

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4708 GIBRALTAR Thursday 7th May 2020

LEGAL NOTICE NO. 174 OF 2020

GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT 1993

GIBRALTAR MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (AMENDMENT) REGULATIONS 2020

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 laws of Gibraltar Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014, the Government has made the following Regulations—

Short title.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Maritime Labour Convention) (Amendment) Regulations 2020 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 12 below.

Amendment to regulation 2.

3. Regulation 2(1) of the Principal Regulations is amended by inserting the following definition after the definition of “constructed”-

“contractual claims” for the purpose of Part VA, means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as may be set out in the seafarers' employment agreement or any collective agreement.

Amendments to regulation 32.

4. Regulation 32 of the Principal Regulations is amended-

(a) in sub-regulation (5), line 2, by inserting after the word “MLC” the words “ or the collective agreement;”

- (b) in sub-regulation (5)(a) by inserting after the words “this regulation” the words “or the provisions relating to treatment of contractual compensations under a collective agreement”; and
- (c) in sub-regulation (6) by inserting after the words “injury benefit,” the words “assistance in the event of abandonment”.

Amendments to regulation 32B.

5. Regulation 32B of the Principal Regulations is amended –

- (a) in sub-regulation (1)(b) by inserting after the words “Standard A4.2.1” the words “and A4.2.2”; and
- (b) by inserting after sub-regulation (2) the following sub-regulation –
 - “(3) A shipowner’s security or a financial security system under this regulation must-
 - (a) not cease to operate before the end of the period of its validity unless its provider has given prior notice of at least 30 days to the Minister;
 - (b) provide for the payment of all contractual claims covered by it which arise during the period for which the certificate or other documentary evidence of such financial security is valid; and
 - (c) provide direct access, sufficient coverage and expedited financial assistance to abandoned seafarers on a Gibraltar ship.”.

Amendment to regulation 32D.

6. Regulation 32D of the Principal Regulations is amended by inserting the following sub-regulation after sub-regulation (3)-

- “(3A) For the purposes of payment of contractual claims or compensation, the financial security must meet the following minimum requirements-
 - (a) the contractual claim or the compensation, where set out in the seafarer's employment agreement and without prejudice of this sub-regulation, must be paid in full and without delay;
 - (b) there shall be no pressure to accept a payment less than the contractual amount;
 - (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments must be made to the seafarer so as to avoid undue hardship;

- (d) the seafarer must receive payment without prejudice to other legal rights, but such payment may be offset by the Shipowner against any damages resulting from any other claim made by the seafarer against the Shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.”.

Amendments to regulation 32E.

7. Regulation 32E of the Principal Regulations is amended –

(a) in sub-regulation (1) by substituting the following paragraph for paragraph (b)-

“(b) the occupational injury, illness or hazard-

(i) has occurred during the period of validity of the Shipowner’s security, and

(ii) the nature of it has made the assessment of full compensation difficult;” and

(b) by inserting after sub-regulation (11) the following sub-regulation -

“(12) Notwithstanding that a seafarer shall receive payment under this regulation and regulation 32D without prejudice to other legal rights, such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident.”.

Amendments to regulation 32L.

8. Regulation 32L of the Principal Regulations is amended by inserting after sub-regulation (1) the following sub-regulations-

“(1A) A seafarer shall be deemed to have been abandoned if, in breach of any of the requirements of the collective agreement or the seafarer’s employment agreement, the shipowner-

(a) fails to cover the cost of the seafarer’s repatriation;

(b) has left the seafarer without necessary maintenance and support; or

(c) has otherwise unilaterally severed their ties with the seafarer including the failure to pay contractual wages for period of at least 2 months.

- (1B) For the purposes of sub-regulation (1A), necessary maintenance and support of the seafarers must include-
- (a) adequate food;
 - (b) accommodation;
 - (c) drinking water supplies;
 - (d) essential fuel for survival on board the ship; and
 - (e) necessary medical care.”.

Amendments to regulation 32N.

9. Regulation 32N of the Principal Regulations is amended –

- (a) after sub-regulation (1), by inserting the following sub-regulation-
 - “(1A) Any financial assistance provided by the financial security system must be granted promptly upon request made by the seafarer or the seafarer’s nominated representative and supported by the necessary justification of entitlement under this Part.”; and
- (b) after sub-regulation (2), by inserting the following sub-regulation-
 - “(2A) The cost of repatriation under this Part must cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.”.

Amendments to regulation 32Q.

10. Regulation 32Q of the Principal Regulations is amended-

- (a) by inserting the following sub-regulation after sub-regulation (1)-
 - “(1A) Where more than one financial security provider provides cover under this Part, the abandonment security document provided by each provider shall be carried on board.”; and
- (b) by substituting the following sub-regulations for sub-regulation (2)-
 - “(2) The shipowner must ensure that-

- (a) each abandonment security document that relates to the ship and is not in English, has with it an English translation; and
- (b) a copy of the abandonment security document referred to in sub-regulation (1) is posted in a conspicuous place on board where it is available to the seafarers.”.

Insertion of new regulation 32T.

11. The Principal Regulations are amended by inserting the following regulation after regulation 32S-

“Savings and adjustments.

32T (1) The provisions of this Part must not-

- (a) prejudice any right of recourse of the insurer or provider of financial security against third parties; and
 - (b) be intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned.
- (2) Any amounts payable by the provider under this Part can be offset against amounts received the seafarer from other sources arising from any rights, claims or remedies that may be the subject of compensation under this Part.”.

Dated 7th May 2020.

G H LICUDI Q.C.
For the Government.

EXPLANATORY NOTE
(This note is not part of these Regulations)

These Regulations amend the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 to transpose into the laws of Gibraltar Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014.

Printed by the Gibraltar Chronicle Printing Limited
Unit 3, New Harbours
Government Printers for Gibraltar,
Copies may be purchased at 6, Convent Place, Price. £0.40