

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4644 of 19 December, 2019

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LEGAL NOTICE NO. 247 OF 2019

## GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT, 1993

### GIBRALTAR MERCHANT SHIPPING (COUNTING AND REGISTRATION OF PERSONS ON BOARD PASSENGER SHIPS) (MISCELLANEOUS AMENDMENT) REGULATIONS 2019

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 purpose of transposing into the law of Gibraltar the Directive (EU) 2017/2109 of the European Parliament and of the Council of 15 November 2017 amending Council Directive 98/41/EC and Directive 2010/65/EU, the Government has made the following Regulations—

#### **Title and commencement.**

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Miscellaneous Amendment) Regulations 2019 and shall come into operation on 21 December 2019.

#### **Amendments to regulation 2.**

2. Regulation 2 of the Gibraltar Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 2004 (the principal Regulations) is amended –

(a) by substituting the following definitions for the definition of “Community ship”-

““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;”;

(b) by substituting the following definition for the definition of “passenger registrar”-

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

- (c) by substituting the following definition for the definition of “passenger ship”-

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

- (d) by inserting the following definitions after the definition of “person”-

““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;”;

- (e) by inserting the words “or a series of voyages from and to the same port without intermediate calls” after the words “more ports” in the definition of “regular service”.

### **Amendment of regulation 3.**

3. Regulation 3 of the principal Regulations is amended by substituting the following subregulation for subregulation (2)-

“(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.”.

### **Amendment of regulation 4.**

4. Regulation 4 of the principal Regulations is amended-

- (a) by substituting the following paragraph for paragraph (c) of subregulation (1)-

“(c) is approved, in the case of a Gibraltar ship, by the Administration in Gibraltar.”.

- (b) by substituting the following subregulations for subregulation (4)-

“(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.”.

**Substitution of regulation 5.**

5. The principal Regulations are amended by substituting the following regulation for regulation 5-

**“Additional requirement for voyages of more than 20 miles.**

- 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.”.

**Substitution of regulation 6.**

6. The principal Regulations are amended by substituting the following regulations for regulation 6-

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

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.”.

**Substitution of regulation 7.**

7. The principal Regulations are amended by substituting the following regulation for regulation 7-

**“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.”.

**Amendments to regulation 8.**

8. Regulation 8 of the principal Regulations is amended-

- (a) by substituting the word “Union” for the word “Community” in subregulation (1)(b)(i);
- (b) “by substituting “ subregulation (1)(a)” for “subregulation (1)” in subregulation (2); and
- (c) by inserting the following subregulation after subregulation (2)-
  - “(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.”; and
- (d) by inserting the words “by means of database referred to in subregulation (2A)” after the words “it may request the Commission” in subregulation (5).

**Regulations 8A and 8B.**

9. The Principal Regulations are amended by inserting the following Regulations after regulation 8-

**“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.

- (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.”.

**Deletion of the Schedule.**

10. The Principal Regulations are amended by deleting the Schedule.

**Amendment to the Schedule of the Gibraltar Merchant Shipping (Reporting Formalities for Ships) Regulations 2012.**

11. Part of A of the Schedule to the Gibraltar Merchant Shipping (Reporting Formalities for Ships) Regulations 2012 is amended by inserting the following entry after the 2nd entry under heading “Notification of security information”-

“Regulations 4(4) and 5(2) of the Gibraltar Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 2004”.

Dated 19<sup>th</sup> December 2019.

G L Licudi QC,  
For the Government.

**EXPLANATORY MEMORANDUM**

These Regulations amend of the Gibraltar Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 2004 and the Gibraltar Merchant Shipping (Reporting Formalities for Ships) Regulations 2012 for the purpose of transposing into the law of Gibraltar the Directive (EU) 2017/2109 of the European Parliament and of the Council of 15 November 2017 amending Council Directive 98/41/EC and amending the Annex to Directive 2010/65/EU.