

**SECOND SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 4490 of 12 July, 2018

LEGAL NOTICE NO. 163 OF 2018.

GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT 1993

**GIBRALTAR MERCHANT SHIPPING (MARITIME LABOUR
CONVENTION) (AMENDMENT) REGULATIONS 2018**

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 implementing the amendments of 2014 to the Maritime Labour Convention, 2006, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Maritime Labour Convention) (Amendment) Regulations 2018 and come into operation on the day of publication.

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

2. The Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 (the Principal Regulations) are amended in accordance with regulations 3 to 7 below.

Amendment to regulation 2.

3. Regulation 2(1) of the Principal Regulations is amended—

- (a) in the definition of “MLC” by inserting after the word “Organisation” the words “as amended from time to time ;” and
- (b) by inserting the following definition after the definition of “STCW”-

“wages” means the pay, however composed, for the seafarer’s normal hours of work including overtime, allowances, paid leave and other remuneration (but excluding bonuses).

Amendment to regulation 19.

4. Regulation 19 of the Principal Regulations is amended in sub-regulation (5), by inserting in paragraph “(a)” after the words “to be repatriated” the words “whether the seafarer is or is not entitled to receive financial assistance under the abandonment financial security required by Part VB of these Regulations.”

Insertion of new regulations 19A and 19B.

5. The Principal Regulations are amended by inserting the following regulations after regulation 19-

“Place for return.

19A.(1) Despite sub-regulation (4)(c) of regulation 19, where there is a duty on a shipowner and the employer to provide for the repatriation of a seafarer under regulation 19, a seafarer is entitled to repatriation to the destination provided for in the seafarer employment agreement, or such other place as may subsequently be agreed with the shipowner.

(2) If the seafarer employment agreement does not identify a destination, and there has been no agreement between the seafarer and the shipowner as to the destination, the seafarer is entitled to repatriation to the seafarer’s choice of the following destinations-

- (a) the place at which the seafarer entered into the seafarer’s employment agreement; or
- (b) the seafarer’s country of residence.

Scope of duty to repatriate.

19B. Where there is a duty on a shipowner to provide for the repatriation of a seafarer under regulation 19, that duty ends when-

- (a) the seafarer is repatriated in accordance with regulation 19A;
- (b) the shipowner makes reasonable arrangements for repatriation which are unsuccessful because of the seafarer’s unreasonable conduct;

- (c) the shipowner has used reasonable endeavours to contact the seafarer for a period of three months or more, but has been unable to make such contact;
- (d) the seafarer confirms in writing to the shipowner that repatriation is not required; or
- (e) the seafarer is dead.”.

Insertion of new regulations 29A.

6. The Principal Regulations are amended by inserting the following regulations after regulation 29-

“Shipowners’ liability for wages following sickness or injury sustained by seafarer.

29A.(1) Subject to sub-regulation (11) and regulation 29(1)(c), this regulation applies in relation to a seafarer who suffers sickness or injury which-

- (a) first occurs during a period-
 - (i) which starts on the date on which the seafarer’s seafarer employment agreement commences and ends on the next date on which the shipowner’s duty to make provision for the repatriation of that seafarer under regulation 19 ends under regulation 19A; or
 - (ii) which starts after a period referred to in sub paragraph (i) but is caused by circumstances or events arising during that period;
- (b) does not first occur during a period of leave, other than shore leave; and
- (c) results in the seafarer’s incapacity for work.

(2) If a seafarer falling within sub-regulation (1)(a)(i) does not receive the wages payable under the seafarer employment agreement in respect of the period specified in sub-regulation (3), the shipowner must pay to the seafarer a sum equal to the difference between-

- (a) any sums received by the seafarer in respect of wages for that period under that agreement; and
 - (b) the wages which would have been payable to the seafarer under that agreement if the seafarer had remained fit for work throughout that period, and (where the agreement would otherwise have terminated during that period) if the agreement had continued on the same terms throughout that period.
- (3) The period referred to in sub-regulation (2) is a period-
- (a) starting on the date of the injury or the first day of the sickness; and
 - (b) ending on the date on which the duty to repatriate the seafarer under regulation 19 ends under regulation 19A (or, if such a duty does not arise, the date on which the seafarer leaves the ship).
- (4) Subject to sub-regulations (5) to (7), if a seafarer falling within sub-regulation (1) is incapable of work after the date on which the duty to repatriate the seafarer under regulation 19 ends under regulation 19A (or if such a duty does not arise, the date on which the seafarer leaves the ship), and the seafarer does not receive the basic wages payable under the seafarer employment agreement for the period starting on that date and ending on the date on which the seafarer is again fit for work, the shipowner must pay to the seafarer a sum equal to the difference between-
- (a) any sums received by the seafarer in respect of basic wages for that period under that agreement; and
 - (b) the basic wages which would have been payable to the seafarer under that agreement if the seafarer had remained fit for work throughout that period, and (where the agreement would otherwise have terminated during that period) if the agreement had continued on the same terms throughout that period.
- (5) The duty in sub-regulation (4) ends on the expiry of the period of 16 weeks commencing on the day following the date of the injury or the first day of the sickness referred to in sub-regulation (1).
- (6) The duty in sub-regulation (4) is conditional upon the seafarer applying for all relevant social security benefits payable in consequence of-

- (a) the seafarer's incapacity for work; and
- (b) the sickness or injury which resulted in the incapacity for work, under the laws of Gibraltar or the laws or arrangements in the country to which the seafarer is repatriated.

(7) If the seafarer receives social security benefits of the kind described in sub-regulation (6) in respect of the period referred to in sub-regulation (5) or any part of that period-

- (a) the amount which the shipowner must pay to the seafarer under sub-regulation (4) is to be reduced by that amount; and
- (b) the shipowner may recover as a civil debt any payments already made to the seafarer to the extent that they exceed such reduced amounts.

(8) The seafarer must on request provide information to the shipowner as to the amounts received by the seafarer in social security benefits during the period referred to in sub-regulation (5).

(9) The sums payable to the seafarer under sub-regulations (2) and (4) must be paid in the same manner and at the same frequency as wages are (or, as the case may be, were) payable under the seafarer employment agreement.

(10) The seafarer may recover any sum due from the shipowner under sub-regulation (2) or (4) as a civil debt.

(11) This regulation does not apply to a seafarer where-

- (a) the injury referred to in sub-regulation (1) was sustained while the seafarer was not at work;
- (b) the injury or sickness referred to in sub-regulation (1) was sustained or arose due to the seafarer's wilful misconduct; or
- (c) the sickness or incapacity for work existed at the time when the seafarer entered the seafarer employment agreement, and the seafarer deliberately concealed the sickness or incapacity from the shipowner."

Insertion of new Parts.

7. The Principal Regulations are amended by inserting the following Parts after Part V-

“PART VA

**SECURITY AGAINST SHIPOWNER’S LIABILITY FOR DEATH OR
LONG TERM DISABILITY OF SEAFARERS.**

Interpretation for Part VA

32A. In this Part-

“shipowner’s security document” has the meaning given in regulation 32G(6);

“shipowner’s security” has the meaning given in regulation 32C.

Shipowner’s security requirement applicable to all ships.

32B.(1) No shipowner shall operate a ship to which these Regulations apply unless-

- (a) a shipowner’s security is in force in relation to the ship; or
- (b) financial security to assure compensation in the event of death or long term disability of seafarers due to occupational illness, injury or hazard is provided in relation to the ship in accordance with paragraph 1 of Standard A4.2.1 of the MLC.

(2) Where the shipowner contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Meaning of “shipowner’s security”.

32C. In this Part, “shipowner’s security” means a contract of insurance or other form of security relating to a ship that-

- (a) provides financial assurance of an amount which the shipowner reasonably considers adequate to ensure that the

shipowner will be able to meet any liabilities that the shipowner may have, including liabilities under seafarer employment agreements, to provide compensation in the event of death or long term disability arising from occupational injury, illness or hazard to seafarers whose normal place of work is on board the ship; and

- (b) provides that-
 - (i) any such seafarer who suffers an occupational injury, illness or hazard-
 - (aa) occurring during the period of validity of the shipowner's security; and
 - (bb) causing long term disability; or
 - (ii) where the occupational injury, illness or hazard causes the death of the seafarer, the seafarer's personal representatives,

may submit a claim for compensation directly to the shipowner's security provider in respect of the disability or, as the case may be, death of the seafarer.

Payment of contractual compensation.

32D.(1) This regulation applies where a claim for contractual compensation is submitted to a shipowner's security provider.

(2) A shipowner's security provider must pay the contractual compensation to the seafarer or the seafarer's personal representative within 7 days beginning with the date on which it is established that the shipowner is liable for the contractual compensation either-

- (a) by agreement between-
 - (i) the shipowner's security provider; and
 - (ii) the seafarer or the seafarer's personal representative; or

- (b) if earlier, by order of a court or tribunal which is not subject to appeal.

(3) If sub-regulation (2) is not complied with, the shipowner's security provider must pay to the seafarer, or the seafarer's personal representative, interest on the unpaid amount at the rate of 20% per year beginning with the date that the shipowner's security provider became satisfied that the shipowner is so liable.

(4) In this regulation, "claim for contractual compensation" means a claim for compensation in the event of death or long term disability of a seafarer arising from occupational injury, illness or hazard where the compensation payable in respect of the claim is set out in the seafarer's seafarer employment agreement, and "contractual compensation" is to be construed accordingly.

Interim payments.

32E.(1) A seafarer is entitled to a payment (an "interim payment") from a shipowner's security provider if the following conditions are satisfied-

- (a) the shipowner is liable to pay compensation to the seafarer due to the seafarer having sustained a long-term disability as a result of an occupational injury, illness or hazard;
- (b) the occupational injury, illness or hazard occurred during the period of validity of the shipowner's security;
- (c) the shipowner's security provides financial assurance in respect of the compensation mentioned in paragraph (a);
- (d) the full amount of compensation payable has not yet been determined; and
- (e) the seafarer is suffering hardship.

(2) A seafarer entitled under sub-regulation (1) may make a request for an interim payment to the shipowner's security provider.

(3) A request under sub-regulation (2) must be supported by evidence that the seafarer satisfies the conditions specified in sub-regulation (1).

(4) A shipowner's security provider must within 14 days of receipt of the request from the seafarer determine whether the conditions in sub-regulation (1) are satisfied.

(5) If, in contravention of sub-regulation (4), a shipowner's security provider does not determine whether the conditions in sub-regulation (1) are satisfied, it must make an interim payment within 21 days of the receipt of the request from the seafarer.

(6) Where a shipowner's security provider determines that the conditions in sub-regulation (1) are satisfied, it must make the interim payment within 21 days of the receipt of the request from the seafarer.

(7) The minimum amount of an interim payment is-

- (a) where an amount in respect of any part of the claim has been determined and payment of that amount would be sufficient to alleviate the seafarer's hardship, the amount so determined; or
- (b) where no amount in respect of any part of the claim has been determined, or the amount which has been determined is not sufficient to alleviate the seafarer's hardship, the lower of-
 - (i) such amount as would alleviate the seafarer's hardship; and
 - (ii) 75% of the likely total amount of compensation payable in respect of the claim as estimated by the shipowner's security provider.

(8) Where, in contravention of sub-regulation (5) or (6), a shipowner's security provider does not make an interim payment, the shipowner's security provider must pay interest on the unpaid amount at a rate of 20% per year from the date of receipt of the request from the seafarer.

(9) A shipowner's security provider who makes an interim payment may deduct the amount of the interim payment from the full amount of compensation payable in respect of the shipowner's liability.

(10) A shipowner's security provider who-

- (a) has made an interim payment under sub-regulation (5); and

- (b) subsequently determines that the conditions in sub-regulation (1) were not satisfied,

may recover as a civil debt the amount of the interim payment less any interest payable under sub-regulation (8).

(11) A shipowner's security provider may recover as a civil debt any proportion of an interim payment which exceeds the full amount of compensation payable in respect of a claim.

Offence of undue pressure.

32F. A person is guilty of an offence if that person induces another to accept less than the full amount of compensation payable, as set out in a seafarer's seafarer employment agreement, in respect of the death or long term disability of a seafarer due to occupational injury, illness or hazard.

Duty to carry and display shipowner's security document.

32G.(1) The shipowner must ensure that for each shipowner's security in force in relation to the ship, a shipowner's security document containing the information specified in sub-regulation (7) is carried on board.

(2) The shipowner must ensure that each shipowner's security document that relates to the ship and is not in English, has with it an English translation.

(3) Where the shipowner contravenes sub-regulation (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) The shipowner and master of the ship must ensure that each shipowner's security document that relates to the ship, together with any English translation, is displayed in a conspicuous place on board ship.

(5) A breach of sub-regulation (4) is an offence by the shipowner and the master of the ship.

(6) In this regulation, "shipowner's security document" means a certificate or other documentary evidence of shipowner's security issued by the shipowner's security provider.

(7) The following information must be included in a shipowner's security document-

- (a) the name of the ship to which the shipowner's security relates;
- (b) port of registry of the ship;
- (c) the call sign of the ship;
- (d) the International Maritime Organisation number of the ship;
- (e) the name and address of the shipowner's security provider;
- (f) the contact details of the person or entity at the shipowner's security provider responsible for handling claims made by seafarers;
- (g) the name of the shipowner;
- (h) the period of validity of the shipowner's security; and
- (i) a declaration from the shipowner's security provider that the shipowner's security meets the requirements of standard A4.2.1 of the MLC.

Termination of shipowner's security on notice to the Minister.

32H.(1) The termination of a shipowner's security before the end of its period of validity is effective only if at least 30 days' notice is given to the Minister by the shipowner's security provider the security.

(2) A notice given under sub-regulation (1) must-

- (a) be in writing; and
- (b) include a copy of the shipowner's security document.

Duty on shipowner's security provider to notify the Minister where a shipowner's security has been terminated.

32I.(1) If a shipowner's security is terminated, the shipowner's security provider must give notice in writing to that effect to the Minister.

(2) A notice under sub-regulation (1) must include with it a copy of the shipowner's security document.

(3) Failure to give notice under sub-regulation (1) within the period of 30 days beginning with the date on which the shipowner's security was terminated is an offence by the shipowner's security provider.

Duty on shipowner to notify seafarers if shipowner's security is to be terminated.

32J.(1) Where the shipowner becomes aware that any shipowner's security that relates to a ship is to be, or has been, terminated before the end of its period of validity, the shipowner must give notice in writing to that effect to all seafarers who work on the ship during the notification period.

(2) A notice under sub-regulation (1) must-

- (a) state the date on which the shipowner's security is to be or was terminated; and
- (b) be given as soon as reasonably practicable after the shipowner becomes aware that the shipowner's security is to be or was terminated.

(3) A breach of sub-regulation (1) is an offence by the shipowner.

(4) In this regulation, the "notification period" means-

- (a) the period beginning with the date on which the shipowner becomes aware that the shipowner's security is to be, or has been, terminated before the end of its period of validity; and
- (b) ending with on the date that the shipowner becomes aware that the shipowner's security has been replaced or reinstated.

PART VB
SECURITY AGAINST THE ABANDONMENT OF SEAFARERS

Interpretation for Part VB.

32K. In this Part-

“abandonment period” has the meaning given by regulation 32L(3);

“abandonment security” has the meaning given by regulation 32N(1).

Abandonment.

32L.(1) A seafarer is “abandoned” in relation to a ship if at any time the shipowner-

- (a) fails to ensure the seafarers’ right to repatriation required under regulation 19;
- (b) having regard to the seafarer’s personal circumstances and requirements, leaves the seafarer without necessary maintenance and support, including leaving the seafarer without-
 - (i) adequate food;
 - (ii) drinking water supplies;
 - (iii) accommodation;
 - (iv) essential fuel for survival on board the ship; or
 - (v) necessary medical care; or
- (c) otherwise unilaterally severs ties with the seafarer, including failing to pay any amount in respect of wages payable to the seafarer under his or her seafarer employment agreement for a period of at least two months.

(2) An abandoned seafarer ceases to be abandoned in relation to a ship if, after the end of the abandonment period, the seafarer continues, resumes or takes up new employment on board the ship or is engaged on board the ship.

(3) The “abandonment period” begins when the seafarer is abandoned and ends with the earliest of the following events-

- (a) the seafarer’s arrival in or at-
 - (i) the seafarer’s country of residence;
 - (ii) the destination provided in the seafarer’s seafarer employment agreement as being that to which the seafarer should be returned in the event that the seafarer is repatriated, or
 - (iii) such place as the seafarer has agreed in advance with-
 - (aa) the abandonment security provider, or
 - (bb) any person who has made provision for the seafarer’s repatriation;
- (b) the seafarer refusing unreasonably to be repatriated, or to co-operate with arrangements made for the seafarer’s repatriation;
- (c) the expiry of a period of 3 months during which the abandonment security provider has used reasonable endeavours to contact the seafarer but has been unable to make such contact;
- (d) the abandonment security provider receives written confirmation from the seafarer that financial assistance is no longer required; or
- (e) the death of the seafarer.

Abandonment security requirement applicable to all ships.

32M.(1) A ship to which these Regulations apply must not be operated unless-

- (a) an abandonment security is in force in relation to the ship; or

- (b) financial security is in place for the ship in accordance with paragraph 3 of standard A2.5.2 of the MLC (financial security for abandoned seafarers).

(2) Where the shipowner contravenes sub-regulation (1) that shipowner commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Abandonment security.

32N.(1) In this Part, “abandonment security” means a contract of insurance or other form of security relating to a ship that-

- (a) provides financial assurance of an amount which the shipowner reasonably considers adequate to cover the items specified in sub-regulation (2)(a) to (d) for any seafarer who is abandoned in relation to the ship; and
- (b) provides that any seafarer who is abandoned in relation to the ship is entitled to-
 - (i) make an abandonment claim; and
 - (ii) receive financial assistance in respect of the items specified in sub-regulation (2)(a) to (d).

(2) The items referred to in sub-regulation (1)(a) are-

- (a) up to four months’ unpaid wages relating to periods occurring before the end of the abandonment period;
- (b) the cost during the abandonment period of-
 - (i) adequate food;
 - (ii) drinking water supplies;
 - (iii) clothing, where necessary;
 - (iv) accommodation;
 - (v) essential fuel for survival on board the ship;

- (vi) necessary medical care;
 - (c) the cost of repatriation, including-
 - (i) the cost of appropriate travel arrangements and any related costs of passage, but this may be limited to travel or passage that is completed before the seafarer ceases to be abandoned; and
 - (iii) the cost of transport of the seafarer's personal effects; and
 - (d) all other expenses reasonably incurred by the seafarer before the end of the abandonment period as a result of being abandoned.
- (3) In this regulation-

“abandonment claim” is a claim for financial assistance that-

- (a) is submitted directly to the abandonment security provider by-
 - (i) an abandoned seafarer; or
 - (ii) a person authorised by the seafarer to act on the seafarer's behalf; and
- (b) is supported by evidence showing that the seafarer is abandoned;

“abandonment period” has the meaning given in regulation 32L(3).

Consideration and payment of abandonment claims.

32O.(1) This regulation applies where an abandonment claim is made.

(2) The abandonment security provider to whom the abandonment claim is made must within 7 days of receipt of the claim determine whether the seafarer is entitled to receive financial assistance.

(3) An abandonment security provider who determines that a seafarer is entitled to receive financial assistance, whether in relation to the whole or any part of an abandonment claim, must within 14 days of receipt of the

claim provide such assistance, whether or not there are further parts of the claim yet to be determined.

(4) An abandonment security provider who in contravention of sub-regulation (2) fails to determine whether a seafarer is entitled to receive financial assistance in relation to the whole or part of an abandonment claim must within 14 days of receipt of the claim provide financial assistance in the amount claimed by the seafarer.

(5) Where, in contravention of sub-regulation (3) or (4) financial assistance is not provided, the abandonment security provider must pay interest on the unpaid amount at the rate of 20% per year from the date of receipt of the claim.

(6) An abandonment security provider who-

- (a) has provided financial assistance to a seafarer under sub-regulation (3); and
- (b) subsequently determines that the seafarer was not entitled to receive the financial assistance,

may recover as a civil debt the amount of the financial assistance less any interest payable under sub-regulation (5).

(7) In this regulation “abandonment claim” has the meaning given in regulation 32N(3).

Subrogation.

32P.(1) Sub-regulation (2) applies where an abandonment security provider provides financial assistance (“the sum provided”) to a seafarer under an abandonment security.

(2) Any rights which a seafarer has, or but for the payment of that sum would have had, against the shipowner as a result of being abandoned are, with respect to the sum provided, transferred to and vested in the abandonment security provider.

Duty to carry and display an abandonment security document.

32Q.(1) The shipowner must ensure that an abandonment security document containing the information specified in sub-regulation (7) for each abandonment security in force in relation to the ship is carried on board.

(2) The shipowner must ensure that each abandonment security document that relates to the ship and is not in English, has with it an English translation.

(3) Where the shipowner contravenes sub-regulation (1) or that shipowner commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) The shipowner and the master of a ship must ensure that each abandonment security document that relates to the ship, together with any English translation, is displayed in a conspicuous place on board ship.

(5) Where the shipowner and the master of the ship contravene sub-regulation (1) that shipowner and the master of the ship both commit an offence and are liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) In this Part “abandonment security document” means a certificate or other documentary evidence of abandonment security issued by the abandonment security provider.

(7) The following information must be included in an abandonment security document-

- (a) the name of the ship to which the abandonment security relates;
- (b) the port of registry of the ship;
- (c) the call sign of the ship;
- (d) the International Maritime Organisation number of the ship;
- (e) the name and address of the abandonment security provider;
- (f) the contact details of the person or entity at the abandonment security provider responsible for handling seafarers’ abandonment claims;

- (g) the name of the shipowner;
- (h) the period of validity of the abandonment security; and
- (i) a declaration from the abandonment security provider that the abandonment security meets the requirements of standard A2.5.2 of the MLC.”.

Termination of abandonment security effective only where notice given.

32R.(1) The termination of an abandonment security before the end of its period of validity is effective only if the abandonment security provider gives at least 30 days’ notice is given to the Minister.

(2) A notice given under sub-regulation (1) must-

- (a) be in writing; and
- (b) include a copy of the abandonment security document.

(3) “Abandonment security document” has the meaning given in regulation 32Q(6).

Duty on shipowner to notify seafarers if abandonment security is to be terminated.

32S.(1) Where the shipowner becomes aware that any abandonment security that relates to a ship is to be, or has been, terminated before the end of its period of validity, the shipowner must give notice in writing to that effect to all seafarers who work on the ship during the notification period.

(2) A notice under sub-regulation (1) must-

- (a) state the date on which the abandonment security is to be or was terminated; and
- (b) be given as soon as reasonably practicable after the shipowner becomes aware that the abandonment security is to be or was terminated.

(3) Where the shipowner contravenes sub-regulation (1) that shipowner commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (4) In this regulation, the “notification period” means-
- (a) the period beginning with the date on which the shipowner becomes aware that the abandonment security is to be, or has been, terminated before the end of its period of validity; and
 - (b) ending with on the date that the shipowner becomes aware that the abandonment security has been replaced or reinstated.”.

Dated 12th July, 2018.

G H LICUDI Q.C.,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations amend the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 to give effect to amendments to the Maritime Labour Convention 2006, which were approved by the International Labour Conference at its 103rd session, on 11 June 2014 and come into force on 18 January 2017. The amendments are to MLC Regulation 2.5 ‘Repatriation’ and MLC Regulation 4.2 ‘Shipowners liability.’

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