

Subsidiary Legislation made under s. 118(1)(c).

**GIBRALTAR MERCHANT SHIPPING (ACCIDENT
REPORTING AND INVESTIGATION) REGULATIONS
2012**

(LN. 2012/023)

Commencement **5.3.2012**

Transposing:

Directive 2009/18/EC

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1995-13

Gibraltar Merchant Shipping (Safety, etc.)

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In exercise of the powers conferred on it by section 118(1)(c) of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993, and for the purpose of transposing into the law of Gibraltar Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 and come into operation on the day of publication.

Interpretation.

- 2.(1) In these Regulations—

“accident” has the meaning given to it in section 2 of the Act and includes marine casualties and incidents;

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

“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;

“access” means the process of embarking on or disembarking from a ship, by whatever means employed;

“causes” means actions, omissions, events, existing or pre-existing conditions or a combination thereof, which led to the casualty or incident;

“the Directive” means Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council, as the same may be amended from time to time;

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“EEA State” means a Member State of the European Union, Norway, Iceland or Liechtenstein;

“Gibraltar ship” means a ship registered in Gibraltar under the Gibraltar Merchant Shipping (Registration) Act 1993;

“high-speed passenger craft” shall have the meaning assigned to it by regulation 2 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-Speed Passenger Craft on Regular Service) Regulations 2005;

“IMO” means the International Maritime Organisation;

“IMO Code for the Investigation of Marine Casualties and Incidents” means the Code for the Investigation of Marine Casualties and Incidents annexed to Resolution A.849(20) of the IMO Assembly of 27 November 1997, in its up-to-date version;

“IMO guidelines on the fair treatment of seafarers in the event of a maritime accident” means the updated guidelines as annexed to Resolution LEG.3(91) of the IMO Legal Committee of 27 April 2006 and as approved by the Governing Body of the International Labour Organisation in its 296th session of 12 to 16 June 2006;

“inspector” means any person appointed under regulation 7(1) by the MAICO;

“judicial inquiry” includes any investigation or other matter conducted under the authority of any enactment for the purposes of or in connection with the institution or conduct of civil or criminal proceedings;

“lead investigating State” shall be understood in accordance with the definition contained in the IMO Code for the Investigation of Marine Casualties and Incidents;

“major injury” means–

- (a) any fracture, other than to a finger, thumb or toe;
- (b) any loss of a limb or part of a limb;
- (c) dislocation of the shoulder, hip, knee or spine;

- (d) loss of sight, whether temporary or permanent;
- (e) penetrating injury to the eye; or
- (f) any other injury—
 - (i) leading to hypothermia or to unconsciousness,
 - (ii) requiring resuscitation, or
 - (iii) requiring admittance to a hospital or other medical facility as an in-patient for more than 24 hours;

“Marine Accident Investigation Compliance Officer” or “MAICO” means the person appointed under regulation 5(1) and where the context so admits or requires, includes an inspector acting under his direction or on his behalf;

“marine casualty” shall be understood in accordance with the definition contained in the IMO Code for the Investigation of Marine Casualties and Incidents;

“marine casualty or incident safety investigation” shall be understood in accordance with the definition contained in the IMO Code for the Investigation of Marine Casualties and Incidents;

“marine incident” shall be understood in accordance with the definition contained in the IMO Code for the Investigation of Marine Casualties and Incidents;

“Maritime Administration” means the Maritime Administrator appointed under section 3 of the Act or any other qualified officer in his office;

“Minister” means the Minister with responsibility for the Port and Shipping;

“pleasure vessel” means—

- (a) any vessel which is—
 - (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or

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- (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion, or

- (b) any vessel which is wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club;

and no payments other than those referred to above are made by or on behalf of the users of the vessel, other than by the owner, and in this definition, "immediate family" means, in relation to an individual, the husband, wife of the individual, and a brother, sister, ancestor or lineal descendant of that individual or of that individual's husband or wife;

"preliminary assessment" means the initial part of an investigation which may be held to establish the causes and circumstances of an accident with a view to deciding whether any further investigation is warranted;

"ro-ro ferry" shall have the meaning assigned to it by regulation 2 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-Speed Passenger Craft on Regular Service) Regulations 2005;

"safety investigation" means an investigation under these Regulations and where the context so admits means an equivalent investigation conducted pursuant to the obligations under the Directive;

"safety recommendation" means any proposal made, including for the purposes of registration and control, by—

- (a) the MAICO when conducting, or leading, the safety investigation on the basis of information derived from that investigation; or

- (b) where appropriate, the European Commission, acting on the basis of an abstract data analysis and the results of safety investigations carried out;

“senior surviving officer” means the senior surviving officer in the deck department and if there is no surviving officer in the deck department, the senior surviving engineer officer;

“serious casualty” shall be understood in accordance with the updated definition contained in Circular MSC-MEPC.3/Circ.3 of the IMO Maritime Safety Committee and Marine Environment Protection Committee of 18 December 2008;

“serious injury” means an injury which is sustained by a person in a marine incident resulting in incapacitation for more than 72 hours commencing within seven days from the date of injury;

“ship’s boat” includes a life raft, painting punt and any boat normally carried by a ship;

“substantially interested State” shall be understood in accordance with the definition contained in the IMO Code for the Investigation of Marine Casualties and Incidents;

“very serious casualty” shall be understood in accordance with the definition contained in the IMO Code for the Investigation of Marine Casualties and Incidents;

“Voyage Data Recorder” or “VDR” shall be understood in accordance with the updated definition contained in Resolution A.861 (20) of the IMO Assembly and Resolution MSC.163 (78) of the IMO Maritime Safety Committee.

(2) Where a ship is managed by a person other than her 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 person.

Application of these Regulations.

3.(1) These Regulations shall apply to accidents that—

- (a) involve Gibraltar ships;

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- (b) occur within BGTW; or
 - (c) involve other substantial interests of Gibraltar.
- (2) These Regulations shall not apply to accidents involving only—
- (a) ships of war and troop ships and other ships owned or operated by a Member State and used only on government non-commercial service;
 - (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure vessels and pleasure craft not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes;
 - (c) fishing vessels with a length of less than 15 metres; and
 - (d) fixed offshore drilling units.

Purpose of these Regulations.

4.(1) These Regulations seek to improve maritime safety and the prevention of pollution by ships, and so reduce the risk of future marine casualties, incidents or accidents by—

- (a) facilitating the expeditious holding of safety investigations and proper analysis of marine casualties and incidents in order to determine their causes; and
- (b) ensuring the timely and accurate reporting of safety investigations and proposals for remedial action.

(2) Investigations under these Regulations shall not be concerned with apportioning blame nor with determining civil or criminal liabilities.

Marine Accident Investigation Compliance Officer.

5.(1) There shall be a permanent officer to be known as the Marine Accident Investigation Compliance Officer or ‘MAICO’ to ensure that safety investigations in matters relating to marine casualties and incidents are carried out in accordance with these Regulations, the Directive and any relevant international obligation.

(2) The MAICO shall be appointed by the Government and shall hold office on such terms and conditions as may be provided for in the instrument of appointment.

(3) The MAICO shall be provided with such resources, including human resources, as the Government considers are reasonably required to discharge the duties imposed on him under these Regulations.

MAICO and inspectors' powers and duties.

6.(1) Upon receipt of notification of a casualty it shall be the duty of the MAICO to immediately respond to it in the manner and to the extent provided for in these Regulations.

(2) The MAICO and an inspector shall have the power to—

- (a) have free access to any relevant area or casualty site as well as to any ship, wreck or structure including cargo, equipment or debris;
- (b) ensure immediate listing of evidence and controlled search for and removal of wreckage, debris or other components or substances for examination or analysis;
- (c) require examination or analysis of the items referred to in paragraph (b), and have free access to the results of such examinations or analysis;
- (d) have free access to, copy and have use of any relevant information and recorded data, including data from VDR, pertaining to a ship, voyage, cargo, crew or any other person, object, condition or circumstance;
- (e) have free access to the results of examinations of the bodies of victims or of tests made on samples taken from the bodies of victims;
- (f) require and have free access to the results of examinations of, or tests made on samples taken from, people involved in the operation of a ship or any other relevant person;
- (g) interview witnesses in the absence of any person whose interests could be considered as hampering the safety investigation;

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- (h) obtain survey records and relevant information held by the flag State, the owners, classification societies or any other relevant party, whenever those parties or their representatives are established in Gibraltar; and
- (i) call for the assistance of the relevant, including flag-State and port-State surveyors, coastguard officers, vessel traffic service operators, search and rescue teams, pilots or other port or maritime personnel.

(3) The MAICO may—

- (a) gather data relating to maritime safety and analyse such data, for prevention purposes, insofar as these activities do not affect his independence or entail responsibility in regulatory, administrative or standardisation matters; and
- (b) combine its duties under these Regulations with the investigation of occurrences other than marine casualties if such investigations do not endanger its independence.

(4) The Government must ensure that the MAICO and an inspector, where appropriate in collaboration with an authority responsible for any judicial inquiry, are provided with any information pertinent to the conduct of the safety investigation.

(5) The MAICO must ensure, and where appropriate through collaboration with any authority undertaking a judicial enquiry, that a safety investigation under these Regulations is—

- (a) independent of criminal or other parallel investigations held to determine liability or to apportion blame; and
- (b) not unduly precluded, suspended or delayed by reason of such investigations.

(6) Notwithstanding subregulation (5), the MAICO or an inspector must not refrain from fully reporting the causes of a marine casualty or incident on the ground that fault or liability may be inferred from the findings.

(7) For the purposes of conducting an investigation under these Regulations, the MAICO shall ensure that he and any inspector has ready access to appropriate expertise, as necessary.

Appointment of inspectors.

7.(1) The MAICO may appoint inspectors to assist him in the discharge of any duty or obligation imposed on him.

(2) The MAICO shall ensure that every inspector appointed pursuant to subregulation (1)–

- (a) is a suitably qualified investigator and competent in matters relating to marine casualties and incidents; and
- (b) has a working knowledge of, and practical experience in, those subject areas pertaining to their normal investigative duties.

Impartiality.

8. The MAICO and any inspector in the discharge of any duty, and in particular when making any decision in relation to carrying out any safety investigation under these Regulations, must be impartial, unbiased and independent.

Duty to report accidents and serious injuries.

9.(1) When an accident takes place the following persons associated with the ship shall notify the Maritime Administration as soon as is practicable following the accident and by the quickest means available–

- (a) the master or, if he has not survived, the senior surviving officer; and
- (b) the ship's owner, unless he has ascertained to his satisfaction that the master or senior surviving officer has reported the accident in accordance with paragraph (a).

(2) In addition to any notification made under subregulation (1), the following persons shall report to the Maritime Administration as soon as is practicable and by the quickest means available any accident of which they are aware–

- (a) in the case of an accident within or adjacent to the limits of any port, the port authority for that port; or

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- (b) in respect of an accident within the port or BGTW an official of the port of Gibraltar.

(3) A person making a notification pursuant to subregulation (1) or (2) shall, in so far as is practicable, include the following information in a report to be sent as soon as possible thereafter—

- (a) name of ship and IMO, official or fishing vessel number;
- (b) name and address of owner;
- (c) name of the master, skipper or person in charge;
- (d) date and time of the accident;
- (e) where from and where bound;
- (f) latitude and longitude or geographical position in which the accident occurred;
- (g) part of ship where accident occurred if on board;
- (h) weather conditions;
- (i) name and port of registry of any other ship involved;
- (j) number of people killed or injured, together with their names, addresses and gender;
- (k) brief details of the accident, including, where known, the sequence of events leading to the accident, extent of damage and whether the accident caused pollution or a hazard to navigation;
- (l) if the ship is fitted with a voyage data recorder, the make and model of the recorder.

(4) In addition to making a report under subregulation (3), the persons specified in subregulation (1) shall, so far as is reasonably practicable, ensure that the circumstances of every accident are examined and that a report giving the findings of such examination, stating any measures taken or proposed to prevent a recurrence, shall be provided to the Maritime Administration as soon as is practicable.

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(5) The master and ship's owner shall, so far as is reasonably practicable, ensure that the circumstances of every serious injury are examined and one of them shall, within 14 days, provide the Maritime Administration with a report giving the findings of such examination and stating any measures taken or proposed to prevent a recurrence.

(6) This regulation shall not apply to an accident when the person killed or injured is a stevedore or shore-based worker and the accident occurs in the port of Gibraltar.

(7) In the case of a marine casualty or marine incident, the Maritime Administration and any person reporting to him under this regulation shall without delay inform the MAICO of the occurrence of that casualty or incident.

Obligation to investigate.

10.(1) Save where subregulations (7) to (9) apply, the ordering of an investigation of an accident shall be at the discretion of the MAICO.

(2) In considering whether to order an investigation into an accident the MAICO shall have regard to any advice given to him by the Maritime Administration.

(3) Where a notification has been received under subregulation (1) or (2) of regulation 9, or a report under subregulation (4) or (5) of regulation 9, the Maritime Administration shall provide advice for the MAICO to decide whether or not an investigation, including any preliminary assessment, should be carried out and the MAICO shall notify the Maritime Administration and the parties to the accident of his decision within 28 days following receipt by him of the report.

(4) Before providing advice on whether an investigation should be carried out and if so, what form it should take, the Maritime Administration may cause to be obtained such information as he considers necessary concerning the accident and any remedial action taken as a result, and any person referred to in regulation 9(1) or (2), as well as any other person who is in possession of it and has been requested to do so by the Maritime Administration, shall provide such information to the best of his ability and knowledge.

(5) In the case of an accident where there is loss of life or major injury to any person on board, or any person is lost or falls overboard from the ship or one of its boats, the MAICO on receiving advice from the Maritime

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Administration may decide not to order an investigation if he is satisfied, or it is otherwise established to his satisfaction, that—

- (a) any loss of life resulted from suicide or natural causes; or
- (b) any major injury resulted from attempted suicide,

and in such circumstances he may order the discontinuation of any investigation which has already been commenced.

(6) Public notice that an investigation has been commenced may be given in such manner as the MAICO may think fit, and may invite any persons who so desire to present relevant evidence to the inspector in such a manner and within such a time as is specified in the notice.

(7) Whenever a very serious casualty occurs, the MAICO must ensure that a safety investigation is carried out if it-

- (a) involves a ship flying the flag of Gibraltar, irrespective of the location of the casualty;
- (b) occurs within BGTW, irrespective of the flag of the ship or ships involved in the casualty; or
- (c) involves a substantial interest of Gibraltar, irrespective of the location of the casualty and of the flag of the ship or ships involved.

(8) The MAICO shall, in the case of a serious casualty, carry out a preliminary assessment in order to decide whether or not a safety investigation should be undertaken and where the MAICO decides not to undertake a safety investigation, the MAICO shall record the reasons for that decision and issue a relevant notification in accordance with regulation 26.

(9) In the case of any other marine casualty or incident the MAICO shall decide whether or not a safety investigation should be undertaken.

(10) In considering whether to investigate any matter to which subregulations (8) and (9) refers, the MAICO must take into account—

- (a) the seriousness of the marine casualty or incident;
- (b) the type of vessel or cargo or both involved; and

- (c) the potential for the findings of the safety investigation to lead to the prevention of future casualties and incidents.

(11) The scope and practical arrangements for the conduct of the safety investigation must be determined by the MAICO in cooperation with the equivalent bodies of other substantially interested States, if any, in such manner as appears to him most conducive to achieving the objective of the these Regulations, and with a view to preventing future casualties and incidents.

(12) When carrying out a safety investigation, the MAICO must follow the common methodology for investigating marine casualties and incidents developed pursuant to Article 2(e) of Regulation (EC) No 1406/2002.

(13) An inspector may depart from the methodology referred to in subregulation (12) in a specific case where this can be justified as necessary, in his professional judgment and with the consent of the MAICO, and if needed to achieve the aims of the investigation.

(14) The MAICO shall ensure that a safety investigation under this Regulation is commenced as promptly as is practicable after the marine casualty or incident occurs and in any event no later than two months after its occurrence.

Leading of, and participation in, safety investigations.

11.(1) Subject to subregulation (3), only one safety investigation in respect of each marine casualty or incident shall be carried out, and where relevant, the safety investigation may involve the participation of any other substantially interested Member State.

(2) Where the safety investigation involves Gibraltar and at least one Member State, the MAICO must—

- (a) cooperate with his counterparts in those Member States with a view to rapidly agreeing which of them is to lead the safety investigation;
- (b) make every effort to agree on the procedures to investigate;
- (c) if he leads the safety investigation, ensure that any substantially interested State-

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- (i) is afforded equal rights and access to witnesses and to the evidence, and
- (ii) has any point of view raised in the safety investigation taken into consideration.

(3) The MAICO must ensure that the conduct of parallel safety investigations into the same marine casualty or incident are strictly limited to exceptional cases and in such cases, he must immediately inform the Minister who will then ensure that the European Commission is notified of the reasons for doing so.

(4) When parallel safety investigations are conducted in Gibraltar and in a Member State, the MAICO must—

- (a) cooperate with the investigating body of that State; and
- (b) exchange any pertinent information gathered in the course of his respective investigations, in particular in order to reach, as far as possible, shared conclusions.

(5) The MAICO, an inspector and the Maritime Administration must abstain from any measure which could unduly preclude, suspend or delay the conduct of a safety investigation falling within the scope of these Regulations.

Subsequent or reopened investigations.

12.(1) Notwithstanding a decision by the MAICO under regulation 10(3) not to investigate, he may at any subsequent time after obtaining the advice from the Maritime Administration cause an investigation to be carried out if he is then satisfied there is good reason in the interests of future safety to do so.

(2) The MAICO may cause any investigation to be re-opened if, following its completion, he receives advice from the Maritime Administration which indicates in his opinion new and important evidence has been discovered which could have a material effect on any safety recommendations made.

(3) Any investigation may be re-opened either in whole or as to any part of it and a re-opened investigation shall be subject to and conducted in accordance with the provisions of these Regulations.

Preservation of evidence.

13.(1) Except where subregulation (2) applies, following an accident involving a Gibraltar ship which is reportable under regulation 9, the persons referred to in subregulation (3) shall so far as is practicable ensure that all—

- (a) charts;
- (b) log books;
- (c) electronic and magnetic recording and video tapes, including information from a VDR or recording system relating to the period preceding, during and after the accident; and
- (d) all documents or other records which might reasonably be considered pertinent to the accident,

are kept and that no alteration is made to any recordings or entries in them.

(2) In the case of an accident involving a Gibraltar ship and for the purposes of compliance with Article 13 of the Directive, the persons referred to in subregulation (3) shall make every effort to—

- (a) save all information from charts, log books, electronic and magnetic recording and video tapes, including information from VDRs and other electronic devices relating to the period preceding, during and after an accident;
- (b) prevent the overwriting or other alteration of such information;
- (c) prevent interference with any other equipment which might reasonably be considered pertinent to the safety investigation of the accident; and
- (d) collect and preserve all evidence expeditiously for the purposes of the safety investigations.

(3) The persons referred to in subregulations (1) and (2) are—

- (a) the master or, if he has not survived, the senior surviving officer; and

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- (b) the ship's owner, unless he has ascertained to his satisfaction that the master or senior surviving officer has taken the action in question.

(4) The duty under subregulation (1) to ensure that documents, information or records are kept and not altered and to ensure under subregulation (2) that information is saved and preserved, or that equipment is left undisturbed, shall continue until—

- (a) notification is received on behalf of the MAICO that no safety investigation is to take place or that the safety investigation has been completed;
- (b) 28 days have passed since the Maritime Administration received the report referred to in regulation 9(1) and no notice has been sent on behalf of the MAICO that he has decided to investigate the matter; or
- (c) the inspector carrying out the investigation gives written notification that he no longer requires them.

(5) Following an accident in BGTW involving a ship which is not a Gibraltar ship, the persons referred to in subregulation (3) shall comply with the requirements of subregulations (1) and (2) if requested to do so by or on behalf of the MAICO or an inspector.

(6) The MAICO or an inspector may, pending investigation, prohibit persons from gaining access to, or interfering with, any ship, ship's boat or other equipment involved in an accident.

(7) Following an accident in BGTW, the MAICO if he considers it reasonably necessary for the collection or preservation of evidence in connection with any investigation, including a preliminary assessment, relating to the accident and a safety assessment, require any of the master or, if he has not survived, the senior surviving officer and the ship's owner to ensure that a ship is accessible within BGTW to any inspector engaged in the investigation of such accident, until the process of collecting or preserving the evidence has been completed to the MAICO's satisfaction.

(8) The MAICO shall not require a ship to remain in BGTW any longer than is necessary for the collection or preservation, as the case may be, of the evidence referred to in subregulation (7) and shall take all reasonable steps to ensure that such evidence is collected or preserved expeditiously.

(9) No requirement under subregulation (7) shall be made unless the MAICO has reasonable grounds for concern that if the ship leaves BGTW, access to it, to any member of the crew, or to any evidence on board relating to the investigation may subsequently be denied to him or any other inspector conducting such investigation.

Conduct of investigations.

14.(1) If the MAICO decides that an investigation shall be carried out, it shall be undertaken by one or more inspectors at such times and places and in such manner as appear to him or them to be most conducive to achieving the objectives set out in regulation 4.

(2) An investigation may extend to cover all events and circumstances preceding the accident together with subsequent events and circumstances which in the opinion of an inspector may have been relevant to its cause or outcome.

(3) Every person required to attend before an inspector shall be allowed the reasonable expenses of attending, payable by the Government.

(4) Any person, not being a solicitor or other professional legal adviser acting solely on behalf of the person required to attend, who—

- (a) has been allowed by an inspector to be present; or
- (b) has been nominated to be present at an oral examination before an inspector, may at any time be excluded from being present—
 - (i) by the inspector if he has substantial reason to believe that his presence would hamper the investigation with the result that the objective in regulation 4 is likely to be hindered and future safety thereby endangered; or
 - (ii) by the MAICO if he is satisfied, having regard to all the circumstances, that it is proper to exclude that person.

(5) Where a person nominated to be present has been excluded in accordance with subregulation (4), the person required to attend shall be entitled to nominate another person to be present at the oral examination in place of the excluded person and subregulation (4) shall then apply to that other person.

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(6) Any document, record or information referred to in regulation 10, properly required by an inspector to be produced for the purposes of an investigation (whether on board the ship involved or otherwise), may be retained by him until the investigation is completed.

(8) In relation to any investigation—

- (a) where a preliminary assessment has been conducted the inspector, having regard to the objectives set out in regulation 4, shall advise the MAICO whether it is appropriate in all the circumstances to conduct further investigations leading to publication of a report; and
- (b) the inspector may provide advice to the MAICO for him to discontinue the investigation at any time; and
- (c) where an investigation is discontinued, the MAICO shall make his reasons for doing so publicly available.

Co-operation with Member States.

15.(1) Notwithstanding regulation 11 the MAICO shall remain responsible for the safety investigation and coordination with substantially interested Member States until such time as it is mutually agreed who will lead the safety investigation.

(2) Without prejudice to its obligations under these Regulations and any applicable international law, the MAICO may, on a case-by-case basis, delegate by mutual agreement with his equivalent counterpart in a Member State the task of leading a safety investigation or specific tasks for the conduct of such an investigation.

(3) Where a ro-ro ferry or high-speed passenger craft is involved in a marine casualty or incident the MAICO shall launch the safety investigation procedure where—

- (a) the marine casualty or incident occurs in BGTW; or
- (b) that vessel sailed through BGTW immediately prior to the marine accident or incident occurred and it occurred in waters where Member States have no jurisdiction.

(4) Where subregulation (3) applies, the MAICO shall remain responsible for the safety investigation and co-ordination with substantially interested

Member States until it is mutually agreed who will lead the safety investigation.

Permanent cooperation framework.

16.(1) The Government, pursuant to Article 10(1) of the Directive, shall cooperate with the European Commission to establish a permanent cooperation framework which will enable the MAICO to cooperate with other investigating bodies to the extent necessary to attain the objectives of these Regulations and the Directive.

(2) To the extent that an agreement is reached upon the best modalities of cooperation in respect of any of the matters set out in subregulation (3), the MAICO shall take steps to give effect to or to implement any such agreement.

(3) The modalities referred to in subregulation (2) are—

- (a) enabling investigative bodies to share installations, facilities and equipment for the technical investigation of wreckage and ship's equipment and other objects relevant to the safety investigation, including the extraction and evaluation of information from VDRs and other electronic devices;
- (b) providing each other with the technical cooperation or expertise needed to undertake specific tasks;
- (c) acquiring and sharing information relevant for analysing casualty data and making appropriate safety recommendations at European Union level;
- (d) drawing up common principles for the follow-up of safety recommendations and for the adaptation of investigative methods to the development of technical and scientific progress;
- (e) managing appropriately the early alerts referred to in regulation 24;
- (f) establishing confidentiality rules for the sharing, in the respect of Gibraltar laws, of witness evidence and the processing of data and other records referred to in regulation 17, including in relations with third countries;

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- (g) organising, where appropriate, relevant training activities for individual investigators;
- (h) promoting cooperation with the investigative bodies of third countries and with the international maritime accidents investigation organisations in the fields covered by these Regulations;
- (i) providing investigative bodies conducting safety investigations with any pertinent information.

Cooperation with substantially interested third countries.

17.(1) The MAICO must cooperate, to the maximum extent possible, with other substantially interested third countries in safety investigations.

(2) Substantially interested third countries shall be allowed at any stage of the investigation to participate in a safety investigation led by the MAICO, by mutual agreement.

(3) The cooperation of the MAICO in a safety investigation conducted by a substantially interested third country shall be without prejudice to the conduct and reporting requirements of a safety investigation under these Regulations.

(4) Where a substantially interested third country is leading a safety investigation involving Gibraltar, the MAICO may decide not to carry out a parallel safety investigation, if the safety investigation led by the third country is conducted in accordance with the IMO Code for the Investigation of Marine Casualties and Incidents.

Disclosure of records.

18.(1) Subject to subregulations (2) to (7), the names, addresses or any other details which may reveal the identity of anyone who has given evidence to the MAICO or an inspector shall not be disclosed.

(2) The following documents or records shall not be made available for purposes other than the investigation, unless a court orders otherwise—

- (a) subject to subregulation (3), all declarations or statements taken from persons by an inspector or supplied to him in the course of his investigation, together with any notes or voice recordings of interviews;

- (b) information relating to persons involved in a marine casualty or incident which is of a particularly sensitive and private nature including information concerning their health;
- (c) any report made under regulation 9(4) or (5);
- (d) the final report except as referred to in regulation 19(4)(a), (5), or (9).

(3) A person who has given a declaration or statement to an inspector in the course of an investigation may make available a copy of his declaration or statement to another person as he sees fit.

(4) Any independent technical analysis commissioned by the Maritime Administration will be provided to the MAICO and opinions expressed in such analysis may be made publicly available if the MAICO considers it appropriate to do so.

(5) Subject to subregulation (6), no order shall be made under subregulation (2) unless the court is satisfied, having regard to the views of the MAICO, that the interests of justice in disclosure outweigh any prejudice, or likely prejudice, to-

- (a) the investigation into the accident to which the document or record relates;
- (b) any future safety investigation undertaken in Gibraltar; or
- (c) relations between Gibraltar and any State, territory or international organisation.

(6) The provisions of this regulation shall be without prejudice to any rule of law which authorises or requires the withholding of any document or record or part thereof on the ground that disclosure of it would be injurious to the public interest.

(7) Copies of information obtained from a VDR or from other recording systems, pertinent to the accident, including voice recordings (other than any recordings referred to in subregulation (2)(a)), video recordings and other electronic or magnetic recordings and any transcripts made from such information or recordings may be provided at the discretion of the MAICO to the police or other official authorities.

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(8) Nothing in this regulation shall be construed as a derogation of the applicable provisions of the Data Protection Act 2004.

Reports of investigations.

19.(1) Subject to subregulation (3), the MAICO shall cause a report of an investigation into an accident conducted pursuant to regulation 14(8)(a), to be submitted to the Minister.

(2) The report shall set out–

- (a) conclusions relating to the facts of the accident;
- (b) where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts; and
- (c) recommendations for future safety.

(3) The Minister may make the report publicly available in such manner as he thinks fit but in the case of an accident to which regulation 20 applies the Minister must publish the report in accordance with the provisions of that regulation.

(4) The Minister shall not make the report publicly available until he has–

- (a) served a notice under this regulation upon any person who, or organisation which, could be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the Minister, at the time he proposes to serve notice pursuant to this subregulation, as best to represent the interests and reputation of the deceased in the matter; and
- (b) considered the representations relating to the facts or analysis contained in the report which may be made to him in accordance with subregulation (6) by or on behalf of the persons served with such notice.

(5) The notice referred to in subregulation (4)(a) shall be accompanied by a draft copy of the report.

(6) The representations referred to in subregulation (4)(b) shall be in writing and shall be served on the Minister within 28 days of service of the notice referred to in subregulation (4)(a) or within such further period as may be allowed under regulation 23.

(7) Subject to any court order under regulation 18, no person shall disclose any information—

- (a) which has been furnished to him pursuant to subregulation (5); or
- (b) which has otherwise been furnished to him by or on behalf of the Minister in advance of the publication of a report and whose confidentiality is protected by regulation 18, or permit such information to be disclosed, save with the prior consent in writing of the Minister, to any other person, except to such advisers as are necessary in order to make representations to the Minister referred to in subregulation (4)(b), and those advisers shall similarly be subject to the duty not to disclose the information or permit it to be disclosed.

(8) A copy of the report when made publicly available shall be given by the Minister to—

- (a) any person who has been served with a notice pursuant to subregulation (4)(a);
- (b) those persons or bodies to whom recommendations have been addressed in that report;
- (c) the IMO;
- (d) where regulation 10(7) to (9) applies, to the European Commission; and
- (e) any person or organisation whom the Minister considers may find the report useful or of interest.

(9) Where an inquest or fatal accident inquiry is to be held following an accident which has been subject to investigation, a draft report may be made available in confidence to the coroner by the MAICO.

(10) If any part of the report or analysis therein is based on information obtained pursuant to an inspector's powers under section 91(3) of the Act, the report shall be inadmissible in any judicial proceedings whose purpose or one of whose purposes is to attribute or apportion liability or blame unless a court or tribunal, having regard to the factors referred to in regulation 18(5)(b) or (c), determines otherwise.

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(11) In this regulation, “judicial proceedings” includes any civil or criminal proceedings before any court, tribunal or person having by law the power to hear, receive and examine evidence on oath.

Publication of accident reports.

20.(1) Safety investigations carried out under these Regulations for the purposes of the Directive, shall result in a published report presented in a format defined in accordance with the relevant sections of Schedule 1 by the MAICO.

(2) Where a safety investigation for the purposes of the Directive does not concern a very serious or, as the case may be, a serious marine casualty, the findings of which do not have the potential to lead to the prevention of future casualties and incidents, the MAICO shall publish a simplified report in place of the report referred to in subregulation (1).

(3) The MAICO must make every effort to ensure that the reports referred to in subregulations (1) and (2), including its conclusions and any possible recommendations, is made available to the public, and especially to the maritime sector, within 12 months of the date of the casualty and if it is not possible to produce the final report within that time, an interim report shall be published within 12 months of that date.

(4) The MAICO must ensure that a copy of the final, simplified or interim report is sent to the European Commission and he shall take into account the possible technical observations of the European Commission on final reports not affecting the substance of the findings for improving the quality of the report in the way most conducive to achieving the objective of these Regulations.

Publications other than reports of investigations.

21.(1) The MAICO may, at his discretion and to promulgate any lessons learned, from time to time publish collective short reports of accidents which have not been the subject of a report submitted under regulation 18(1).

(2) The MAICO may, at his discretion, submit a report to the Minister on any matter arising from his analysis of marine accident investigations.

Recommendations.

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22.(1) The MAICO may, as a result of one or more investigations, whether or not completed, at any time make recommendations as to how future accidents may be prevented.

(2) The actions recommended shall be addressed to those persons or bodies who, in the opinion of the MAICO, are most fitted to implement them.

(3) Recommendations shall be made publicly available if the MAICO considers that to do so is in the interests of safety or preventing pollution.

(4) Any person to whom a recommendation is addressed pursuant to subregulation (2) shall, without delay—

- (a) take that recommendation into consideration;
- (b) send to the MAICO—
 - (i) details of the measures, if any, he has taken or proposes to take to implement the recommendation and, in a case where he proposes to implement measures, the timetable for securing that implementation, or
 - (ii) an explanation as to why the recommendation is not to be the subject of measures to be taken to implement it,

and any details or timetable pursuant to subparagraph (i) or explanation pursuant to subparagraph (ii) shall be provided to the MAICO within 28 days following receipt of the recommendation; and

- (c) give notice to the MAICO if at any time any information provided to the MAICO in pursuance of subregulation (4)(b)(i) concerning the measures he proposes to take or the timetable for securing their implementation is rendered inaccurate by any change of circumstances.

(5) Subject to subregulations (6) and (7) the MAICO shall, annually or at such other intervals as he sees fit, make information publicly available in respect of the matters, including any explanation, referred to in paragraphs (b) and (c) of subregulation (4) which have been communicated to him and he shall inform the Minister of those matters.

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(6) The MAICO shall not publish information under subregulation (5) unless he has first notified any person referred to in the information and he has considered any representations relating to the information which may have been made to him in accordance with subregulation (7) by or on behalf of any person so notified, and amended the information in such manner as he thinks fit.

(7) Any representations made pursuant to subregulation (6) shall be in writing and shall be served on the MAICO within 28 days of receipt of the notification referred to in that subregulation or within such further period as may be allowed under regulation 23.

(8) The MAICO must ensure that safety recommendations are duly taken into account by the addressees and, where appropriate, the MAICO shall follow these up.

(9) Where appropriate, the MAICO must make safety recommendations on the basis of an abstract data analysis and of the overall results of safety investigations carried out.

(10) A safety recommendation shall in no circumstances determine liability or apportion blame for a casualty.

Extension of time.

23.(1) The Minister shall have the power to extend the period of 28 days prescribed in regulation 19(6), but the Minister shall do so only if he considers that there are good reasons warranting such an extension having regard to the requirement in regulation 19(1) for a report of an investigation to be made available in the shortest time possible.

(2) The MAICO may extend the period of 28 days prescribed in regulation 22(4)(b) where he considers it appropriate to do so.

(3) The powers under this regulation may be exercised notwithstanding that the prescribed period has expired.

Service of documents.

24. Any notice or other document required or authorised by any provision of these Regulations to be served on or given to any person may be served or given—

- (a) by delivering it to that person;

- (b) by leaving it at his usual or last-known residence or place of business, whether in Gibraltar or elsewhere;
- (c) by sending it to him by post at that address; or
- (d) by sending it to him at the address by telex, facsimile, or other means which produces a document containing a text of the communication, or by electronic mail in which event the document shall be regarded as having been served when it is sent.

Early alert system.

25. Without prejudice to its right to give an early alert, the MAICO must, at any stage of a safety investigation, if, he takes the view that urgent action is needed at Community level to prevent the risk of new casualties, inform the European Commission without delay of the need to give an early alert.

European database for marine casualties: format of notification.

26. The MAICO must ensure that the European Commission is—

- (a) notified on marine casualties and incidents in accordance with the format in Schedule 2; and
- (b) provided with data resulting from safety investigations in accordance with the European Marine Casualty Information Platform database scheme.

Costs.

27.(1) Where any safety investigation involves Gibraltar and a Member State, the respective activities shall be free of charge.

(2) Where assistance is requested of Gibraltar by a Member State that is not involved in the safety investigation, the Government and the Member State concerned must agree on the reimbursement of costs incurred.

Fair treatment of seafarers.

28. In the event of an accident in BGTW, the Government and any person exercising any duty or responsibility under these Regulations must, in the

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light of any applicable laws, take into account the relevant provisions of the IMO guidelines on the fair treatment of seafarers.

Offences and penalties.

29.(1) A person shall be guilty of an offence if–

- (a) being a person referred to in regulation 9(1) or (2) he fails without reasonable cause to report an accident as required by those provisions;
- (b) being a master or ship's owner, he fails without reasonable cause to comply with regulation 9(5);
- (c) being a person referred to in regulation 9(1) or (2), he fails without reasonable cause to provide information as required by regulation 10(4); or
- (d) he falsely claims to have any additional information or new evidence pertaining to any accident or serious injury,

and such a person shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If any person fails without reasonable cause to comply with any requirement, duty or prohibition in regulation 13(1), (2) or (5) to (7), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale and on conviction on indictment to a fine.

(3) If any person without reasonable cause discloses or permits to be disclosed any information in contravention of regulation 18(1) or 19(7), or makes available any documents or records in contravention of regulation 18(2), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Repeal.

30. The Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2006 are repealed.

Savings and transitional provisions.

31.(1) In this regulation a reference to the “repealed Regulations” shall be construed as a reference to the regulations repealed by regulation 30.

(2) Any proceedings which have been instituted under the repealed Regulations (including any appeal) which have not been concluded at the time of the coming into operation of these Regulations shall be continued as though the repealed Regulations had not been repealed.

(3) Where proceedings for an offence committed under the repealed Regulations have not been commenced at the commencement of these Regulations—

- (a) if there is an equivalent offence under these Regulations proceedings must be brought under these Regulations;
- (b) if there is no equivalent offence proceedings cannot be brought.

(4) Any order, instruction direction, exemption, notice, permit, complaint or other non-legislative instrument made or issued by any person or body under the repealed Regulations which could be made or issued by an equivalent person or body under these Regulations continues to have effect as if made or issued by that person or body under these Regulations until it expires, it is varied or revoked under these Regulations.

Application of sections 56 and 91 of Act.

32. Sections 56 and 91 of the Act shall not apply to a safety investigation undertaken in accordance with the provisions of these Regulations.

SCHEDULE 1

Regulation 19(1)

SAFETY INVESTIGATION REPORT CONTENT

Foreword

This identifies the sole objective of the safety investigation and indicates that a safety recommendation shall in no case create a presumption of liability or blame and that the report has not been written, in terms of content and style, with the intention of it being used in legal proceedings.

(The report should make no reference to witness evidence nor link anyone who is referred to in the report to a person who has given evidence during the course of the safety investigation.)

1. SUMMARY

This part outlines the basic facts of the marine casualty or incident: what happened, when, where and how it happened; it also states whether any deaths, injuries, damage to the ship, cargo, third parties or environment occurred as a result.

2. FACTUAL INFORMATION

This part includes a number of discrete sections, providing sufficient information that the investigating body interprets to be factual, substantiate the analysis and ease understanding.

These sections include, in particular, the following information:

2.1. Ship particulars

Flag/register,

Identification,

Main characteristics,

Ownership and management,

Construction details,

Minimum safe manning,

Authorised cargo.

2.2. Voyage particulars

Ports of call,

Type of voyage,

Cargo information,

Manning.

2.3. Marine casualty or incident information

Type of marine casualty or incident,

Date and time,

Position and location of the marine casualty or incident,

External and internal environment,

Ship operation and voyage segment,

Place on board,

Human factors data,

Consequences (for people, ship, cargo, environment, other).

2.4. Shore authority involvement and emergency response

Who was involved,

Means used,

Speed of response,

Actions taken,

Results achieved.

3. NARRATIVE

This part reconstructs the marine casualty or incident through a sequence of events, in a chronological order leading up to, during and following the marine casualty or incident and the involvement of each actor (i.e. person, material, environment, equipment or external agent). The period covered by the narrative depends on the timing of those particular accidental events that directly contributed to the marine casualty or incident. This part also includes any relevant details of the safety investigation conducted, including the results of examinations or tests.

4. ANALYSIS

This part includes a number of discrete sections, providing an analysis of each accidental event, with comments relating to the results of any relevant examinations or tests conducted during the course of the safety investigation and to any safety action that might already have been taken to prevent marine casualties.

These sections should cover issues such as:

- accidental event context and environment,
- human erroneous actions and omissions, events involving hazardous material, environmental effects, equipment failures, and external influences,
- contributing factors involving person-related functions, shipboard operations, shore management or regulatory influence.

The analysis and comment enable the report to reach logical conclusions, establishing all of the contributing factors, including those with risks for which existing defences aimed at preventing an accidental event, and/or those aimed at eliminating or reducing its consequences, are assessed to be either inadequate or missing.

5. CONCLUSIONS

This part consolidates the established contributing factors and missing or inadequate defences (material, functional, symbolic or procedural) for which safety actions should be developed to prevent marine casualties.

6. SAFETY RECOMMENDATIONS

When appropriate, this part of the report contains safety recommendations derived from the analysis and conclusions and related to particular subject areas, such as legislation, design, procedures, inspection, management, health and safety at work, training, repair work, maintenance, shore assistance and emergency response.

The safety recommendations are addressed to those that are best placed to implement them, such as ship owners, managers, recognised organisations, maritime authorities, vessel traffic services, emergency bodies, international maritime organisations and European institutions, with the aim of preventing marine casualties.

This part also includes any interim safety recommendations that may have been made or any safety actions taken during the course of the safety investigation.

7. APPENDICES

When appropriate, the following non-exhaustive list of information is attached to the report in paper and/or electronic form:

- photographs, moving images, audio recordings, charts, drawings,
- applicable standards,
- technical terms and abbreviations used,
- special safety studies,
- miscellaneous information.

SCHEDULE 2

Regulation 25(2)

MARINE CASUALTY OR INCIDENT NOTIFICATION DATA

(Part of the European Marine Casualty Information Platform)

Note: Underlined numbers mean that data should be provided for each ship if more than one ship is involved in the marine casualty or incident.

01. Member State responsible/contact person
02. Member State investigator
03. Member State role
04. Coastal state affected
05. Number of substantially interested States
06. Substantially interested States
07. Notification entity
08. Time of the notification
09. Date of the notification
10. Name of the ship
11. IMO number/distinctive letters
12. Ship flag
13. Type of marine casualty or incident
14. Type of ship
15. Date of the marine casualty or incident
16. Time of the marine casualty or incident
17. Position – Latitude

18. Position – Longitude
19. Location of the marine casualty or incident
20. Port of departure
21. Port of destination
22. Traffic separation scheme
23. Voyage segment
24. Ship operation
25. Place on board
26. Lives lost:
 - Crew
 - Passengers
 - Other
27. Serious injuries:
 - Crew
 - Passengers
 - Other
28. 27. 28. Pollution
29. Ship damage
30. Cargo damage
31. Other damage
32. Brief description of the marine casualty or incident
33. Brief description of the reasons not to undertake a safety investigation.

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