

Gibraltar Merchant Shipping (Safety, etc.)

1995-13

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

Regulations made under s. 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993.

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY
VESSEL TRAFFIC MONITORING AND INFORMATION
SYSTEM) REGULATIONS 2004**

(LN. 2004/120)

28.4.2005 (*LN. 2005/074*)

Amending enactments	Relevant current provisions	Commencement date
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Transposing:
Directive 2002/59/EC

ARRANGEMENT OF REGULATIONS

Regulations

**PART I
PRELIMINARY**

1. Title and commencement.
2. Interpretation.
3. Application of these Regulations.

**PART II
SHIP REPORTING AND MONITORING.**

4. Competent authority.
5. Notification prior to entry into the Port.
6. Mandatory ship reporting system.
7. Use of ships' routing system.
8. Vessel traffic services within territorial sea.
9. Vessel traffic services outside territorial sea.
10. Use of automatic identification systems.
11. Voyage data recorder systems.

**PART III
NOTIFICATION OF DANGEROUS OR POLLUTING GOODS.**

12. Notification by ships carrying dangerous or polluting goods.
13. Exemption from the requirements of regulation 12.
14. Obligation on the shipper in respect of dangerous or polluting goods.

**PART IV
INCIDENTS AND ACCIDENTS AT SEA.**

15. Reporting of incidents and accidents at sea.
16. Measures to be taken in the event of exceptionally bad weather or sea conditions.
17. Measures to be taken in the event of incidents or accidents at sea.
18. Obligations of owners in relation to accidents and incidents.
19. Casualty investigation.

**PART V
USE OF INFORMATION.**

20. Broadcasting and supply of information.

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

- 21. Transmission of information concerning hazardous ships.
- 22. Confidentiality of information.

**PART VI
CONTROL PROVISIONS.**

- 23. Offences.
- 24. Defences.
- 25. Offences due to the fault of another person.
- 26. Offences by corporate bodies.
- 27. Inspection and detention of ships.
- 28. Appeal.

SCHEDULE 1
Prescription applicable to on-board equipment.

SCHEDULE 2
Information to be notified in accordance with regulation 12.

SCHEDULE 3
Granting exemption for international schedule service.

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

In exercise of the powers conferred on it by regulation 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 and all other powers enabling, the Government, for the purposes of transposing into the law of Gibraltar Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC, has made the following Regulations:

**PART I
PRELEMINARY.**

Title and commencement.

1.(1) These Regulations may be cited as the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004.

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

Interpretation.

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

“accident” means any accident or occurrence affecting the safety of a ship, including, without prejudice to the generality of the foregoing, any occurrence whereby a ship—

- (a) is in collision,
- (b) grounds,
- (c) is damaged,
- (d) malfunctions or breaks down,
- (e) suffers the flooding or shifting of cargo, or
- (f) suffers a defective hull or structural failure;

"address" means the name and the communication links whereby contact may, where necessary, be made with the operator, agent, port authority, competent authority or any other authorised person or

body in possession of detailed information regarding the ship's cargo;

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

“agent” means a person mandated or authorized to supply information on behalf of the owner or operator of a ship;

“BC Code” means the IMO Code of Safe Practice for Solid Bulk Cargoes, in its up-to date version that is applicable at the time of reference;

“casualty” means a casualty within the meaning of the IMO Code for the investigation of marine casualties and incidents;

“coastal authority” means–

- (a) a person or body who provides a VTS;
- (b) a person or body who is responsible for a mandatory reporting system approved by the IMO; or
- (c) a person or body who is responsible for the co-ordination of search and rescue operations at sea or the co-ordination of operations to deal with pollution at sea;

“co-operating States” means two or more States of which at least one shall be an EEA State;

“company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the ISM Code;

“dangerous goods” means–

- (a) goods classified as such in the IMDG Code;

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

- (b) dangerous liquid substances listed in Chapter 17 of the IBC Code;
- (c) liquefied gases listed in Chapter 19 of the IGC Code;
- (d) solids referred to in Appendix B of the BC Code; and
- (e) goods in respect of whose carriage appropriate preconditions have been imposed in accordance with paragraph 1.1.3 of the IBC Code or paragraph 1.1.6 of the IGC Code;

“Directive” means Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC;

“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;

“EEA State” means a Member State, Norway, Iceland or Liechtenstein;

“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;

“IBC Code” means the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk, in its up-to date version that is applicable at the time of reference;

“IGC Code” means the IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, in its up-to date version that is applicable at the time of reference;

“IMDG Code” means the IMO International Maritime Dangerous Goods Code, in its up-to date version that is applicable at the time of reference;

“IMO” means the International Maritime Organisation;

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

“IMO guidelines” means the Guidelines for Vessel Traffic Services contained in IMO Resolution A.857 (20) adopted on 27th November 1997 as amended;

“incident” means any incident on a ship which affects or could affect the safety of other ships, including, without prejudice to the generality of the foregoing, a failure or defect which affects or is likely to affect—

- (a) the manoeuvrability or seaworthiness,
- (b) the propulsion system,
- (c) the steering gear,
- (d) the electrical generating system,
- (e) the navigation equipment, or
- (f) the communications system, of the ship;

“INF Code” means the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships, adopted by Resolution MSC. 88(71), in its up-to date version as in force at the time of reference;

“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 IMO Resolution A. 741(18) as amended by Resolution MSC. 104(73), in its up-to date version that is applicable at the time of reference;

“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;

“MARPOL Convention” means the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto, in its up-to date version that is applicable at the time of reference;

Gibraltar Merchant Shipping (Safety, etc.)

GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL TRAFFIC MONITORING AND INFORMATION SYSTEM) REGULATIONS 2004

This version is out of date

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

“nautical chart” and “nautical publication” have the same meaning as they have in Regulation 2 in Chapter V of the Annex to the SOLAS Convention;

“non-Gibraltar ship” means a ship which is not a Gibraltar ship;

“Operator”, as regards a ship, includes an owner;

“Act” means the Gibraltar Merchant Shipping (Safety, etc.) Act 1993;

“owner”, as regards a ship, means

- (a) the owner of the ship;
- (b) any other organisation or person such as the manager or the bareboat charterer who has assumed responsibility for the operation of the ship from the owner of the ship and who, on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the ISM Code;

"place of refuge" means the part of the port of Gibraltar or a protective berth or an anchorage or any other sheltered area within Gibraltar waters identified by the port authority for accommodating ships in distress;

“polluting goods” means—

- (a) any oil, oily mixture, oil fuel or crude oil, as defined in Annex I to the MARPOL Convention;
- (b) any noxious liquid substance, as defined in Annex II to the MARPOL Convention;
- (c) any harmful substances, as defined in Annex III to the MARPOL Convention; or
- (d) any marine pollutant identified in the IMDG Code;

“Port of Gibraltar” means—

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

- (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 relevant legislation;
- (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 following co-ordinates:

Position	36° 09'.0 N	–	005° 19'.7 W
“	36° 09'.0 N	–	005° 17'.5 W
“	36° 07'.2 N	–	005° 17'.5 W
“	36° 06'.5 N	–	005° 19'.7 W

“port authority” means, in the case of Gibraltar, the Gibraltar Port Authority and in other cases, the relevant port authority designated by an EEA State to receive and pass on information requested pursuant to these Regulations;

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

“relevant authority” means, in the case of an accident or incident at sea–

- (a) the port authority, where the accident or incident occurs in Gibraltar waters;
- (b) the coastal authority of the EEA State in whose territorial waters the accident or incident occurred; or
- (c) in the case of an incident or accident of a Gibraltar ship outside the coastal waters of an EEA State, the competent national authorities in whose territorial waters the incident or accident occurred.

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

“ro-ro ferry” means a seagoing passenger vessel with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers.

“rules”, in relation to a VTS, means the most recent rules which have been–

- (a) published in a nautical chart or a nautical publication; or
- (b) promulgated so that masters of ships ought reasonably to be aware of them;

“ship” means a sea-going vessel or craft;

"shipper" means any person by whom or in whose name or on whose behalf a contract of carriage of goods has been concluded with a carrier;

"ship's routing system" means any system of one or more routes or routing measures aimed at reducing the risk of casualties which includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas and deep-water routes;

“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 that is applicable at the time of reference;

“traditional ship” means an historical ship or a replica of an historical ship operated according to traditional principles of seamanship and technique, and for the purposes of this definition, a replica of an historical ship includes such replica designed to encourage and promote traditional skills and seamanship;

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

“VDR” means voyage data recorder;

“VTS” means vessel traffic service;

“vessel traffic service” means a service which is designed to improve the safety and efficiency of vessel traffic and to protect the environment and which is capable of interacting with that traffic and responding to traffic situations developing in the VTS area.

(2) The words or expressions which are used in these Regulations but not defined herein shall have the same meaning as they have in section 2 of the Act.

Application of these Regulations.

3.(1) Subject to subregulation (2), and unless otherwise stated, these Regulations, apply to—

- (a) all Gibraltar ships; and
- (b) all non-Gibraltar ships while they are in Gibraltar waters.

(2) These Regulations do not apply to—

- (a) ships of less than 300 gross tonnage, unless otherwise stated;
- (b) warships, naval auxiliaries and other ships owned or operated by the Government of an EEA State which are used for non-commercial public service;
- (c) fishing vessels;
- (d) traditional ships;
- (e) recreational craft having a length of less than 45 metres.

(3) In relation to a ship, these Regulations do not apply to—

- (a) bunkers of less than 5,000 tonnes; and
- (b) the stores and the equipment,

for use on board that ship.

(4) For the purposes of regulation 12, in relation to a ship, bunkers of less than 5000 tonnes for use on board that ship shall not be regarded as dangerous or polluting goods.

(5) In this regulation, “length”, in relation to a recreational craft, means either–

- (a) 96% of the total length of the craft on a waterline at 85% of the least moulded depth measured from the keel line; or
- (b) the length from the foreside of the stem to the axis of the rudder stock on that waterline,

whichever is the greater, and where the craft in question is designed with rake of keel, the waterline on which the lengths referred to in (a) and (b) are measured shall be parallel to the designed waterline.

**PART II
SHIP REPORTING AND MONITORING.**

Competent authority.

4.(1) For the purposes of these Regulations–

- (a) as regards Gibraltar, the competent authority shall be the port authority; and
- (b) as regards an EEA State, the competent authority shall be the authority designated as such by the EEA State in question in accordance with Article 22 of the Directive.

(2) The competent authority shall monitor and take all necessary and appropriate measures to ensure that the masters, operators or agents of ships, as well as shippers or owners of dangerous or polluting goods carried on board such ships, comply with the requirements of Parts II, III, IV and V of these Regulations.

Notification prior to entry into the Port.

5.(1) This regulation applies to–

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

- (a) a Gibraltar ship bound for a port located in an EEA State; and
- (b) a non-Gibraltar ship bound for the Port of Gibraltar.

(2) The operator, agent or master of a ship referred to in subregulation (1) shall notify the port authority of the port to which the ship in question is bound the information specified in subregulation (3) and in accordance with subregulation (4).

(3) The information referred to in subregulation (2) is—

- (a) the name, the call sign, the IMO identification number or the maritime mobile service identity number of the ship;
- (b) the port of destination;
- (c) the estimated time of arrival at the port of destination, or if required by the authority of the port in question, the pilot station for that port;
- (d) the estimated time of departure from the port of destination referred to in paragraph (c);
- (e) the total number of persons on board the ship.

(4) The information shall be notified—

- (a) if it is known to which port the ship is bound, at least 24 hours before the arrival of the ship;
- (b) if the duration of the voyage is less than 24 hours, no later than the time of departure from the previous port; or
- (c) if it is not known to which port the ship is bound until less than 24 hours before the arrival of the ship at the port in question, as soon as possible after it becomes known that the ship is bound for that port.

(5) Where information has been notified in accordance with subregulation (2), the master of the ship in question shall notify immediately the authorities of the port to which the ship is bound of any changes to that information as far as it is available.

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

Mandatory ship reporting system.

6.(1). The port authority shall monitor and take all necessary and appropriate measures to ensure that all ships entering the area of a Gibraltar mandatory ship reporting system, adopted by the IMO and operated by Gibraltar in accordance with the relevant guidelines and criteria developed by the IMO, comply with that system in reporting information required without prejudice to additional information by the competent authority in accordance with IMO Resolution A. 851(20).

(2) A Gibraltar mandatory ship reporting system referred to in subregulation (1), shall follow—

- (a) the guidelines and criteria developed by the IMO by resolution MSC.43(64) as amended by resolution MSC.111(73); and
- (b) the general principles adopted by the IMO by resolution A.851(20).

(3) The port authority shall, when submitting a new mandatory ship reporting system to the IMO for adoption, include in its proposal a requirement that a ship provides at least the following information—

- (a) the name, the call sign, the IMO identification number or the maritime mobile service identity number of the ship;
- (b) the date and time,
- (c) the position in latitude and longitude or true bearing and distance in nautical miles from a clearly identified landmark,
- (d) the course,
- (e) the speed,
- (f) the port destination and estimated time of arrival,
- (g) the cargo and, if dangerous goods are present on board, their quantity and IMO class,
- (h) the address for the communication of cargo information,
- (i) the total number of persons on board, and

- (j) other information including–
 - (i) the characteristics and estimated quantity of bunker fuel, for ships carrying more than 5000 tons of bunker fuel, and
 - (ii) the navigational status.

(4) The port authority may, after a Gibraltar mandatory ship reporting system has been adopted and established, amend an existing reporting system following the same procedure set out in subregulations (2) and (3).

Use of ships' routing system.

7.(1). The port authority shall monitor and take all necessary and appropriate measures to ensure that all ships entering the area of a Gibraltar mandatory ships' routing system, adopted by the IMO and operated by Gibraltar, use that system in accordance with the relevant guidelines and criteria developed by the IMO.

(2) A ships' routing system established by Gibraltar and not adopted by the IMO, shall follow the general provisions, guidelines and criteria developed by the IMO by Resolution A. 572(14) as amended and the port authority shall set out its requirements for the information necessary for the efficient and effective use of that system.

Vessel traffic services within territorial seas.

8.(1) The master of a Gibraltar ship shall ensure that, when the ship enters an area in respect of which a VTS is operated in accordance with the IMO guidelines by-

- (a) an EEA State within the territorial sea of that EEA State; or
- (b) co-operating States within the territorial seas of those co-operating States,

the ship shall participate in, and comply with, the rules of that VTS.

(2) The master of a non-Gibraltar ship shall ensure that, when the ship enters an area within Gibraltar waters in respect of which a VTS is operated in accordance with IMO guidelines, the ship shall participate in, and comply with, the rules of that VTS.

Vessel traffic services outside territorial seas.

9.(1) The master of a Gibraltar ship which is bound for a port of an EEA State shall ensure that, when the ship enters an area, in respect of which is operated a VTS outside the territorial sea of an EEA State and that VTS is operated in accordance with the IMO guidelines by–

(a) an EEA State; or

(b) co-operating States,
the ship shall participate in, and comply with, the rules of that VTS.

(2) The master of a non-Gibraltar ship which is not bound for the Port of Gibraltar shall ensure that, when the ship enters a VTS area outside Gibraltar waters and that VTS is operated in accordance with the IMO guidelines by–

(a) Gibraltar; or

(b) two or more States or territories one of which is Gibraltar,

the ship shall follow the rules of that VTS whenever possible.

(3) If the Administration is of the opinion that a non-Gibraltar ship has failed substantially to comply with subregulation (2), the Administration shall report that failure to the flag State of the ship in question.

Use of automatic identification systems.

10.(1) This regulation applies to–

(a) a cargo craft;

(b) a cargo ship, other than a cargo craft, of 300 gross tonnage or more but less than 500 gross tonnage built on or after 1st July 2002 on a domestic voyage;

(c) a passenger ship built before 1st July 2002 on a domestic voyage;

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

- (d) a tanker built before 1st July 2002 on a domestic voyage which has undergone a survey for safety equipment between 1st July 2003 and the date on which these Regulations come into force;
- (e) a cargo ship, other than a cargo craft or a tanker, of 50,000 gross tonnage or more built before 1st July 2002 on a domestic voyage;
- (f) a cargo ship, other than—
 - (i) a cargo craft,
 - (ii) a tanker referred to in paragraph (d), or
 - (iii) a cargo ship referred to in paragraph (e),

built before 1st July 2002 on a domestic voyage.

(2) Subject to subregulation (3), a ship referred to in subregulation (1)(f) shall be fitted with an automatic identification system, which complies with the relevant requirements in accordance with the applicable timetable contained in Part 1 of Schedule 1.

(3) If a tanker built before 1st July 2002 on a domestic voyage has not undergone a survey for safety equipment since 1st July 2003, the tanker in question shall be fitted with an automatic identification system which complies with the relevant requirements no later than the next such survey.

(4) The master of a ship fitted with an automatic identification system shall ensure that the system is maintained in operation at all times except where international agreements, rules or standards provide for the protection of navigational information.

(5) In this regulation—

- (a) “cargo craft” means a high-speed craft, other than a craft carrying more than 12 passengers, which is capable of maintaining the main functions and safety systems of unaffected spaces after damage in any one compartment on board;
- (b) “high speed craft” means a craft capable of a maximum speed in metres per second (m/s) equal to or exceeding: $3.7 \nabla^{0.1667}$ where ∇ = volume of displacement corresponding to the design waterline

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

(m³), excluding craft the hull of which is supported clear above the water surface in non displacement mode by aerodynamic forces generated by ground effect; and

- (b) “the relevant requirements” means the requirements of paragraph 2.4.5 of regulation 19 in Chapter V of the Annex to the SOLAS Convention.

Voyage data recorder systems.

11.(1) The port authority shall monitor and take all necessary and appropriate measures to ensure that every ship calling at the Port of Gibraltar, to which these Regulations apply, is fitted with a voyage data recorder (VDR) system meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC).

(2) All ships to which these Regulations apply, other than those referred to in subregulation (3), (4) and (5), shall be fitted with a voyage data recorder system as referred to in subregulation (1) and all classes of ships described in Part 2 of Schedule 1 shall comply with the requirements of subregulation (1) from the effective date of these Regulations.

(3) All cargo ships of 20000 gross tonnage and upwards built before 1 July 2002 and to which these Regulations apply, shall be fitted with a voyage data recorder system as referred to in subregulation (1)–

- (a) by the date fixed by the IMO; or
- (b) in the absence of a decision in the IMO for such a date, not later than 1 January 2007.

(4) All cargo ships of 3000 gross tonnage and upwards but less than 20000 gross tonnage built before 1 July 2002 and to which these Regulations apply, shall be fitted with a voyage data recorder system as referred to in subregulation (1)–

- (a) by the date fixed by the IMO; or
- (b) in the absence of a decision in the IMO for such a date, not later than 1 January 2008.

(5) The Administration may exempt any passenger ship engaged only in domestic voyages in sea areas other than those covered by Class A, as referred to in regulation 4 of the Gibraltar Merchant Shipping (Safety Rules and Standards for Passenger Ships on Domestic Voyages) Regulations, 2003 from compliance with the requirements of this regulation.

(6) The master of a ship shall ensure that any data which have been collected from a VDR system are made available to the Administration concerned in the event of an investigation following a casualty occurring within the waters under the jurisdiction of an EEA State.

(7) The Administration shall ensure that, following a casualty occurring within Gibraltar waters—

- (a) the data referred to in subregulation (6) is—
 - (i) used in the investigation; and
 - (ii) properly analysed ;and
- (b) the findings of the investigation referred to in subregulation (6) are published as soon as possible after its conclusion.

PART III

NOTIFICATION OF DANGEROUS OR POLLUTING GOODS.

Notification by ships carrying dangerous or polluting goods.

12.(1) This regulation applies to ships, regardless of their size, carrying—

- (a) dangerous goods; or
- (b) polluting goods.

(2) Subject to regulation 13(1), before a ship departs from the Port of Gibraltar, the operator, agent or master of that ship shall notify the port authority of the information specified in Schedule 2.

(3) Subject to regulation 13(5), before a Gibraltar ship departs from a port located in an EEA State, other than the Port of Gibraltar, the operator, agent or master of that Gibraltar ship shall notify the competent authority of the State in which that port is situated of the information specified in Schedule 2.

Gibraltar Merchant Shipping (Safety, etc.)

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

(4) Subject to regulation 13(5), where a Gibraltar ship—

- (a) is coming from a port which is not located in an EEA State;
and
- (b) is bound for—
 - (i) a port located in, or
 - (ii) an anchorage located in the territorial waters of,

an EEA State other than Gibraltar,
the operator, master or agent of that ship shall notify the competent authority
of the EEA State in question of the information specified in Schedule 2 not
later than the time set out in subregulation (6).

(5) Subject to regulation 13(5), where a ship is—

- (a) coming from a port which is not located in an EEA State; and
- (b) bound for the Port of Gibraltar or an anchorage located in
Gibraltar waters,

the operator, master or agent of that ship shall notify the port authority of the
information specified in Schedule 2 not later than the time set out in
subregulation (6).

(6) The time referred to in subregulations (4) and (5) is—

- (a) where—
 - (i) the port of destination, or
 - (ii) the location of the anchorage,

is known at the time of departure from the port at which the dangerous
goods or the polluting goods were loaded, no later than the time of departure
from that port; or

- (b) where—
 - (i) the port of destination, or

- (ii) the location of the anchorage,

is not known at the time of departure from the port at which the dangerous goods or the polluting goods were loaded, the time immediately such port or such location is known.

(7) Whenever practicable, the information referred to in Schedule 2 shall be notified to the port authority by electronic means.

(8) When the Gibraltar port authority receives information pursuant to subregulations (2) and (5), that port authority shall—

- (a) retain that information for as long as the information may be required for use in the event of an incident or accident at sea; and
- (b) provide that information to the Administration at the request of the Administration for the same purpose as in paragraph (a).

(9) Where any information has been notified in accordance with this regulation, regulation 5(2), 6 or 14(1), the master of the ship in question shall notify immediately the person to whom that information was notified of any changes to that information.

(10) The operator, agent or master of a ship shall notify the port authority immediately if the estimated time of arrival changes by more than 12 hours, or if any of the other information set out in Schedule 2 alters significantly.

Exemptions from the requirements of regulation 12.

13.(1) Subject to the conditions specified in subregulation (2), the Administration may grant an exemption in respect of a scheduled service on domestic voyages so that regulation 12(2) shall not apply to the operator, agent or master of a ship engaged on that scheduled service.

(2) The conditions referred to in subregulation (1) are that the company who operates the scheduled service shall—

- (a) maintain, and keep up to date, a list of the ships engaged on that scheduled service;
- (b) send that list, and details of all updates, to the Administration; and

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

- (c) ensure that, in respect of each voyage made by a ship whilst engaged on the scheduled service, the information specified in Schedule 2 is kept so that it can be provided at any time by electronic means to the port authority immediately upon request.

(3) The Administration shall immediately revoke an exemption granted under subregulation (1) if it is satisfied that any condition contained in subregulation (2) is not complied with.

(4) An exemption granted under subregulation (1), and any revocation thereof, shall be in writing.

(5) Regulation 12(3), (4) and (5) shall not apply to the operator, agent or master of a ship engaged on an international scheduled service in respect of which there is in force an exemption granted pursuant to Schedule 3.

(6) The Administration shall cause a list of companies and ships granted exemption under this regulation to be communicated to the European Commission.

Obligation on the shipper in respect of dangerous or polluting goods

14.(1) No dangerous or polluting goods shall be offered for carriage or taken on board any ship, irrespective of its size, in the Port of Gibraltar unless a declaration has been delivered by the shipper to the master or operator containing the information listed in subregulation (2).

(2) The following information is required to be contained in a declaration pursuant to subregulation (1)–

- (a) the correct technical names of the dangerous or polluting goods;
- (b) the United Nations (UN) numbers where they exist;
- (c) the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes;
- (d) where appropriate, the class of the ship needed for INF cargoes as defined in Regulation VII/14.2 of the SOLAS Convention, the quantities of such goods and, if they are being carried in

cargo transport units other than tanks, the identification number thereof; and

- (e) the address from which detailed information on the cargo may be obtained.

(3) The shipper shall, for the purpose of carriage or taking on board any ship dangerous or polluting goods—

- (a) deliver to the master or operator a declaration referred to in subregulation (2); and
- (b) ensure that the shipment offered for carriage is indeed the one declared in compliance with subregulation (1).

PART IV

INCIDENTS AND ACCIDENTS AT SEA.

Reporting of incidents and accidents at sea.

15.(1) When a ship in Gibraltar waters is involved in—

- (a) an accident,
- (b) an incident or
- (c) a pollution event likely to result in the pollution of Gibraltar waters,

the master of that ship shall immediately send to the Administration and the port authority, by the quickest means available the information specified in subregulation (3).

(2) Where a slick of polluting goods or containers or packages drifting at sea are seen from a ship in Gibraltar waters, the master of that ship shall immediately send to the port authority by the quickest means available—

- (a) the details of the sighting;
- (b) the information specified in subregulation (3)(a) and (b); and

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

(b) any other relevant information referred to in IMO Resolution A.851(20) adopted by the Assembly of the IMO on 27th November 1997 as amended.

(3) The information referred to in subregulation (1) shall comprise—

- (a) the identity of the ship;
- (b) the position of the ship;
- (c) the last port from which the ship departed;
- (d) the next port of call;
- (e) the number of people on board the ship;
- (f) the date on which, and the time at which, the accident, the incident or the polluting event occurred;
- (g) details of the accident, the incident or the polluting event;
- (h) the name of the body or person from whom information regarding any dangerous goods or polluting goods on board the ship may be obtained together with the necessary information to enable that person or body to be contacted; and
- (i) any other relevant information contained in IMO Resolution A.851(20) as amended.

(4) The master shall also ensure that a report referred to in subregulation (1) shall comply as to form and content with the standard reporting requirements.

(5) When a Gibraltar ship is involved in—

- (a) an accident;
- (b) an incident; or
- (c) a pollution event,

outside Gibraltar waters, the master of that ship shall report without delay the particulars of the accident, incident or pollution event, to the fullest

extent possible together with the information specified in subregulation (9) in the manner described in subregulation (6).

(6) A report referred to in subregulation (5)–

(a) shall be sent,

- (i) where the accident, incident or pollution event is a threat to the coastline or to the interests of Gibraltar, to the Administration,
- (ii) where the accident, incident or pollution event is a threat to the coastline or to a related interest, of another State, to the relevant Administration of the State in question; and

(b) as to form and content, shall comply with the standard reporting requirements.

(7) When a ship is involved in a discharge, or a probable discharge, of dangerous packaged goods, the master of that ship shall report without delay the particulars of the discharge or probable discharge to the fullest extent possible together with the information specified in subregulation (9) in the manner described in subregulation (8).

(8) A report referred to in subregulation (7)–

(a) shall be sent,

- (i) where the accident, incident or pollution event is a threat to the coastline or to the interests of Gibraltar, to the Administration,
- (ii) where the accident, incident or pollution event is a threat to the coastline or to a related interest, of another State, to the relevant Administration of the State in question; and

(c) as to form and content, shall comply with the standard reporting requirements.

(9) The information referred to in subregulations (5) and (7) shall comprise–

- (a) the identity of the ship;
- (b) the time and location of the incident;
- (c) the quantity and type of dangerous goods involved; and
- (d) details of assistance and salvage measures.

(10) In this regulation–

- (a) “dangerous packaged goods” means dangerous goods in packaged form including those in freight containers, portable tanks, road and rail vehicles and shipborne barges;
- (b) “pollution event” means a discharge, or the threat of a discharge, of polluting goods into the sea; and
- (c) “the standard reporting requirements” means the requirements stated in-
 - (i) part 2 (Standard Reporting Format and Procedures), or
 - (ii) sections 3.1, 3.2 and 3.3 of part 3 (Guidelines for Detailed Reporting Requirements),

of the Appendix to the Annex to Resolution A.851(20) adopted by the Assembly of the IMO on 27th November 1997 as amended.

Measures to be taken in the event of exceptionally bad weather or sea conditions.

16.(1) This regulation applies whenever, in the event of exceptionally bad weather or sea conditions, the port authority is of the opinion, based on meteorological information provided to it, that there is–

- (a) a serious threat of pollution in Gibraltar waters or the shipping areas or coastal zones of other States; or
- (c) a risk to human life.

(2) Whenever possible, the port authority shall provide to the master of every ship which intends to enter or leave the Port of Gibraltar full details of—

- (a) the weather conditions;
- (b) the sea state; and
- (c) the danger such weather and sea conditions may cause to—
 - (i) the ship;
 - (ii) the crews and passengers; and
 - (ii) the cargo on board the ship.

(3) Without prejudice to any measures which may be taken to give assistance to ships in distress, the port authority may give a recommendation described in subregulation (4) to the master of a ship in general or to a particular ship in, or about to enter, a relevant area.

(4) The recommendation referred to in subregulation (3) is a recommendation that the ship—

- (a) should enter or leave the Port of Gibraltar;
- (b) should not enter or leave the Port of Gibraltar;
- (c) should not be bunkered in Gibraltar waters;
- (d) should only be bunkered in Gibraltar waters subject to certain conditions,

until the port authority is of the opinion that there is no longer a serious threat of pollution or a risk to human life as described in subregulation (1).

(5) If the master of a ship is informed of an opinion pursuant to subregulation (4)(c) or (4)(d), the master shall ensure that the ship is not bunkered or that the conditions subject to which the ship should be bunkered are complied with.

(6) A recommendation or an opinion given pursuant to this regulation—

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

- (a) shall be given to the master of the ship in question by the quickest means available; and
- (b) if not given in writing, shall be confirmed in writing as soon as is reasonably practicable.

(7) Where the port authority gives a recommendation or an opinion pursuant to this regulation, the master of the ship in question shall immediately inform the owner of that ship by the quickest means available of the recommendation or the opinion.

(8) If, as a result of the exercise of his professional judgement, the master decides not to act in accordance with a recommendation given pursuant to this regulation, the master shall inform the port authority of the reasons for his decision.

(9) In this regulation, “professional judgement” means professional judgement as regards matters relating to safe navigation or the protection of the marine environment.

Measures to be taken in the event of incidents or accidents at sea.

17.(1) This regulation applies to the master of—

- (a) a cargo ship of not less than 300 gross tonnage and not more than 500 gross tonnage on an international voyage;
- (b) a cargo ship on a domestic voyage;
- (c) a passenger ship other than—
 - (i) a passenger ship engaged on voyages any of which are long international voyages;
 - (ii) a passenger ship engaged on voyages any of which are short international voyages;
 - (iii) a passenger ship engaged on domestic voyages; and
 - (iv) a ro-ro ferry.

(2) A master of a ship to whom this regulation applies shall inform the operator of the ship in question by the quickest means available of any

accident or incident at sea in which the ship is involved or which affects the ship as soon as possible after the accident or incident occurs.

(3) If the port authority considers, following a report pursuant to regulation 15(1) from the master of a ship which is involved in an incident or accident at sea, that it is necessary to avert, lessen or remove a serious and imminent threat to Gibraltar waters or Gibraltar's related interests, the safety of other ships and their crews and passengers or of persons on shore or to protect the marine environment, the port authority may, in addition to other measures -

- (a) restrict the movement of the ship or direct the ship to follow a specific course (but this requirement does not affect the master's responsibility for the safe handling of his ship);
- (b) give official notice to the master of the ship to put an end to the threat to the environment or maritime safety;
- (c) send an evaluation team on board the ship to assess the degree of risk, help the master to remedy the situation and keep the competent coastal station informed thereof; and
- (d) instruct the master to put in at a place of refuge in the event of imminent peril, or cause the ship to be piloted or towed.

(4) Where a ship is involved in an incident or accident at sea, the operator, the master of the ship and the owner of the dangerous or polluting goods carried on board shall, if requested by the port authority, cooperate fully with the port authority in order to minimise the consequences of the incident or accident at sea.

Obligations of owners in relation to accidents and incidents.

18.(1) When the owner of a ship is informed by the master of the ship of an accident or incident at sea in the Port of Gibraltar or elsewhere in the case of a Gibraltar registered ship, either in accordance with the ISM Code or in accordance with regulation 17(2) that owner—

- (a) shall inform the Administration and relevant authority immediately of the accident or incident; and
- (b) shall give such assistance as may be reasonably required by the relevant authority.

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

(2) Where a ship, to which the provisions of the ISM Code are applicable, is involved in an incident or accident at sea, the master of that ship shall, in accordance with the ISM Code, inform the company of that incident or accident and the company shall, as soon as it has been informed of the incident or accident, contact the relevant authority and place itself at its disposal as necessary.

(3) Where it appears to the port authority that the company notified pursuant to subregulation (2) has not been able to establish and maintain a link with the ship or the relevant authority, it shall then inform the Administration concerned which issued the ISM document of compliance and associated safety management certificate, or on whose behalf it was issued.

Casualty investigation.

19.(1) The company and the master of a ship involved in any casualty in Gibraltar waters or at sea after sailing from Gibraltar and prior to reaching a port of another EEA State shall notify the Administration in Gibraltar as soon as possible of the nature and extent of the casualty.

(2) The Administration on receipt of a notification of a casualty shall—

- (a) arrange to conduct an investigation in accordance with IMO guidelines set out in the Code for the investigation of marine casualties; and
- (b) provide necessary support and co-operation to a flag State who may also desire to conduct or participate in the investigation; and

(3) The Administration shall participate and cooperate in an investigation that is carried out by another EEA State as the lead administration if Gibraltar happens to be the flag State.

(4) The Administration shall ensure that—

- (a) the investigation pursuant to this regulation is carried out in the most efficient way and within the shortest possible time; and
- (b) the report resulting from such investigation is made public in accordance with point 12.3 of the Code for the investigation of marine casualties.

PART V
USE OF INFORMATION.

Broadcasting and supply of information.

20.(1) The port authority shall, as necessary, broadcast within the relevant areas an incident or accident which has been notified pursuant to regulation 15(1) and information with regard to any ship that poses a threat to maritime safety, the safety of individuals or the environment.

(2) The port authority shall make adequate arrangements to provide the information which has been notified to it pursuant to regulations 12 and 15 at any time upon request for safety reasons by the competent authority of another EEA State.

(3) The port authority shall take appropriate measures as soon as possible to inform any EEA State of facts which it received pursuant to regulations 12 and 15 or in some other way if those facts involve or increase the risk for that EEA State of a hazard being posed to certain shipping areas and coastal zones and arrange for consulting the EEA State regarding the action being envisaged.

(4) The Port authority shall make the necessary arrangements to use fully the reports which ships are required to transmit to it pursuant to regulation 15.

Transmission of information concerning hazardous ships.

21.(1) A ship shall be considered to be a hazardous ship that poses a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment if that ship -

- (a) in the course of its voyage—
 - (i) has been involved in an incident or accident at sea as referred to in regulation 15;
 - (ii) has failed to comply with the notification and reporting requirements imposed by these Regulations; or

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

- (iii) has failed to comply with the applicable rules in ships' routing systems and VTS pursuant to regulations 7 and 11;
- (b) in respect of which there is proof or presumptive evidence of deliberate discharges of oil or other infringements of the MARPOL Convention in waters under the jurisdiction of an EEA State; and
- (c) has been refused access to the Port of Gibraltar or has been the subject of a report or notification by the Administration in accordance with the Gibraltar Merchant Shipping (Port State Control) Regulations, 2003.

(2) The port authority shall communicate the relevant information on any hazardous ship as described in subregulation (1) to the relevant authorities concerned in other EEA States located along the planned route of the ship and without delay, inform the flag State and any other State concerned of measures taken pursuant to regulation 17, 26(2) or this regulation.

Confidentiality of information.

22.(1) No authority or member of staff of an authority shall disclose any information which has been obtained by, or furnished to, that authority or member of staff under or for the purposes of the Directive and these Regulations unless the disclosure is made with lawful justification.

(2) For the purposes of subregulation (1), a disclosure of information is made with lawful justification only if, and to the extent that—

- (a) the disclosure is made for the purposes of, and is necessary for, the performance of any obligation under the Directive and these Regulations;
- (b) the disclosure is made with the consent of the person to whom, or to whose business, property or other assets, the information relates;
- (d) the disclosure is made for the purposes of any proceedings, whether criminal or civil; or
- (e) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.

(3) Subregulation (1) shall not apply in the case of information contained in an historical record.

(4) Where records created at different dates are for administrative purposes kept together in one file or other assembly, all the records in that file or other assembly are to be treated for the purposes of this regulation as having been created when the latest of those records was created.

(5) For the purposes of this regulation “year” means a calendar year.

PART VI
CONTROL PROVISIONS.

Offences.

23.(1) Any contravention of regulation 5(2), 12(2), 12(3), 12(4), 12(5) or 12(10) shall be an offence by the operator, agent and master of the ship in question punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(2) Any person who, in purported compliance with regulation 5(2), 12(2), 12(3), 12(4), 12(5) or 12(10) makes a notification or supplies information which he knows to be false in any material particular, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(3) If the master of a ship fails to comply with regulation 5(5), 8(1), 8(2), 9(1), 9(2), 10(4), 11(6), 12(9), 15(1), 15(2), 15(4), 15(5), 15(7), 16(5), 16(7), 16(8), 17(2) or 18(2), that master shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(4) If a ship does not comply with regulation 10(2), 10(3) or 10(4), 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.

(5) If a shipper fails to comply with regulation 14(3), that shipper shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(6) If the master of a ship or the owner of dangerous or polluting goods fails to comply with regulation 17(4), that master or the owner shall be

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

This version is out of date

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

(7) If the owner of a ship fails to comply with regulation 18(1), that owner shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(8) If the company and the master of a ship fails to comply with regulation 19(1) that company and the master shall both be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(9) Any person who knowingly or recklessly discloses information in contravention of regulation 22(1) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

Defences.

24. In any proceedings for an offence under these Regulations, other than an offence under regulation 23(2) or 23(9), it shall be a defence for a person charged under these Regulations to prove that he took all reasonable steps to avoid the commission of the offence.

Offences due to the fault of another person.

25. Where an offence under these Regulations is committed, or would have been committed but for the operation of regulation 24, by any person due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first mentioned person.

Offences by corporate bodies.

26.(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—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) 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, subregulation (1) 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.

Inspection and detention of ships.

27.(1) When a ship to which these Regulations apply, is in Gibraltar waters, the Maritime Administrator may direct a surveyor or an inspector to inspect the ship to verify that it is in compliance with the requirements of these Regulations, and where the inspection carried out reveals that the ship is not—

- (a) fitted with an Automatic Identification System in compliance with regulation 10;
- (b) fitted with a Voyage Data Recorder in compliance with regulation 11; or
- (c) in compliance with any other requirement of these Regulations,

the Administration shall detain the ship by order and prevent the ship from proceeding to sea or leave the port until the ship complies with the requirement in respect of which it has been in non-compliance.

(2) Where the Administration is acting under this regulation, it shall—

- (a) prepare a report addressed to the Government of the State in which the ship is registered; and
- (b) take all possible efforts to avoid a ship being unduly delayed or detained.

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

- (a) the Gibraltar Port Authority;
- (b) the Chief Immigration Officer and the Collector of Customs;

GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004

This version is out of date

- (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) the surveyor or recognized organisation responsible for the issue of the certificates.

(4) The notification referred to in subregulation (3) shall contain—

- (a) the result of the inspection with a list of deficiencies;
- (b) any decision taken by the inspector or the surveyor; and
- (c) information on the right of appeal against the order for detention.

(5) Where the ship is detained, the Administration shall, in addition to the steps taken under subregulation (3)—

- (a) cause the facts concerning the detention of the ship to be reported to the IMO; and
- (b) notify all relevant information about the ship to the authorities of the next port of call.

Appeals.

28.(1) In the case of any dispute or complaint with regard to any decision made by the Administration or the Captain of the Port in carrying out his duties under these Regulations, the owner or operator of a ship or his representative in Gibraltar or the company may, within 7 days, make an appeal to the Minister with responsibility for the Port and Shipping and the Minister shall dispose of the appeal as soon as possible in writing by giving reasons for his decision.

- (2) On an appeal under subregulation (1), the Minister shall either—
 - (a) confirm the decision made by the Administration or the Captain of the Port or confirm it with such modifications as he thinks fit; or
 - (b) cancel it.

Gibraltar Merchant Shipping (Safety, etc.)

1995-13

**GIBRALTAR MERCHANT SHIPPING (COMMUNITY VESSEL
TRAFFIC MONITORING AND INFORMATION SYSTEM)
REGULATIONS 2004**

**Subsidiary
2004/120**

This version is out of date

(3) A second appeal may be made to the Supreme Court and only on a point of law.

(4) An appeal under subregulation (3) shall be made within 21 days from the decision made under subregulation (1) and the Court shall give an expedited hearing to that appeal.

(5) An appeal to the Minister or to the Court shall not suspend the operation of a notice of detention of a ship.

SCHEDULE 1

Regulation 10

PRESCRIPTIONS APPLICABLE TO ON-BOARD EQUIPMENT**Part 1****Automatic identification systems (AIS).**

1. Ships built on or after 1 July 2002:

Passenger ships, irrespective of size, and all ships of 300 gross tonnage and upwards built on or after 1 July 2002 which call at the Port of Gibraltar are subject to the carrying requirement laid down in regulation 10.

2. Ships built prior to 1 July 2002:

Passenger ships, irrespective of size, and all ships of 300 gross tonnage and upwards built prior to 1 July 2002 which call at the Port of Gibraltar are subject to the carrying requirement laid down in regulation 10 according to the following timetable-

- (a) passenger ships - on the effective date of these Regulations;
- (b) tankers - not later than the first survey for safety equipment after 1 July 2003;
- (c) ships, other than passenger ships and tankers, of 50000 gross tonnage and upwards- on the effective date of these Regulations;
- (d) ships, other than passenger ships and tankers, of 10000 gross tonnage and upwards but less than 50000 gross tonnage - not later than 1 July 2005 or, as regards ships engaged in international voyages, any earlier date decided within the framework of the IMO;
- (e) ships, other than passenger ships and tankers, of 3000 gross tonnage and upwards but less than 10000 gross tonnage - not later than 1 July 2006 or, as regards ships engaged in international voyages, any earlier date decided upon within the

framework of the IMO;

- (f) ships, other than passenger ships and tankers, of 300 gross tonnage and upwards but less than 3000 gross tonnage - not later than 1 July 2007 or, as regards ships engaged in international voyages, any earlier date decided upon within the framework of the IMO.

Part 2

Voyage data recorder (VDR) systems.

Ships including Gibraltar ships in the following classes shall, inasmuch as they call at the Port of Gibraltar, be fitted with a voyage data recorder system meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC) on the effective date of these Regulations-

- (a) passenger ships built on or after 1 July 2002,
- (b) ro-ro passenger ships built before 1 July 2002;
- (c) passenger ships other than ro-ro passenger ships, built before 1 July 2002; and
- (d) ships other than passenger ships, of 3000 gross tonnage and upwards, built on or after 1 July 2002.

In this Schedule, “the effective date of these Regulations” means the date on which these Regulations come into operation.

SCHEDULE 2

Regulation 12

Information to be notified in accordance with regulation 12.

A. General information:

- (a) ship identification (name, call sign, IMO identification number or MMSI number);
- (b) port of destination;
- (c) for a ship leaving a port in a Member State: estimated time of departure from the port of departure and estimated time of arrival at the port of destination or pilot station, as required by the competent authority;
- (d) for a ship coming from a port located outside the Community and bound for a port in a Member State: estimated time of arrival at the port of destination or pilot station, as required by the competent authority; and
- (e) total number of persons on board.

B. Cargo information:

- (a) the correct technical names of the dangerous or polluting goods, the United Nations (UN) numbers where they exist, the IMO hazard classes in accordance with the IMDG, IBC and IGC Codes and, where appropriate, the class of the ship as defined by the INF Code, the quantities of such goods and their location on board and, if they are being carried in cargo transport units other than tanks, the identification number thereof;
- (b) confirmation that a list or manifest or appropriate loading plan giving details of the dangerous or polluting goods carried and of their location on the ship is on board; and
- (c) address from which detailed information on the cargo may be obtained.

SCHEDULE 3

Regulation 13(5)

Granting exemption for international scheduled service.

1. When an international scheduled service is operated between two or more States, of which at least one is a Member State, any of the Member States involved may request of the other Member States that an exemption be granted to that service.
2. All Member States involved, including the coastal States concerned, shall collaborate in granting an exemption to the service concerned in accordance with the conditions laid down in Article 15.1 of the Directive.