

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

Subsidiary Legislation made under s.118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 & s.11 of and para (1) of Sch 3 to the European Union (Withdrawal) Act 2019

Gibraltar Merchant Shipping (Carriage of Passengers by Sea) (EU Exit) Regulations 2020

LN.2020/410

Commencement **1.1.2021**

Implementing:
Regulation (EC) No. 392/2009

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title and commencement.
2. Interpretation.
3. Application of these Regulations.
4. Dis-application of EC Regulation 392 of 2009 in respect of carriage by sea within BGTW.
5. Requirement to have Insurance.
6. Insurance certificates.
7. Issue of certificates by the Maritime Administrator.
8. Offences and penalties.
9. Power to detain.
10. Arbitration.
11. Compensation for unjustified detention.
12. Provision of information to passengers.
13. Fees.
14. Dis-application of section 95 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993.

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

2020/410 Gibraltar Merchant Shipping (Carriage of Passengers by Sea) (EU Exit) Regulations 2020

In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 the Minister on behalf of the Government, and the powers conferred on him by section 11 of and paragraph (1) of Schedule 3 to the European Union (Withdrawal) Act 2019, for the purpose of supporting the operation of and implementing Regulation (EC) No. 392/2009 of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents as amended by the Gibraltar Merchant Shipping (Passenger's Rights) (Amendment) (EU Exit) Regulations 2020, has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Carriage of Passengers by Sea) (EU Exit) Regulations 2020 and come into operation on 1 January 2021.

Interpretation

2.(1) In these Regulations—

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

“Athens Convention” means the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 and the Protocol of 2002 to the Convention;

“EC Regulation 392 of 2009” means Regulation (EC) No. 392/2009 of the European Parliament and of the Council of 23rd April 2009 on the liability of carriers of passengers by sea in the event of accidents as amended by the Gibraltar Merchant Shipping (Passenger's Rights) (Amendment) (EU Exit) Regulations 2020;

“State Party” means a country in respect of which the Athens Convention is in force;

“insurance” means insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention;

“proper officer” means an officer as may be appointed or designated by the Minister for the purposes of these Regulations;

“Gibraltar ship” means a ship registered in Gibraltar under Part III of the Gibraltar Merchant Shipping (Registration) Act 1993.

(2) For the purposes of these Regulations expressions used in EC Regulation 392 of 2009 and in these Regulations have the same meaning as in EC Regulation 392 of 2009.

Application of these Regulations.

3.(1) Subject to regulation 4, these Regulations apply to ships and persons engaged in the carriage of passengers by sea to which EC Regulation 392 of 2009 applies.

(2) These Regulations do not apply to warships, auxiliary warships or other State owned or operated ships used for a non commercial public service.

Dis-application of EC Regulation 392 of 2009 in respect of carriage by sea within BGTW.

4. EC Regulation 392 of 2009 does not apply to any ship engaged in the carriage of passengers by sea solely within BGTW unless-

- (a) the ship is a Class A ship and the carriage takes place after 30th December 2016;
or
- (b) the ship is a Class B ship and the carriage takes place after 30th December 2018.

Requirement to have Insurance.

5.(1) A ship shall not enter or leave the port of Gibraltar, or if the ship is a Gibraltar ship a port in any other country, unless there is insurance in force, in respect of that ship and a certificate complying with the provisions of regulation 6.

- (2) The requirement for the ship to have insurance does not apply to any ship-
 - (a) which is not licensed to carry more than 12 passengers; or
 - (b) to which EC Regulation 392 of 2009 does not apply by virtue of Regulation 4 or Article 2.2 of the Athens Convention.

Insurance certificates.

6.(1) The existence of the insurance required under regulation 5 is to be proved by a certificate in the form prescribed in-

- (a) the Annex to the Athens Convention; or
- (b) appendix B of Annex II to EC Regulation 392 of 2009,

showing that there is in force in respect of the ship insurance satisfying those requirements.

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

2020/410 Gibraltar Merchant Shipping (Carriage of Passengers by Sea) (EU Exit) Regulations 2020

- (2) The certificate must be -
- (a) if the ship is a Gibraltar ship, a certificate issued by the Maritime Administrator;
 - (b) if the ship is registered in a State Party (other than in Gibraltar or the United Kingdom), a certificate issued by or under the authority of the government of that State Party; and
 - (c) if the ship is registered in a country which is not a State Party, a certificate issued by the Maritime Administrator or under the authority of any State Party.
- (3) The certificate must-
- (a) be carried on onboard the ship; and
 - (b) be produced on demand by the master to-
 - (i) the Maritime Administrator or to any proper officer where the ship is a Gibraltar ship; or
 - (ii) the Maritime Administrator in the case of any other ship.

Issue of certificates by the Maritime Administrator.

7.(1) Subject to sub-regulation (2), if the Maritime Administrator is satisfied on the application for such a certificate as is referred to in regulation 6 in respect of -

- (a) a Gibraltar ship; or
- (b) a ship registered in any country that is not a State Party,

that there will be insurance in force throughout the period for which the certificate is to be issued the Maritime Administrator may issue such a certificate to the carrier or performing carrier.

- (2) If the Maritime Administrator is of the opinion that there is doubt whether-
- (a) the person providing the insurance will be able to meet their obligations thereunder; or
 - (b) the insurance will not cover the carrier or performing carrier's liability under EC Regulation 392 of 2009;

the Maritime Administrator may, after taking into account any other matters which appear to be relevant, refuse to issue the certificate.

(3) Where, at any time while a certificate is in force, the person to whom the certificate has been issued ceases to be the performing carrier in relation to the ship to which the certificate relates the certificate shall be delivered up forthwith to the Maritime Administrator or to a proper officer and in such case shall be cancelled by the Maritime Administrator.

(4) Where, at any time while a certificate is in force, it is established that the contract of insurance in respect of which the certificate is issued is or may be treated as invalid the certificate may be cancelled by the Maritime Administrator and, if so cancelled, shall on demand be delivered up to the Maritime Administrator by the person to whom it was issued.

(5) Where, at any time while a certificate is in force, circumstances arise in relation to the insurer or guarantor named in the certificate (or where more than one is so named, any of them) such that if the certificate were applied for at that time, the Maritime Administrator would have been entitled to refuse the application under paragraph (2) the certificate may be cancelled by the Maritime Administrator and if so cancelled the certificate shall on demand be delivered up to the Maritime Administrator by the person to whom it was issued.

(6) The Maritime Administrator shall send a copy of any certificate issued under this regulation in respect of a Gibraltar ship to the Registrar and the Registrar shall make the copy available for public inspection.

Offences and penalties.

8.(1) A carrier or performing carrier is guilty of an offence if-

- (a) a relevant ship enters or leaves a port in contravention of regulation 5; or
- (b) anyone attempts to navigate that ship into or out of a port in contravention of that regulation.

(2) The person guilty of an offence under sub-regulation (1) is liable-

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale; or
- (b) on conviction on indictment to a fine.

(3) A master who fails to comply with regulation 6(3) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

2020/410 Gibraltar Merchant Shipping (Carriage of Passengers by Sea) (EU Exit) Regulations 2020

(4) A person required by sub-regulations (3) to (5) of regulation 7 to deliver up a certificate who fails to do so shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(5) Any document required or authorised by virtue of any statutory provision to be served on a foreign company for the purposes of or the institution of (or otherwise in connection with the institution of) proceedings for an offence under regulation 5 against the company as owner of the ship is to be treated as served on the company if the document is served on the master of the ship.

(6) In this regulation foreign company means a company or body which is not one to which section 439 of the Companies Act 2014 applies so as to authorise the service of the document in question.

Power to detain.

9.(1) A ship may be detained if anyone attempts to navigate it out of the port in contravention of regulation 5.

(2) Section 105 of the Act (which relates to the detention of a ship) is to have effect in relation to the ship, subject to the modification that for-

- (a) “this Act” there were substituted “the Gibraltar Merchant Shipping (Carriage of Passengers by Sea) Regulations 2020”; and
- (b) “owner” there were substituted “carrier or performing carrier”.

(3) An officer detaining the ship must serve on the master of the ship a detention notice which-

- (a) states the reason for the detention; and
- (b) requires the ship to comply with the terms of the detention notice until it is released by a competent authority.

(4) Where a ship is detained which is not a Gibraltar ship the Maritime Administrator must immediately inform in writing-

- (a) the ship’s flag state administration; or,
- (b) if this is not possible-

- (i) the Consul of the State of the flag administration; or, in the Consul's absence, or
- (ii) the nearest diplomatic representative of the State of the flag administration.

(5) The written information referred to in sub-regulation (4) must set out all the circumstances of the decision to detain the ship.

(6) Where sub-regulation (4) applies the Maritime Administrator must notify all relevant-

- (a) nominated surveyors; or
- (b) recognised organisations;

responsible for the issue of classification certificates.

(7) In this regulation "competent authority" means the Maritime Administrator or any other person mentioned in section 105(1) of the Act.

Arbitration.

10.(1) Any question as to whether the matters specified in relation to a ship in a detention notice constituted a valid basis for the officer's opinion must, if the master of the ship or the carrier or performing carrier so requires by notice given to the officer within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the arbitrator.

(2) Where notice is given by the master of the ship or the carrier or performing carrier in accordance with sub-regulation (1), the giving of a notice does not suspend operation of the detention notice.

(3) The arbitrator may have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether or not the ship was or was not liable to be detained.

(4) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the officers opinion, the arbitrator must-

- (a) cancel the detention notice; or

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

2020/410 Gibraltar Merchant Shipping (Carriage of Passengers by Sea) (EU Exit) Regulations 2020

- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.
- (5) In any case other than one described in sub-regulation (4) the arbitrator must affirm the detention notice in its original form.
- (6) The decision of the arbitrator must include a finding whether there was or was not a valid basis for the detention of the ship.
- (7) To be qualified for appointment as an arbitrator under this regulation a person must be-
 - (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
 - (b) a naval architect;
 - (c) a person falling within sub-regulation (8); or
 - (d) a person with special experience of shipping matters, or of activities carried on within ports.
- (8) For the purposes of a sub-regulation (7)(c) a person falls within this sub-regulation if that person is a Barrister or Solicitor in Gibraltar of at least 7 years' standing.

Compensation for unjustified detention.

11.(1) If, on a reference under regulation 10 relating to a detention notice, the arbitrator decides that the person making the reference has proved-

- (a) that the matter complained of did not constitute a valid basis for the officer's opinion; and
- (b) that there were no reasonable grounds for the issue of the detention notice;

the arbitrator must award the owner of the ship such compensation in respect of any loss suffered in consequence of the detention of the ship as the arbitrator thinks fit.

(2) Where a person making the reference to the arbitrator under regulation 10 and the arbitrator makes an award in his favour under sub-regulation (1), that person shall be entitled to compensation.

Provision of information to passengers.

12. A carrier or performing carrier which fails to supply a passenger with the information specified in article 7 of EC Regulation 392 of 2009 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Fees.

13. The Minister may charge a fee of £31.00 for the issue of a certificate mentioned in regulation 6(1).

Dis-application of section 95 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993.

14. Section 95 of the Act (Convention relating to the carriage of passengers and their luggage by sea) is amended -

(a) by inserting after subsection (1) the following subsection-

“(1A) Sub-section (1) does not give the force of law in Gibraltar to provisions to the extent that they apply to cases in which EC Regulation No. 392/2009 applies.”; and

(b) by inserting after subsection (2) the following subsection-

“(3) In this section “EC Regulation No. 392/2009” means Regulation (EC) No. 329/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents.”.