

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

Subsidiary Legislation made under s.118.

Gibraltar Merchant Shipping (Flag State Requirements) Regulations 2011

LN.2011/161

Commencement **22.9.2011**

Amending enactments	Relevant current provisions	Commencement date
LN. 2020/387	Long title, rr. 2(1), 7,	1.1.2021

Transposing:
Directive 2009/21/EC

1995-13 Gibraltar Merchant Shipping (Safety, etc.)
2011/161 Gibraltar Merchant Shipping (Flag State Requirements)
Regulations 2011

ARRANGEMENT OF REGULATIONS

Regulation

1. Title and commencement.
2. Interpretation.
3. Obligations of the Administration.
4. Application of these Regulations.
5. Conditions for allowing a ship to operate upon granting the right to fly the flag of Gibraltar.
6. Detention of a ship flying the flag of Gibraltar.
7. Duty to ensure information is retained.
8. Flag State auditing process.
9. Quality management system and internal evaluation.

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

**Gibraltar Merchant Shipping (Flag State Requirements)
Regulations 2011** **2011/161**

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 has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Flag State Requirements) Regulations 2011 and come into operation on the day of publication.

Interpretation.

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

“Administration” means the Maritime Administrator;

“certificates” means statutory certificates issued in respect of the relevant IMO Conventions;

“EC Regulation 789/2004” means Regulation (EC) No 789/2004 of the European Parliament and of the Council of 21st April 2004 on the transfer of cargo and passenger ships between registers within the Community and repealing Council Regulation (EEC) No 613/91;

“recognised organisation” means an organisation recognised in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations, as amended from time to time;

“IMO audit” means an audit conducted in accordance with the provisions of Resolution A.974(24) adopted by the IMO Assembly on 1 December 2005;

“IMO Conventions” means the conventions for which the International Maritime Organization is the depository;

“ship” means a ship or craft flying the flag of a Member State, the United Kingdom or Gibraltar, falling within the scope of the relevant IMO Conventions, and for which a certificate is required.

Obligations of the Administration.

3.(1) The Administration shall—

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

2011/161 Gibraltar Merchant Shipping (Flag State Requirements) Regulations 2011

- (a) discharge its obligations under these Regulations effectively and in a manner that will ensure that Gibraltar is compliant with its obligations as flag State;
 - (b) enhance safety and prevent pollution from ships flying the flag of Gibraltar.
- (2) These Regulations shall be without prejudice to—
- (a) the European Union maritime legislation listed in Article 2(2) of Regulation (EC) No 2009/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS); and
 - (b) the Gibraltar Merchant Shipping (Seafarer’s Hours of Work and Medical Examination) Regulations 2003.

Application of these Regulations.

4. These Regulations shall apply to the Administration in respect of a ship that flies the flag of Gibraltar.

Conditions for allowing a ship to operate upon granting the right to fly the flag of Gibraltar.

5.(1) No ship which has been granted the right to fly the flag of Gibraltar shall be allowed to operate unless the Administration is satisfied that the ship in question complies with the applicable international rules and regulations.

(2) For the purposes of subregulation (1), the Administration shall verify the safety records of the ship by all reasonable means and, if necessary, shall consult with the losing flag State in order to establish whether any outstanding deficiencies or safety issues identified by that State remain unresolved.

(3) Whenever another flag State requests information concerning a ship which was previously flying the flag of Gibraltar, the Administration shall promptly provide details of outstanding deficiencies and any other relevant safety-related information to the requesting flag State.

Detention of a ship flying the flag of Gibraltar.

6. When the Administration is informed that a ship flying the flag of Gibraltar has been detained by a port State, it shall, in accordance with such procedures as it has established for

Gibraltar Merchant Shipping (Safety, etc.) 1995-13
Gibraltar Merchant Shipping (Flag State Requirements) 2011/161
Regulations 2011

this purpose, oversee the ship being brought into compliance with the relevant IMO Conventions.

Duty to ensure information is retained.

7.(1) The Administration shall ensure that the information referred to in sub-regulation (2) concerning each Gibraltar ship-

- (a) is kept; and
 - (b) can be readily accessed by the Administration.
- (2) The information referred to in sub-regulation (1) is as follows-
- (a) particulars of the ship (including name and IMO number);
 - (b) dates of surveys, including additional and supplementary surveys, if any, and audits;
 - (c) identification of the recognised organisations involved in the certification and classification of the ship;
 - (d) identification of the competent authority which has inspected the ship under port State control provisions and the dates of the inspections;
 - (e) outcome of the port State control inspections (including any deficiencies identified and any detentions which took place);
 - (f) information on marine casualties; and
 - (g) identification of ships which have ceased to fly the flag of Gibraltar during the previous 12 months.
- (3) The duty in sub-regulation (1) ends-
- (a) 12 months after the date on which the ship ceases to be a Gibraltar ship; or
 - (b) if sooner, on the date on which the information is provided to a flag State under regulation 4(2) or under Article 4(3) of the EC Regulation 789/2004.

Flag State auditing process.

1995-13 Gibraltar Merchant Shipping (Safety, etc.)
2011/161 Gibraltar Merchant Shipping (Flag State Requirements)
Regulations 2011

8.(1) The Government shall—

- (a) subject to a positive reply from the IMO to a timely request by the Government, take the necessary measures to ensure that an IMO audit of the Administration is carried out at least once every seven years; and
- (b) publish the outcome of the audit in accordance with relevant laws on confidentiality.

(2) Subregulation (1) shall expire at the latest on 17 June 2017 or at an earlier date, as established by the European Commission, if a mandatory IMO Member State Audit Scheme has entered into force.

Quality management system and internal evaluation.

9.(1) The Government shall, by 17 June 2012, develop, implement and maintain a quality management system for the operational parts of the flag State-related activities of the Administration.

(2) The quality management system referred to in subregulation (1) shall be certified in accordance with the applicable international quality standards.

(3) If the Administration appears on the black list or it appears, for two consecutive years, on the grey list as published in the most recent annual report of the Paris Memorandum of Understanding on Port State Control, the Government shall ensure that the European Commission is provided with a report on its flag State performance no later than four months after the publication of the Paris Memorandum of Understanding on Port State Control report.

(4) The report referred to in subregulation (3) shall identify and analyse the main reasons for the lack of compliance that led to the detentions and the deficiencies resulting in black or grey list status.