

Gibraltar Merchant Shipping (Safety, etc.)

1995-13

GIBRALTAR MERCHANT SHIPPING (COUNTING AND REGISTRATION OF PERSONS ON BOARD PASSENGER SHIPS) REGULATIONS 2004

Subsidiary
2004/052

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Regulations made under s. 118.

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(LN. 2004/052)

9.9.2004

(LN. 2004/083)

Amending enactments	Relevant current provisions	Commencement date
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Transposing:

Directive 98/41/EC

Directive (EU) 2017/2109

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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, the Government, for the purposes of transposing into the law of Gibraltar Council Directive 98/41/EC of 18 June 1998 on the registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community as amended by Article 8 of Directive 2002/84/EC of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships, has made the following Regulations:

Title and commencement.

1.(1) These Regulations may be cited as the Gibraltar Merchant Shipping (Counting and Registration of persons on board passenger ships) Regulations 2004.

(2) These Regulations shall come into operation on a date to be appointed by the Minister with responsibility for shipping by notice in the Gazette.

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 person in the relevant flag State holding equivalent responsibilities;

“appropriate search and rescue services” means, in relation to a ship involved in an emergency, the search and rescue services for the area in which the ship is located;

“designated authority” means the Authority defined in section 2 of the Maritime (Search and Rescue) Act 2005;

“EU ship” means a ship which is registered in, or which is entitled to fly the flag of, a Member State;

“Directive” means Council Directive 98/41/EC on the registration of persons sailing on board passenger ships operating to or from ports of the member States of the Community as amended by Directive 2002/84/EC of 5 November 2002 amending the Directives on maritime safety and the prevention of pollution from ships;

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“domestic voyage” means a voyage in sea areas from a port of a Member State to the same or another port within that Member State;

“Gibraltar passenger ship” means a passenger ship which is registered in Gibraltar;

“Gibraltar ship” means a ship which is registered in Gibraltar in accordance with the Gibraltar Merchant Shipping (Registration) Act, 1993;

“Gibraltar waters” means the area of waters contained within British territorial waters in Gibraltar;

“international voyage” means a voyage by sea from a port of a Member State to a port outside that Member State, or conversely;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by Resolution A.741 (18) in its up-to-date version as in force at the time of reference;

“landing point” means any berth, excursion point, floating pier or stage, link span, pier, port, stop or anchorage point from or to where passengers are embarked or disembarked;

“long international voyage” means a voyage by sea from a port in a country to which the SOLAS Convention applies to a port in another country or conversely and which is not a short international voyage;

“Member State” means any State within the European Union, and a reference to a Member State shall be deemed to include a reference to Gibraltar;

“mile” means a nautical mile consisting of 1852 metres;

“owner” means the owner of the ship and includes any person responsible for the safe operation of the ship;

“passenger registrar” means the person appointed under regulation 7(1) by an owner of a passenger ship to fulfil the ISM Code obligations, where applicable, or a person designated by a company as

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responsible for the transmission of information on persons who have embarked on a company passenger ship;

“passenger ship” means a ship or a high-speed craft which carries more than 12 passengers;

“person” means any person on board a ship irrespective of age;

“pleasure yacht or pleasure craft” means a vessel which is not engaged in trade, regardless of its means of propulsion;

“port area” shall have the meaning assigned to it by regulation 2(1) of the Gibraltar Merchant Shipping (Safety Rules and Standards for Passenger Ships on Domestic Voyages) Regulations 2011;

“protected sea area” means a sea area sheltered from open sea effects where a ship is at no time more than six miles from a place of refuge where shipwrecked persons can land and in which the proximity of search and rescue facilities is ensured;

“regular community service” means a regular service in a sea area where the annual probability of the significant wave height exceeding two metres is less than 10% and—

- (a) the voyage does not exceed thirty miles or thereabouts from the point of departure; or
- (b) the primary purpose of the service is to provide regular links to outlying communities for customary purposes;

“regular service” means a series of ship crossings operated so as to serve traffic between the same two or more ports or a series of voyages from and to the same port without intermediate calls either—

- (a) according to a published timetable; or
- (b) with crossings so regular or frequent that they constitute a recognisable systematic series;

“search and rescue services” means the search and rescue services responsible for the initiation and co-ordination of all maritime search and rescue activity required to provide assistance in the event of an emergency involving a ship or its aftermath;

“ship” includes hovercraft;

“short international voyage” means an international voyage–

- (a) in the course of which a ship is not more than two hundred nautical miles from a port or place in which the passengers and crew could be placed in safety; and
- (b) which does not exceed six hundred nautical miles in distance between the last port of call in the country in which the voyage begins and the first port of destination;

“SOLAS Convention” means the International Convention for the Safety of Life at Sea, 1974 as amended by the Protocol of 1988, in its up-to-date version as in force at the time of reference;

“voyage” includes an excursion.

(2) Where a ship is managed or operated by a person other than the owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that other person.

(3) Any approval or exemption given pursuant to these Regulations shall be given in writing and shall specify the date on which it takes effect and the conditions, if any, on which it is given.

Application of these Regulations.

3.(1) These Regulations shall apply to–

- (a) a Gibraltar passenger ship which departs from a port located in a Member State or which is bound from a port in a third country to a port located in a Member State; and
- (b) any passenger ship while it is within Gibraltar waters.

(2) These Regulations shall not apply to–

- (a) ships of war and troop ships;
- (b) pleasure yachts and pleasure craft; and

- (c) ships exclusively engaged in port areas.

Passenger counting.

4.(1) The owner of every passenger ship to which these Regulations apply shall ensure that there is a system in use capable of counting all persons on board when it leaves any landing point which—

- (a) in the case of a passenger ship engaged on a voyage of more than 20 miles from the port of departure—

- (i) departs from a port located in a Member State, or
- (ii) in the case of a Gibraltar passenger ship, departs from a port located outside the territory of the European Community and is bound for a port located within the European Community,

uses a system of individual passenger boarding cards in respect of passengers;

- (b) conforms to the requirements of subregulations (2) to (4); and
- (c) is approved, in the case of a Gibraltar ship, by the Administration in Gibraltar.

(2) The system of counting all persons on board as established pursuant to subregulation (1) above shall be such that—

- (a) all persons boarding such a ship at a landing point at the beginning of a voyage are counted individually on, or just prior to, boarding and, as the case may be—
 - (i) all persons disembarking at subsequent landing points, during the course of a voyage, are counted individually as they disembark;
 - (ii) all persons boarding at subsequent landing points, during the course of a voyage, are counted individually on, or just prior to, boarding; and

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- (iii) the number of persons remaining on board at each landing point is determined; or
 - (b) the number of persons is determined and recorded according to an alternative method approved by the Administration, which shall be of equivalent effectiveness to the system set out in paragraph (a).
- (3) If the counting system established in respect of a passenger ship pursuant to subregulation (1) includes a system of individual passenger boarding cards no passenger shall be permitted to board the ship unless he has been issued with an individual boarding card.
- (4) Before the passenger ship departs, the number of persons on board shall be-
- (a) communicated to the master of the ship; and
 - (b) reported by appropriate technical means in the single window established under regulation 7 of the Gibraltar Merchant Shipping (Reporting Formalities For Ships) Regulations 2012.
- (4A) For a transitional period of 6 years from 20 December 2017, the Captain of the Port may continue to allow that information to be communicated to the company's passenger registrar or to the shore-based company system that performs the same function, instead of requiring it to be reported in the single window.
- (5) No passenger ship shall leave any landing point if-
- (a) the requirements of subregulation (4) have not been complied with; or
 - (b) the total number of persons on board the ship exceeds the number of persons the ship is permitted to carry.
- (6) The arrangements made in pursuance of the requirements in subregulation (1) shall be described in written instructions which shall be kept on board the ship at all times in the custody of the master.

Additional requirement for voyages of more than 20 miles.

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5.(1) Where a passenger ship departs from the port of Gibraltar in order to undertake a voyage of which the distance sailed from the point of departure to the next port of call exceeds 20 miles, the following information shall be recorded-

- (a) the family names of the persons on board, their forenames, their gender, their nationality, their dates of birth;
- (b) the information concerning special care or assistance that might be needed in an emergency when volunteered by a passenger; and
- (c) a contact number in case of an emergency only if the Captain of the Port so chooses, when volunteered by the passenger.

(2) The information listed in subregulation (1) shall be collected before the passenger ship's departure and reported in the single window established under regulation 7 of the Gibraltar Merchant Shipping (Reporting Formalities For Ships) Regulations 2012 upon the passenger ship's departure but in no case later than 15 minutes after its departure.

(3) For a transitional period of 6 years from 20 December 2017, the Captain of Port may continue to allow that information be communicated to the company's passenger registrar or to the shore-based company system that performs the same function, instead of requiring it to be reported in the single window.

(4) Without prejudice to other legal obligations that comply with the Data Protection Act, 2004, all personal data collected for the purposes of these Regulations shall-

- (a) not be processed and used for any other purpose;
- (b) always be handled in accordance with the Data Protection Act, 2004; and
- (c) be erased automatically and without undue delay once it is no longer needed.

Non-EU ships on voyages from outside the European Union to Gibraltar.

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6. In respect of any passenger ship which is not a EU ship on any voyage from any landing point outside the territory of the European Union to Gibraltar, the owner or the Company shall ensure that the information specified in regulations 4(2) and 5(1) is provided in accordance with regulations 4(4) and 5 (2) and (3).

Master's duty to count the number of persons on board.

6A. Before a passenger ship departs from the port of Gibraltar, the master of the ship shall ensure that the number of persons on board the ship does not exceed the number that ship is permitted to carry.

Management of passenger's data.

7.(1) Every company assuming responsibility for operating a passenger ship shall, to which regulations 4 and 5 apply, appoint a passenger registrar responsible for reporting the information referred to in those provisions in the single window established under regulation 7 of the Gibraltar Merchant Shipping (Reporting Formalities for Ships) Regulations 2012.

(2) Personal data collected in accordance with regulations 5 of these Regulations shall be kept by the company no longer than is necessary for the purposes of these Regulations, and in any event only until the moment the ship's voyage in question has been safely completed and the data has been reported in the single window established regulation 7 of the Gibraltar Merchant Shipping (Reporting Formalities for Ships) Regulations 2012.

(3) Without prejudice to other legal obligations that comply with the Data Protection Act, 2004, including for statistical purposes, once the information is no longer needed for this purpose, it shall be erased automatically and without undue delay.

(4) Each company shall ensure that information concerning passengers who have declared a need for special care or assistance in emergency situations is properly recorded and communicated to the master before the passenger ship departs.

Exemptions.

8.(1) Subject to the provisions of these Regulations, the Administration may exempt any passenger ship–

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- (a) leaving any landing point within Gibraltar from the requirements of regulation 4(4) in so far as they apply as respects a passenger registrar or a shore-based passenger registrar if the ship is engaged, exclusively in a protected sea area, on a regular service of less than one hour between calls at landing points; or
- (b) from the requirements of regulation 5(1) if—
 - (i) in respect of any Gibraltar passenger ship leaving any landing point outside the territory of the European Union on an international voyage, the scheduled voyages of the ship make it impracticable for such records to be prepared; and
 - (ii) in respect of any passenger ship where the ship—
 - (aa) sails exclusively in protected sea areas between two landing points one of which is Gibraltar or from and to the same landing point in Gibraltar without calling at any intermediate landing point; or
 - (bb) is engaged on a regular community service.

(2) Where an exemption is granted pursuant to subregulation (1)(a), the Administration shall cause the Commission to be informed of it, giving substantive reasons for, granting such exemption.

(2A) Where an exemption is granted from the obligation under regulation 5, the Administration shall cause the Commission to be notified of it without delay, giving substantive reasons for, granting such exemption and this notification shall be carried out by means of database established and maintained by the Commission and the Administration shall have access.

(3) Subregulation (1) shall not apply to any passenger ship sailing from Gibraltar and flying the flag of a third country that is a contracting party to the SOLAS Convention which under the relevant SOLAS provisions does not agree to the application of any exemptions referred to in that subregulation.

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(4) The Maritime Administrator may lower the twenty-mile threshold referred to in regulation 5(1) for a passenger ship which departs from a landing point in Gibraltar.

(5) Where the Administration considers it impracticable for companies to record the information specified in regulation 5(2), it may request the Commission by means of database referred to in subregulation (2A) to derogate, wholly or partly, from the requirement of that regulation for regular services in an area—

- (a) where the annual probability of the significant wave height's exceeding two metres is less than 10%; and
- (b) the voyage does not exceed about thirty miles from the point of departure; or
- (c) where the primary purpose of the service is to provide regular links to outlying communities for customary purposes.

Procedure for registration and maintenance of data.

8A.(1) Administration shall ensure that companies have a procedure for data registration in place which guarantees that information required by these Regulations is reported in an accurate and timely manner.

(2) Administration shall have access to the information required under these Regulations and it shall ensure that, in the event of an emergency or in the aftermath of an accident, that the Administration has immediate access to the information required under these Regulations.

(3) Personal data collected in accordance with regulation 5 shall be kept by the Administration no longer than is necessary for the purposes of these Regulations, and in any event, no longer than—

- (a) until the moment the ship's voyage in question has been safely completed, but in any case not longer than 60 days after the ship's departure; or
- (b) in the event of emergency or in the aftermath of an accident, until any investigation or judiciary proceedings have been completed.

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(4) Without prejudice to other legal obligations that comply with the Data Protection Act, 2004, including obligations for statistical purposes, once the information is no longer needed for the purposes of these Regulations, it shall be erased automatically and without undue delay.

Further responsibility for collection, recording and processing of data.

8B.(1) For the purposes of these Regulations the required data shall be collected and recorded in such a way that no undue delay is caused for passengers embarking or disembarking the ship.

(2) A multiplicity of data collection on the same or similar routes shall be avoided.

(3) The processing of personal data under these Regulations shall be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council.

(4) The processing of personal data by the Single Window and the SafeSeaNet, shall be carried out in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council.

False statements.

9. A person shall not, in connection with a system for counting the persons on board a passenger ship or collecting the information specified in regulation 5(2)–

- (a) knowingly or recklessly make any false statement liable or intended to lead to error in the determination of the total number of persons on board or in the collection of the information specified in regulation 5(2); or
- (b) falsify the information collected or transmitted to the passenger registrar.

Offences.

10.(1) If there is any breach of any of the requirements specified by these Regulations in respect of a passenger ship the owner and the master both shall be guilty of an offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or on conviction on indictment by imprisonment for a term not exceeding two years or a fine, or both.

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(2) Any person who contravenes regulation 9 shall be guilty of an offence punishable, on summary conviction, to a fine not exceeding level 5 on the standard scale or, on conviction on indictment, by imprisonment for a term not exceeding two years or a fine, or both.

Defences.

11.(1) It shall be a defence for the person charged under these Regulations to prove that he took all reasonable steps to avoid the commission of the offence.

(2) Without prejudice to subregulation (1), it shall be a defence for a person providing information to the owner of a ship in respect of other persons not being members of his family, being information required by the owner pursuant to these Regulations, if that person has been charged under regulation 9, to prove that the information was collected by him in good faith.

SCHEDULE

Deleted.