

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

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Subsidiary Legislation made under s.118.

## **Gibraltar Merchant Shipping (Passengers' Rights) Regulations 2015**

**LN.2015/077**

*Commencement*                      **21.5.2015**

**Implementing:**  
Regulation (EU) No 1177/2010

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### **ARRANGEMENT OF REGULATIONS**

Regulation

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*In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 and all other powers enabling, read with the powers of the Government conferred by section 23 (g)(i) of the Interpretation and General Clauses Act, the Government, for the purposes of implementing Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004, has made the following Regulations—*

**Short title and commencement.**

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Passengers' Rights) Regulations 2015 and come into force on the day of publication.

**Interpretation.**

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

“Captain of the Port” shall have the meaning assign to it by section 2(1) of the Port Act;

“EU Regulation” means Regulation (EU) No 1177/2010 of the European Parliament and of the Council of 24 November 2010 concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 as amended from time to time;

“carrier”, “port”, “port authority”, “ticket vendor”, “terminal operator”, “tour operator” and “travel agent” have the same meaning as in the EU Regulation;

“conciliation” includes mediation and any other form of alternative dispute resolution.

(2) A reference to an Article is a reference to that Article in the EU Regulation.

**Offences.**

3.(1) A carrier who contravenes an obligation imposed by Article 4(1), 17, 18 or 19(5) is guilty of an offence.

(2) A carrier or a ticket vendor who contravenes an obligation imposed by Article 4(2) is guilty of an offence.

(3) A carrier or a terminal operator who contravenes an obligation imposed by Article 10, 11(3), (4) or (5), 12(3), 13, 14, 15(4), 16, 22 or 24 is guilty of an offence.

(4) A carrier, port authority or terminal operator who contravenes an obligation imposed by Article 23 is guilty of an offence.

(5) A carrier, tour operator or travel agent who contravenes an obligation imposed by Article 7 or 8(2), (3), (4) or (5) is guilty of an offence.

(6) A carrier, terminal operator, tour operator or travel agent who contravenes an obligation imposed by Article 9 or 12(1) is guilty of an offence.

(7) A carrier, terminal operator, ticket vendor, tour operator or travel agent who contravenes an obligation imposed by Article 6 is guilty of an offence.

(8) A tour operator or travel agent who contravenes an obligation imposed by Article 11(3) or 12(2) is guilty of an offence.

**Penalties.**

4. A person guilty of an offence under regulation 3 is liable—

(a) in relation to any failure to comply with an obligation imposed by—

- (i) Article 4(1),
- (ii) Article 9,
- (iii) Article 11(3), (4) or (5),
- (iv) Article 12(1) or (2),
- (v) Article 13,
- (vi) Article 14,
- (vii) Article 15(4),
- (viii) Article 16,
- (ix) Article 17,
- (x) Article 18,
- (xi) Article 19(5),



(2) A person is not entitled to rely on the defence provided by sub-regulation (1) by reason of his reliance on information supplied to him, unless he can show that it was reasonable in all the circumstances to have relied on that information.

**Offences by corporate or unincorporated bodies.**

7.(1) Where—

- (a) an offence is committed by a body corporate or a partnership (including a limited liability partnership) or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual, the individual as well as the body corporate, partnership or unincorporated association commits an offence and is liable to be proceeded against and punished accordingly.

(2) In sub-regulation (1), “relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body,
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a partnership, a partner;
- (c) in relation to an unincorporated association other than a partnership, a person who is concerned in the management or control of the association.

**Enforcement.**

8.(1) The Captain of the Port is the body designated for the purposes of Article 25.

(2) Any person subject to an obligation imposed by the EU Regulation and referred to in regulation 3 must supply the Captain of the Port with such information and documents as it may reasonably require for the purposes of, or in connection with, the exercise of any of its functions under the EU Regulation.

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(3) A person who fails, without reasonable excuse, to comply with a request to supply such information or documents is guilty of an offence, and is liable on summary conviction, to a fine not exceeding level 5 on the standard scale, or on conviction on indictment, to an unlimited fine.

(4) The Captain of the Port may, from time to time, issue general guidance for understanding and information about the rights of passengers when travelling by sea under the EU Regulation.

**Compensation claims.**

9.(1) A claim by a person for an infringement of any of that person's rights under the EU Regulation may be made the subject of civil proceedings in the same way as any other claim in tort.

(2) Proceedings may be brought only in the Supreme Court and the remedies available in such proceedings are those which are available in the Supreme Court.

(3) The court is not to consider a claim under this regulation unless proceedings in respect of it are instituted before the end of the period of six months beginning when the infringement complained of occurred.

(4) Where, in relation to proceedings or prospective proceedings under this regulation, the dispute concerned is referred to conciliation before the end of the period of six months mentioned in sub-regulation (3), the period allowed by that sub-regulation is to be extended by three months.

(5) The court may consider any claim under this regulation which is out of time if, in all the circumstances of the case, it considers that it is just and equitable to do so.