

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3840 of 17 March, 2011

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LEGAL NOTICE NO. 24 2011.

**GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT 1995**

**GIBRALTAR MERCHANT SHIPPING (PREVENTION OF  
POLLUTION FROM SHIPS) (AMENDMENT) REGULATIONS 2011**

In exercise of the powers conferred on it by sections 98 and 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993 and all other enabling powers, and for the purposes of transposing into the law of Gibraltar Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements, the Government has made the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Prevention of Pollution from Ships) (Amendment) Regulations 2011 and shall come into operation on the day of publication.

**Amendments to the Gibraltar Merchant Shipping (Prevention of Pollution from Ships) Regulations 2009.**

2. The Gibraltar Merchant Shipping (Prevention of Pollution from Ships) Regulations 2009 (the Principal Regulations) are amended in accordance with regulations 3 to 5 below.

**Amendment to regulation 2.**

3. The Principal Regulations are amended in regulation 2—

- (a) by inserting the following definition after the definition of “Annex-VI”-

““BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil

within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;”;

- (b) by inserting the following definition after the definition of “Convention country”–

“corporate body” means a legal person or any legal entity in possession of that status under any law of Gibraltar, other than the Government, a public authority in the exercise of public functions or a public international organisation;”;

- (c) by substituting “, including criminal penalties, for pollution offences, as the same may be amended from time to time” for “for infringements” in the definition of “Ship-source pollution Directive”;

- (d) by deleting the definition “territorial waters”.

**Amendment to regulation 122.**

4. The Principal Regulations are amended in regulation 122, by inserting the following subregulation after subregulation (2)-

“(2A) Where an act that leads to an offence referred to in subregulation (2) is repeated and each act is committed with intent, recklessly or with serious negligence and in conjunction result in deterioration in the quality of water, the owner and the master of the ship shall each be guilty of an offence and liable on conviction on indictment to imprisonment for a term between 2 to 5 years and to fine.”.

**Insertion of regulation 122A.**

5. The Principal Regulations are amended by inserting the following regulation after regulation 122–

**“Liability of, and penalties for, corporate body.**

122A.(1) A corporate body may be made liable for an offence under subregulation (2), (2A), (3) or (4) of regulation 122 committed by a person acting either individually or as part of an organ of the corporate body, who has a leading position within the corporate body, and based on—

- (a) a power of representation of the corporate body;
- (b) an authority to take decisions on behalf of the corporate body; or
- (c) an authority to exercise control within the corporate body,

where the offence is committed for its benefit.

- (2) A corporate body may be made liable for an offence under subregulation (2), (2A), (3) or (4) of regulation 122 committed by a person referred to in subregulation (1) where lack of supervision or control by that person has made possible the commission of the offence for the benefit of the corporate body by a person under its authority.
- (3) Where a corporate body is guilty of an offence under this regulation and that offence is committed with the consent or connivance of, or by involvement as an accessory or instigator of, a director, manager, secretary or other similar officer of the corporate body or a person who was purporting to act in any such capacity, any such natural person shall also be guilty of the offence and shall be liable to be proceeded against and punished accordingly.”.

**Consequential amendments.**

6. The Principal Regulations are amended—

- (a) in regulations 3(1)(b) and (3)(a)(ii), 27(8)(a) and (10), 110(4), 115(3) and 120(1) by substituting the word “BGTW” on each occasion the words “the territorial waters” appears; and

- (b) in regulations 63(7), 90(1)(a), 97(10), 112(2)(b) and 117(12)(a) by substituting the word “BGTW” on each occasion the words “territorial waters” appears.

Dated 17th March, 2011.

P R CARUANA,  
For the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations transpose into the law of Gibraltar Directive 2009/123/EC amending Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements.

These Regulations also replace the definition of territorial waters with the definition BGTW, and make the necessary consequential amendments.