a ship to which these Regulations apply unless that seafarer is the holder of a valid medical fitness certificate.

(2) A seafarer, the validity of whose certificate expires while he is in a location where medical examination in accordance with these Regulations is impracticable, may continue to be employed without such a certificate for a period not exceeding three months from the date of expiry of such medical certificate.

(3) Every medical fitness certificate shall be issued by an authorised medical practitioner.

(4) If after examination of the applicant, the medical practitioner considers that the applicant is fit, having regard to the medical standards specified in Merchant Shipping Notice MSN 1765(M), he shall issue the applicant with a medical fitness certificate and in this connection Instruction No.11 of the STCW Regulations shall have effect.

(5) A medical fitness certificate may be restricted to such capacity of sea service or geographical areas as the authorised medical practitioner considers appropriate.

(6) No person shall employ a seafarer in a ship to which these Regulations apply in a capacity or geographical area precluded by any restriction in that seafarer's medical fitness certificate.

**Health assessment and transfer of seafarers on watchkeeping duties to day work.**

13.(1) Every shipowner shall ensure that every seafarer on a ship owned by him is given a regular health assessment at no cost to the seafarer which shall comply with medical confidentiality.

(2) Where—

(a) an authorised medical practitioner has certified that a seafarer engaged on watchkeeping duties is suffering from health problems which the practitioner considers to be due to the fact that the seafarer performs work during the night, and

(b) it is possible for the person by whom he is employed to transfer the seafarer to work—

(i) to which the seafarer is suited, and

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- (ii) which is to be undertaken during periods such that the seafarer will cease to perform work during the night,

the person by whom the seafarer is employed shall transfer the seafarer accordingly.

**Information on watchkeepers, etc.**

14. Every shipowner shall, if he is so requested by the Administration, provide information on watchkeepers and other night workers.

**Safety and health protection of seafarers.**

15.(1) Every shipowner shall establish, with respect to the seafarers of his ship, such safety and health protection as may be appropriate to the nature of the work of individual seafarer.

(2) The shipowner shall provide equivalent safety and health protection and other prevention services or facilities with regard to the seafarers working by day or by night.

**Entitlement to annual leave.**

16.(1) Every seafarer shall be entitled to paid annual leave of at least four weeks, or a proportion of four weeks in respect of a period of employment of less than one year.

(2) Leave to which a seafarer is entitled under this regulation—

(a) may be taken in instalments;

(b) may not be replaced by a payment in lieu, except where the seafarer's employment is terminated.

(3) Where during any period a seafarer is entitled to hours of rest or annual leave both under a provision of these Regulations and under a separate provision (including a provision of his contract), he may not exercise the two rights separately, but may, in taking hours of rest or annual leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

**Inspection of Gibraltar registered ships.**

17.(1) The Maritime Administrator may direct a marine surveyor or inspector to inspect a Gibraltar registered ship to determine whether there has been a failure to comply in relation to that ship with any of the requirements of regulations 5, 8,10 and 12.

(2) Where a marine surveyor or an inspector is satisfied under subregulation (1) that there has been a failure to comply in relation to that ship with any of the requirements of regulations 5, 8,10 and 12, he may detain the ship.

(3) The marine surveyor or the inspector shall not in the exercise of his power under this regulation detain or delay the ship unreasonably.

**Inspection of other ships.**

18.(1) When a ship, other than a Gibraltar registered ship, to which these Regulations apply, is in Gibraltar waters, the Maritime Administrator may direct a marine surveyor or an inspector to inspect the ship to determine whether there has been a failure to comply in relation to that ship with any of the requirements of regulation 5, 8, 10 and 12.

(2) Where a ship, other than a Gibraltar registered ship, to which these Regulations apply, calls voluntarily at Gibraltar Port in the normal course of its business or for operational reasons and the Administration receives a complaint which it does not consider manifestly unfounded or obtains evidence that the ship does not conform to the standards laid down in these Regulations, it shall carry out detailed inspections on board the ship to determine whether—

- (a) the shipboard living and working conditions are manifestly hazardous to safety, health or environment;
- (b) the seafarers are excessively or unduly fatigued;
- (c) there is any breach of the duty imposed by regulation 5;
- (d) a table complying with regulation 8 is posted-up in a prominent and easily accessible place in the ship;
- (e) records are being maintained and carried on board in compliance with regulation 10;
- (f) there is proof that such records have been endorsed by the Administration of the State in which the ship is registered; and
- (g) the seafarer is the holder of a medical fitness certificate.

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(3) When a marine surveyor or an inspector acting under subregulation (1) of this regulation is satisfied that there has been a failure to comply in relation to that ship with any of the requirements of regulation 5, 8, 10 and 12, he shall, in the case of deficiencies which are clearly hazardous to the safety or health of seafarers, take the measures necessary to ensure that such deficiencies are rectified, and he may detain the ship until deficiencies have been rectified or in the case where the seafarers are excessively or unduly fatigued, the seafarers in question have been sufficiently rested.

(4) In the case of acting upon a complaint, the Administration shall—

- (a) prepare a report addressed to the Government of the State in which the ship is registered; and
- (b) not reveal the identity of the person lodging the complaint to the master or the owner of the ship concerned.

(5) When carrying out an inspection under this regulation all possible efforts should be made to avoid a ship being unduly delayed.

**Rectification of deficiencies.**

19.(1) Where an inspection, carried out pursuant to regulation 17 or 18 reveals that the ship does not conform to the requirements of these Regulations, the Administration shall detain the ship by order and prevent the ship from proceeding to sea until—

- (a) the conditions on board which are clearly hazardous to the safety or health of seafarers have been rectified; or
- (b) the seafarers are sufficiently rested, if there is evidence that watchkeeping personnel for the first watch or subsequent relieving watches are too fatigued to operate the vessel safely.

(2) Where a ship has been detained from proceeding to sea under subregulation (1), the Administration shall immediately notify—

- (a) the Gibraltar Port Authority;
- (b) Gibraltar Government's Immigration authority and the Customs Department;
- (c) the master, the owner or operator of the ship;

- (d) the Administration of the flag State or the State where the ship is registered or its diplomatic representative in Gibraltar or the United Kingdom; and
  - (e) in the case where there is a non-compliance of regulation 12, the Director General of the International Labour Office.
- (3) The notification referred to in subregulation (2) shall contain—
- (a) the results of the inspections referred to in regulation 18;
  - (b) any decision taken by the inspector;
  - (c) any corrective actions required, if necessary; and
  - (d) the right of appeal against the order for detention.

**Rectification of deficiencies in other jurisdictions.**

20.(1) Where the deficiencies revealed (except to cases involving seafarer's fatigue or to cases where structural alteration or repair is needed) cannot be rectified or repaired in Gibraltar, or where the work can be done in Gibraltar but it will take too long and the ship is safe to proceed to the next port or the nearest repair yard, the Maritime Administrator may allow the ship to proceed to the nearest appropriate repair yard available, as chosen by the master and the responsible parties.

(2) The Maritime Administrator shall not allow a ship to leave Gibraltar waters in pursuance of subregulation (1), unless the conditions determined by the Administration of the flag State and agreed by the Maritime Administrator are complied with.

(3) The conditions referred to in subregulation (2) shall ensure that the ship can proceed without risk to the health and safety of passengers or crew, or risk to other ships, or without there being unreasonable threat of harm to the marine environment.

(4) Where the Maritime Administrator allows a ship to proceed in pursuance of subregulation (1), he shall notify the relevant Administration of the State where the repair yard is situated, the parties referred to in regulation 19(2) and any other authority, as appropriate, of all the conditions for the voyage.

**Compensation for undue delay.**

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21.(1) Where the ship is unduly delayed in connection with an inspection under these Regulations, the shipowner shall be entitled to compensation for any loss or damage suffered.

(2) Where the shipowner claims, in any legal action, compensation for any loss or damage suffered by him due to an undue delay in connection with the inspection carried out under these Regulations, the burden of proof for such delay shall lie with the shipowner.

**No more favourable treatment.**

22. The Administration shall, during an inspection carried out under these Regulations to a ship that is registered in the territory of or flying the flag of a State which has not signed ILO Convention No 180 or the Protocol to ILO Convention No 147, ensure that the treatment given to that ship and its crew is no more favourable than that given to a ship flying the flag of a State which is a party to either ILO Convention No 180 or the Protocol to ILO Convention No 147 or both of them.

**Right of appeal.**

23.(1) The company, shipowner or his representative in Gibraltar may appeal to the Minister against a decision for detention given by the Maritime Administrator.

(2) The lodging of an appeal under this regulation shall not cause the detention to be suspended.

**Release of information.**

24. The Maritime Administrator shall ensure publication, at least on a quarterly basis, of the information specified in Part I of Annex IX to the Merchant Shipping Notice No. MSN 1725 (M)(a) concerning ships which have been inspected pursuant to regulation 18 and actions taken under regulation 19 with regard to such ships during the previous three months period and which have been detained more than once during the past twenty-four months.

**Penalties.**

25.(1) A company or shipowner, an employer, a master of a ship or a person authorised by the master, as the case may be, who contravenes regulations 5, 7(3), 8(1), 9(3), 10(1),(5) or (6), 12(1) or (6),13(1), 14 or 15, shall be guilty of an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale.



(2) Where there is a contravention of regulation 6(3) or (4), the master of the ship shall be guilty of an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale.

(3) Where there is a contravention of regulation 9(1), the employer of the person shall be guilty of an offence punishable, on summary conviction, by a fine not exceeding level 3 on the standard scale.

(4) Where there is a contravention of regulation 16, the employer of the seafarer shall be guilty of an offence punishable, on summary conviction, by a fine not exceeding level 4 on the standard scale.

(5) In proceedings for an offence under these Regulations, it shall be a defence for the defendant to show that all reasonable steps had been taken by him to ensure compliance with the Regulations.

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**SCHEDULE**

Sections 2(1), 6(6) and 10(5).

**WORKFORCE AGREEMENTS**

1. An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied—

- (a) the agreement is in writing;
- (b) it has effect for a specified period not exceeding five years;
- (c) it applies either—
  - (i) to all of the relevant members of the workforce, or
  - (ii) to all of the relevant members of the workforce who belong to a particular group;
- (d) the agreement is signed—
  - (i) in the case of an agreement of the kind referred to in sub-paragraph (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in sub-paragraph (c)(ii), by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature), or
  - (ii) if the employer employed 20 or fewer individuals on the date referred to in sub-paragraph (d)(i), either by the appropriate representatives in accordance with that sub-paragraph or by the majority of the individuals employed by him; and
- (e) before the agreement was made available for signature, the employer provided all the employees to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it in full.

2. For the purposes of this Schedule—

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“relevant members of the workforce” are all of the employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are employees duly elected to represent the relevant members of the workforce, “representatives of the group” are employees duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of a group are members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no employee who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group;
- (e) the employees entitled to vote may vote for as many candidates as there are representatives to be elected; and
- (f) the election is conducted so as to secure that—
  - (i) so far as reasonably practicable, those voting do so in secret, and
  - (ii) the votes given at the election are fairly and accurately counted.

4. In this Schedule “employee” means an individual who has entered into or works under a contract of employment.