

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4159 of 26 March, 2015

LEGAL NOTICE NO. 51 OF 2015.

GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT 1993

**GIBRALTAR MERCHANT SHIPPING (MARITIME LABOUR
CONVENTION) (AMENDMENT) REGULATIONS 2015**

In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993 and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Directive 2013/54/EU of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006, the Government has made the following Regulations—

Title.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Maritime Labour Convention) (Amendment) Regulations 2015.

Commencement.

2. These Regulations come into operation on 31 March 2015.

Amendments to the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013.

3. The Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 are amended by inserting the following Part after Part VI—

“PART VIA

Subject matter of Part VIA.

43A.(1) This Part lays down rules to ensure that the Administration effectively discharges Gibraltar’s obligations with respect to the implementation of the relevant parts of the Maritime Labour Convention, 2006.

- (2) This Part is without prejudice to—
- (a) Directive 2009/13/EC and Directive 2009/21/EC; and
 - (b) any higher standards for living and working conditions for seafarers set out therein.

Interpretation of Part.

43B. For the purposes of this Part, the following definitions shall apply in addition to the relevant definitions set out in the Annex to Directive 2009/13/EC—

“Administration” means the Maritime Administrator in the case of Gibraltar, and in other cases the corresponding authority of the MLC State;

“Directive 2009/13/EC” means Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners’ Associations (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC as the same may be amended from time to time;

“Directive 2009/21/EC” means Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements EC as the same may be amended from time to time;

“relevant parts of MLC 2006” means the parts of the Maritime Labour Convention, 2006 of which the content shall be considered as corresponding to the provisions in the Annex to Directive 2009/13/EC.

Monitoring of compliance.

43C.(1) The Administration shall ensure that effective and appropriate enforcement and monitoring mechanisms, including inspections at the intervals provided for in the MLC, are established in order to ensure that the living and working conditions of seafarers on Gibraltar ships and MLC ships, when in British Gibraltar Territorial waters, meet, and

continue to meet, the requirements of the relevant parts of MLC 2006.

- (2) With respect to ships of less than 200 gross tonnage not engaged in international voyages, the Administration may, in consultation with the shipowners' and seafarers' organisations concerned, decide to adapt, pursuant to Article II, paragraph 6 of the MLC, monitoring mechanisms, including inspections, to take account of the specific conditions relating to such ships.
- (3) When fulfilling its obligations under this regulation, the Administration may, where appropriate, authorise public institutions or other organisations, including those of a Member State, if the latter agrees, which they recognise under the MLC as having sufficient capacity, competence and independence, to carry out inspections.
- (4) In all cases under subregulation (3), the Administration shall remain fully responsible for the inspection of the living and working conditions of the seafarers concerned on Gibraltar ships and this provision is without prejudice to the Gibraltar Merchant Shipping (Organisations for Inspection, Survey and Certification of Ships) Regulations 2011.
- (5) The Administration shall establish clear objectives and standards covering the administration of its inspection systems, as well as adequate overall procedures for their assessment of the extent to which those objectives and standards are being attained.
- (6) The Captain of the ship and the shipowner shall ensure that every seafarer on board a ship flying the flag of Gibraltar has access to a copy of the Agreement implemented by Directive 2009/13/EC and such access may be provided electronically.

Personnel in charge of compliance monitoring.

- 43D.(1) The Administration shall ensure that personnel, including staff from institutions or other recognised organisations authorised to carry out inspections in accordance with regulation 43C(3) of the MLC and in charge of verifying the proper implementation of the relevant parts of the MLC, have

the training, competence, terms of reference, full legal authority, status and independence necessary or desirable-

- (a) to enable them to carry out that verification; and
 - (b) to ensure compliance with the relevant parts of MLC, 2006.
- (2) A person who is authorised to undertake inspections pursuant to this Part may exercise the powers of detention specified in Part VII (Compliance and enforcement) when exercising a function or duty under this Part.
- (3) All authorisations granted under this Part with respect to inspections shall, as a minimum, empower the certifying authority to require the rectification of deficiencies that it identifies in seafarers' living and working conditions, and to carry out inspections in that regard at the request of a port State.
- (4) The Administration shall establish-
- (a) a system to ensure the adequacy of work performed by recognised organisations, which includes information on all applicable laws of Gibraltar and Administrative Instructions and relevant international instruments; and
 - (b) procedures for communication with and oversight of such organisations.
- (5) The Administration shall-
- (a) ensure that the International Labour Office is provided with a current list of any recognised organisations authorised to act on its behalf; and
 - (b) keep this list up to date.
- (6) The list referred to in subregulation (5) shall specify the functions that the recognised organisations have been authorised to carry out.

On-board complaint procedures, handling of complaints and corrective measures.

43E.(1) The Administration shall ensure that an appropriate on-board complaint procedure is in place in accordance with these Regulations.

(2) Where the Administration –

- (a) receives a complaint which it does not consider manifestly unfounded; or
- (b) obtains evidence that a Gibraltar ship or an MLC ship
 - (i) does not conform to the requirements of the relevant parts of the MLC 2006; or
 - (ii) there are serious deficiencies in its implementing measures,

then, the Administration shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

(3) Every person dealing with or becoming aware of complaints shall-

- (a) treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' living and working conditions or a violation of laws and regulations; and
- (b) give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint."

Dated 26th March, 2015,

A J ISOLA,
Minister with responsibility for maritime services,
and for the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 in order to transpose into the laws of Gibraltar Directive 2013/54/EU of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006.

