

# Maritime Security Act

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## Principal Act

Act. No. 1999-40

Commencement

9.12.1999

Assent

9.12.1999

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AN ACT TO GIVE EFFECT TO THE CONVENTION FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF MARITIME NAVIGATION AND TO THE PROTOCOL FOR THE SUPPRESSION OF UNLAWFUL ACTS AGAINST THE SAFETY OF FIXED PLATFORMS LOCATED ON THE CONTINENTAL SHELF WHICH SUPPLEMENTS THAT CONVENTION; TO MAKE OTHER PROVISION FOR THE PROTECTION OF SHIPS AND HARBOUR AREAS AGAINST ACTS OF VIOLENCE AND FOR CONNECTED PURPOSES.

## PART I GENERAL

### Title and interpretation.

- 1.(1) This Act may be cited as the Maritime Security Act.
- (2) In Part II of this Act, and unless the context otherwise provides—

“act of violence” means—

- (a) any act done in Gibraltar which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide, assault or an offence under section 75, 76, 77, 78, 79, 83 or 84 of the Criminal Offences Act; or
- (b) any act which causes an explosion likely to endanger life or property; or
- (c) any act done outside Gibraltar which, if done in Gibraltar, would constitute such an offence as is mentioned in paragraphs (a) or (b) above;

“act which causes an explosion likely to endanger life or property” means an act committed unlawfully and maliciously which causes by any explosive substance an explosion of a nature likely to endanger life or cause serious injury to property, whether any injury to person or property has been actually caused or not;

“fixed platform” means—

- (a) any offshore installation, within the meaning of the Mineral Workings (Offshore Installations) Act 1971 of the United Kingdom, which is not a ship, and
- (b) any other artificial island, installations or structure which—
  - (i) permanently rests on, or is permanently attached to, the seabed,

- (ii) is maintained for the purposes of the exploration or exploitation of resources or for other economic purposes, and
- (iii) is not connected with dry land by a permanent structure providing access at all times and for all purposes;

“naval service” includes military and air force service;

“police officer” has the meaning given to that expression in the Police Act.

“ship” means any vessel (including hovercraft, submersible craft and other floating craft) other than one which—

- (a) permanently rests on, or is permanently attached to, the seabed, or
- (b) has been withdrawn from navigation or laid up; and

“United Kingdom national” means an individual who is—

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 of the United Kingdom is a British subject, or
- (c) a British protected person (within the meaning of that Act).

(3) In Part III of this Act and unless the context otherwise provides—

“appointed person” means a person other than a police officer appointed in writing by the Minister for the purposes of sections 24, 27 and 29;

“article” includes any substance, whether in solid or liquid form or in the form of a gas or vapour;

“authorised person” means a person other than a police officer the Minister is satisfied is a fit and proper person and suitably qualified and has received appropriate training to do any act or omission for the purposes of this Part and has accordingly authorised him by notice in writing so to do;

“act of violence” means—

- (a) any act done in Gibraltar which constitutes the offence of murder, attempted murder, manslaughter, culpable homicide, assault or an offence under section 75, 76, 77, 78, 79, 83 or 84 of the Criminal Offences Act; or
- (b) any act which causes an explosion likely to endanger life or property; or
- (c) any act done outside Gibraltar which, if done in Gibraltar, would constitute such an offence as is mentioned in paragraphs (a) or (b) above;

“act which causes an explosion likely to endanger life or property” means an act committed unlawfully and maliciously which causes by any explosive substance an explosion of a nature likely to endanger life or cause serious injury to property, whether any injury to person or property has been actually caused or not;

“Captain of the Port” has the meaning given in the Port Act;

“Commissioner” has the meaning given in the Police Act;

“employee”, in relation to a body corporate, includes an officer of that body corporate;

“enforcement notice” has the meaning given by section 23;

“explosive” means any article manufactured for the purpose of producing a practical effect by explosion, or intended for that purpose by a person having the article with him;

“firearm” includes an airgun or air pistol;

“Gibraltar ship” means a ship which—

- (a) is registered in Gibraltar under Part I of the Merchant Shipping Act 1894 read with Part XA of the Merchant Shipping Act or under Part III, IV or VIII of the Gibraltar Merchant Shipping (Registration) Act 1993,
- (b) is not registered under the law of any country and is entitled to be registered in Gibraltar under Part I of the Merchant Shipping Act 1894 read with Part XA of the Merchant Shipping Act or under Part III, IV or VIII of the Gibraltar Merchant Shipping (Registration) Act 1993;

“harbour area” means that part of the Port of Gibraltar (as defined in the Schedule to the Port Act) as may be prescribed for the purposes of this Act by the Minister, together with such other area or areas adjacent to Port Waters (as defined in the Admiralty Waters (Gibraltar) Order 1972) as may be prescribed for the purposes of this Act by the Minister;

“harbour operations” means,—

- (a) the marking or lighting of the harbour area or any part thereof;
- (b) the berthing, anchoring or dry-docking of a ship;
- (c) the warehousing, sorting, weighing or handling of any goods in the harbour area or any part thereof;
- (d) the movement of goods or persons in the harbour area or a part thereof;
- (e) the towing or moving of a ship which is in or is about to enter or has recently left the harbour area or any part thereof;
- (f) the loading or unloading of goods or the embarking or disembarking of passengers in or from a ship which is in the harbour area or a part thereof or the approaches thereto;
- (g) the lighterage or handling of goods in the harbour area or a part thereof;
- (h) the provision of pilotage services;
- (i) the provision of supplies of fuel, lubricating oils or water in the harbour area;

“master” has the same meaning as in the Gibraltar Merchant Shipping (Registration) Act 1993;

“measures” (without prejudice to the generality of that expression) includes the construction, execution, alteration, demolition or removal of any building or other works (whether on dry land or on the seabed or other land covered by water), and also includes the institution or modification, and the supervision and enforcement, of any practice or procedure;

“Minister” means the Minister charged with responsibility for Transport;

“naval service” includes military and air force service;

“nominated person” shall be construed in accordance with the provisions of section 22 and 25;

“owner”, in relation to a ship registered in Gibraltar or in any other country, means registered owner;

“police officer” has the meaning given in the Police Act;

“property” includes any land, buildings or works, any ship or vehicle and any baggage, cargo or other article of any description;

“Queen’s Harbour Master” has the meaning given in the Admiralty Waters Regulations;

“restricted zone”, in relation to the harbour area, means any part of the harbour area designated under section 15 or, where the whole of the harbour area is so designated, that area, and

“ship” includes hovercraft and every other description of vessel used in navigation.

(4) Any power to give a direction under any provision of Part III of this Act includes power to revoke or vary any such direction by a further direction.

(5) For the purposes of Part III of this Act, a person is permitted to have access to a restricted zone of a harbour area if he is permitted to enter that zone or if arrangements exist for permitting any of his employees or agents to enter that zone.

(6) Where a direction made under Part III of this Act requires searches to be carried out, or other measures to be taken, by police officers, the direction shall be given to the Commissioner by the Governor acting upon a request from the Minister and the Commissioner shall comply with the direction as he sees fit for the purposes of that Part.

(7) An authorised person shall, if required, produce written evidence of his appointment when exercising any power under Part III.

(8) Part III of this Act shall not apply to any part of the harbour area under the control or management of the Queen's Harbour Master or any part of the Port which is Admiralty Waters.

(9) Part III of this Act shall not apply to any United Kingdom Government department operating in Gibraltar.

(10) The exercise of the Minister’s functions under Part III of this Act shall not displace or prejudice the Governor’s right to give directions to any person as he considers appropriate with respect to those functions in exercise of his constitutional responsibilities for internal security. The Governor shall be kept fully informed of all matters under Part III affecting internal security.

## PART II

### OFFENCES AGAINST THE SAFETY OF SHIPS AND FIXED PLATFORMS

#### **Hijacking of ships.**

2.(1) Subject to subsection (2), a person who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it, commits the offence of hijacking a ship, whatever his nationality and whether the ship is in Gibraltar or elsewhere.

(2) Sub-section (1) does not apply in relation to a warship or any other ship used as a naval auxiliary or police service or in the service of the Collector of Customs unless—

- (a) the person seizing or exercising control of the ship is a United Kingdom national, or
- (b) his act is committed in Gibraltar, or
- (c) the ship is used in the naval service of the United Kingdom or in the service of any police force in Gibraltar or the service of the Collector of Customs.

(3) A person guilty of the offence of hijacking a ship shall be liable on conviction on indictment to imprisonment for life.

#### **Seizing or exercising control of fixed platforms.**

3.(1) A person who unlawfully, by the use of force or by threats of any kind, seizes a fixed platform or exercises control of it, commits an offence, whatever his nationality and whether the fixed platform is in Gibraltar or elsewhere.

(2) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for life.

#### **Destroying ships or fixed platforms or endangering their safety.**

4.(1) Subject to sub-section (5), a person commits an offence if he unlawfully and intentionally—

- (a) destroys a ship or a fixed platform,
- (b) damages a ship, its cargo or a fixed platform so as to endanger, or to be likely to endanger, the safe navigation of the ship, or as the case may be, the safety of the platform, or
- (c) commits on board a ship or on a fixed platform an act of violence which is likely to endanger the safe navigation of the ship, or, as the case may be, the safety of the platform.

(2) Subject to sub-section (5), a person commits an offence if he unlawfully and intentionally places, or causes to be placed, on a ship or fixed platform any device or substance which—



- (a) in the case of a ship, is likely to destroy the ship or is likely so to damage it or its cargo as to endanger its safe navigation, or
  - (b) in the case of a fixed platform, is likely to destroy the fixed platform or so to damage it as to endanger its safety.
- (3) Nothing in sub-section (2) is to be construed as limiting the circumstances in which the commission of any act—
- (a) may constitute an offence under sub-section (1), or
  - (b) may constitute attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of such an offence.
- (4) Except as provided by sub-section (5), sub-sections (1) and (2) apply whether any such act as is mentioned in those sub-sections is committed in Gibraltar or elsewhere and whatever the nationality of the person committing the act.
- (5) Sub-sections (1) and (2) do not apply in relation to any act committed in relation to a warship or any other ship used as a naval auxiliary or police service or in the service of the Collector of Customs unless—
- (a) the person committing the act is a United Kingdom national, or
  - (b) his act is committed in Gibraltar, or
  - (c) the ship is used in the naval service of the United Kingdom or in the service of any police force in Gibraltar or the service of the Collector of Customs.
- (6) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for life.
- (7) In this section “unlawfully”—
- (a) in relation to the commission of an act in Gibraltar, means the commission of an act constituting an offence under the law of Gibraltar, and
  - (b) in relation to the commission of an act outside Gibraltar, means the commission of an act that would constitute an offence under the law of Gibraltar, had it been committed in Gibraltar.

**Other acts endangering or likely to endanger safe navigation.**

5.(1) Subject to sub-section (6), it is an offence for any person unlawfully and intentionally–

- (a) to destroy or damage any property to which this subsection applies, or
- (b) seriously to interfere with the operation of any such property, where the destruction, damage or interference is likely to endanger the safe navigation of any ship.

(2) Sub-section (1) applies to any property used for the provision of maritime navigation facilities, including any land, building or ship so used, and including any apparatus or equipment so used, whether it is on board a ship or elsewhere.

(3) Subject to sub-section (6), it is also an offence for any person intentionally to communicate any information which he knows to be false in a material particular, where the communication of the information endangers the safe navigation of any ship.

(4) It is a defence for a person charged with an offence under sub-section (3) to prove that, when he communicated the information, he was lawfully employed to perform duties which consisted of or included the communication of information and that he communicated the information in good faith in performance of those duties.

(5) Except as provided by sub-section (6), sub-sections (1) and (3) apply whether any such act as is mentioned in those sub-sections is committed in Gibraltar or elsewhere and whatever the nationality of the person committing the act.

(6) For the purposes of sub-sections (1) and (3) any danger, or likelihood of danger, to the safe navigation of a warship or any other ship used as a naval auxiliary or in police service or in the service of the Collector of Customs is to be disregarded unless–

- (a) the person committing the act is a United Kingdom national, or
- (b) his act is committed in Gibraltar, or
- (c) the ship is being used in the naval service of the United Kingdom or in the service of any police force in Gibraltar or the service of the Collector of Customs.

(7) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for life.

(8) In this section “unlawfully” has the same meaning as in section 4.

#### **Offences involving threats.**

6.(1) A person commits an offence if–

- (a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do in relation to any ship or fixed platform an act which is an offence by virtue of section 4(1), and
  - (b) the making of that threat is likely to endanger the safe navigation of the ship or, as the case may be, the safety of the fixed platform.
- (2) Subject to sub-section (4), a person commits an offence if–
- (a) in order to compel any other person to do or abstain from doing any act, he threatens that he or some other person will do an act which is an offence by virtue of section 5(1), and
  - (b) the making of that threat is likely to endanger the safe navigation of any ship.
- (3) Except as provided by sub-section (4), sub-sections (1) and (2) apply whether any such act as is mentioned in those sub-sections is committed in Gibraltar or elsewhere and whatever the nationality of the person committing the act.
- (4) Sub-section (6) of section 5 applies for the purposes of sub-section (2)(b) as it applies for the purposes of subsections (1) and (3) of that section.
- (5) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for life.

#### **Ancillary offences.**

7.(1) Where any person does outside Gibraltar any act which, if done in Gibraltar, would constitute an offence falling within sub-section (2), his act shall constitute that offence if it is done in connection with an offence under section 2, 3, 4 or 5 committed or attempted by him.

(2) The offences falling within this sub-section are the offences referred to in the definition of “act of violence”.

(3) Sub-section (1) has effect without prejudice to section 27 or 28 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993 or section 58 or 59 of the Merchant Shipping Act 1995.

(4) It is an offence for any person in Gibraltar to induce or assist the commission outside Gibraltar of any act which–

- (a) would, but for sub-section (2) of section 2, be an offence under that section, or

- (b) would, but for sub-section (5) of section 4, be an offence under that section, or
  - (c) would, but for sub-section (6) of section 5, be an offence under that section, or
  - (d) would, but for sub-section (4) of section 5, be an offence under that section.
- (5) A person who commits an offence under sub-section (4) shall be liable on conviction on indictment to imprisonment for life.
- (6) Sub-section (4) has effect without prejudice to the operation, in relation to any offence under section 2, 4, 5 or 6 of this Act of section 8 of the Accessories and Abettors Act 1861, as amended by the Criminal Law Act 1977.

**Master's power of delivery.**

8.(1) The provisions of this section shall have effect for the purposes of any proceedings before any court in Gibraltar.

(2) If the master of a ship, wherever that ship may be, and whatever the State (if any) in which it may be registered, has reasonable grounds to believe that any person on board the ship has—

- (a) committed any offence under section 2, 4, 5 or 6,
- (b) attempted to commit such an offence, or
- (c) aided, abetted, counselled, procured or incited the commission of such an offence,

in relation to any ship other than a warship or other ship used as a naval auxiliary or in police service or in the service of the Collector of Customs, he may deliver that person to an appropriate officer in Gibraltar or any Convention country.

(3) Where the master of a ship intends to deliver any person in Gibraltar or any Convention country in accordance with subsection (2) he shall give notification to an appropriate officer in that country—

- (a) of his intention to deliver that person to an appropriate officer in that country; and
- (b) of his reasons for intending to do so.

(4) Any notification under sub-section (3) shall be given—

- (a) before the ship in question has entered the territorial sea of the country concerned;  
or

- (b) if in the circumstances it is not reasonably practicable to comply with paragraph (a), as soon as reasonably practicable after the ship has entered that territorial sea.
- (5) Where the master of a ship delivers any person to an appropriate officer in any country under sub-section (2) he shall—
- (a) make to an appropriate officer in that country such oral or written statements relating to the alleged offence as that officer may reasonably require; and
  - (b) deliver to an appropriate officer in that country such other evidence relating to the alleged offence as is in the master's possession.
- (6) The master of a ship who fails to comply with sub-section (3) or (5) without reasonable excuse shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) It is a defence for a master of a ship charged with an offence under sub-section (6) of failing to comply with subsection (3) to show that he believed on reasonable grounds that the giving of the notification required by sub-section (3) would endanger the safety of the ship and, except where the country concerned is Gibraltar, that either—
- (a) he notified some other competent authority in the country concerned within the time required by subsection (4), or
  - (b) he believed on reasonable grounds that the giving of notification to any competent authority in that country would endanger the safety of the ship.

### **Section 8: Interpretation.**

9. In section 8—

“appropriate officer” means—

- (a) in relation to Gibraltar, a police officer or immigration officer, and
- (b) in relation to any Convention country, an officer having functions corresponding to the functions in Gibraltar either of a police officer or of an immigration officer;

“immigration officer” has the meaning given to that expression in the Immigration Control Act;

“Convention country” means a country in which the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, which was signed at

Rome on 10th March 1988, is for the time being in force and if Her Majesty has, by Order in Council made under section 15 of the Aviation and Maritime Security Act 1990 of the United Kingdom, certified that any country specified in the Order is for the time being a Convention country, any such Order in Council for the time being in force shall be conclusive evidence that the country in question is for the time being a Convention country; and

“master” has the same meaning as in the Gibraltar Merchant Shipping (Registration) Act 1993.

### PART III

#### PROTECTION OF SHIPS AND HARBOUR AREAS AGAINST ACTS OF VIOLENCE

##### **Purposes to which Part III applies.**

10. The purposes to which this Part applies are the protection against acts of violence in respect of—

- (a) ships, and persons or property on board ships, and
- (b) the harbour area, such persons as are at any time present in any part of the harbour area and such property as forms part of the harbour area or is at any time (whether permanently or temporarily) in any part of the harbour area.

##### **Searches in the harbour area.**

11.(1) For the purposes to which this Part applies, the Minister may secure that searches to which this section applies are carried out by authorised persons.

(2) The searches to which this section applies, in relation to the harbour area, are searches—

- (a) of the harbour area or any part of it,
- (b) of any ship which at the time when the direction is given or at any subsequent time is in the harbour area, and
- (c) of persons and property (other than ships) which may at any time be in the harbour area, and
- (d) subject to sub-section (1), of persons.

(3) Subject to sub-sections (4) and (5), if an authorised person has reasonable cause to suspect that an article to which this sub-section applies is in, or may be brought into, any part

of the harbour area, he may, by virtue of this subsection and without a warrant, search any part of the harbour area or any ship, vehicle, goods or other moveable property of any description which is, or any person who is, for the time being, in any part of the harbour area, and for that purpose—

- (a) may enter any building or works in the harbour area, or enter upon any land in the harbour area, if need be by force,
- (b) may go on board any such ship and inspect the ship,
- (c) may stop any such ship and, for so long as may be necessary for that purpose, prevent it from being moved, and
- (d) may stop any such vehicle, goods, property or person and detain it or him for so long as may be necessary for that purpose.

(4) In the case of premises used only as a private dwelling any power to search or enter conferred by sub-section (3) may not be exercised except by a police officer under the authority of a warrant issued by a justice of the peace.

(5) If, on an application made by a police officer, a justice of the peace is satisfied that there are reasonable grounds for suspecting that an article to which sub-section (3) applies is in any premises used only as a private dwelling, he may issue a warrant authorising a police officer to enter and search the premises.

(6) Sub-section (3) applies to the following articles—

- (a) any firearm, or any article having the appearance of being a firearm, whether capable of being discharged or not,
- (b) any explosive, any article manufactured or adapted (whether in the form of a bomb, grenade or otherwise) so as to have the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, or any article marked or labelled so as to indicate that it is or contains an explosive, and
- (c) any article (not falling within paragraph (a) or (b)) made or adapted for use for causing injury to or incapacitating a person or for destroying or damaging property, or intended by the person having it with him for such use, whether by him or by any other person.

(7) Any person who intentionally obstructs a person acting in the exercise of a power conferred on him by sub-section (3), commits an offence.

(8) A person guilty of an offence under sub-section (7) shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(9) Where, following a conviction for an offence under subsection (8)(a), a person continues to commit that offence without reasonable excuse, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of the amount at level 5 on the standard scale for each day during which the failure continues.

(10) Sub-section (3) has effect without prejudice to the operation, in relation to any offence under this Act, of any statutory provision or rule of law relating to the power to arrest without warrant.

(11) No person, other than a police officer, shall exercise any power conferred by this Part to search any person unless authorised by the Minister to exercise such power.

**Power to require other persons to promote searches.**

12.(1) The Minister may give a direction in writing to any person (other than the Captain of the Port) who –

- (a) carries on harbour operations in the harbour area, or
- (b) is permitted to have access to a restricted zone of the harbour area for the purposes of the activities of a business carried on by him,

requiring him to use his best endeavours to secure that such searches to which this section applies as are specified in the direction are carried out.

(2) The searches to which this section applies are–

- (a) in relation to a person falling within sub-section (1)(a), searches–
  - (i) of any land which he occupies within the harbour area, and
  - (ii) of persons or property which may at any time be on that land; and
- (b) in relation to a person falling within sub-section (1)(b), searches–
  - (i) of any land which he occupies outside the harbour area for the purposes of his business, and



(ii) of persons or property which may at any time be on that land.

(3) Any person who, without reasonable excuse, fails to comply with a direction given to him under this section shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(4) Where a person is convicted of an offence under subsection (3), then, if without reasonable excuse the failure in respect of which he was convicted is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of the amount at level 5 on the standard scale for each day during which the failure continues.

#### **Offences relating to authorised persons.**

13.(1) A person who—

(a) intentionally obstructs an authorised person acting in the exercise of a power conferred on him by or under this Part, or

(b) falsely pretends to be an authorised person,

commits an offence.

(2) A person guilty of an offence under sub-section (1)(a) shall be liable—

(a) on summary conviction, to a fine not exceeding level 5 on the standard scale;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(3) A person guilty of an offence under sub-section (1)(b) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Power of Minister to require information.**

14.(1) The Minister may, by notice in writing served on any of the following, namely—

(a) any person who is the owner, charterer or manager of—

(i) a Gibraltar ship, or

- (ii) any other ship which is in, or appears to the Minister to be likely to enter, the harbour area,
- (b) the Captain of the Port,
- (c) any person who carries on harbour operations in the harbour area, or
- (d) any person who is permitted to have access to a restricted zone in the harbour area for the purposes of the activities of a business carried on by him,

require that the Minister be provided with such information specified in the notice as the Minister may require in connection with the exercise by the Minister of his functions under this Part.

(2) A notice under sub-section (1) shall specify a date, not being earlier than seven days from the date on which the notice is served, before which the information required by the notice in accordance with sub-section (1) is to be furnished to the Minister.

(3) Any such notice may also require the person on whom it is served, after he has furnished to the Minister the information required by the notice in accordance with subsection (1), to inform the Minister if at any time the information previously furnished to the Minister is rendered inaccurate by any change of circumstances including, but without prejudice to the generality of the foregoing, whether any further measures have been taken for purposes to which this Part applies or whether any measures already being taken have been altered or discontinued.

(4) In so far as such a notice requires further information to be furnished to the Minister in accordance with sub-section (3), it shall require that information to be furnished to him before the end of such period, not being less than seven days from the date on which the change of circumstances occurs, as shall be specified in the notice for the purposes of this sub-section.

(5) Any person served with a notice under section (1)(a), (c) and (d) above who—

- (a) without reasonable excuse, fails to comply with a requirement imposed on him by a notice under this section, or
- (b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence.

(6) A person guilty of an offence under sub-section (5) shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (7) A notice served on a person under sub-section (1) may at any time–
- (a) be revoked by a notice in writing served on him by the Minister, or
  - (b) be varied by a further notice under sub-section (1).
- (8) The Minister shall supply to the Governor such information as the Minister shall have obtained pursuant to the provisions of this Part as shall relate to matters of internal security.

**Designation of restricted zones of the harbour area.**

15.(1) The Minister may, by order in the Gazette, designate the whole or any part of the harbour area as a restricted zone for the purposes of this Part.

(2) The whole or any part of the harbour area may be designated as a restricted zone, or part of a restricted zone, for specified days or times of day only.

**Unauthorised presence in restricted zone.**

16.(1) A person shall not–

- (a) enter, with or without a vehicle or vessel, any part of a restricted zone of the harbour area except with the permission of the Captain of the Port or a person acting on his behalf and in accordance with any conditions subject to which that permission is for the time being granted, or
- (b) remain in any part of such a restricted zone after being requested to leave by the Captain of the Port or a person acting on his behalf.

(2) Sub-section (1)(a) shall not apply unless it is proved that, at the material time, notices stating that the area concerned was a restricted zone were posted so as to be readily seen and read by persons entering the restricted zone.

(3) A person who contravenes sub-section (1) without lawful authority or reasonable excuse shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Power to impose restrictions in relation to ships.**

17.(1) The Captain of the Port may give a direction in writing to the owner, charterer, manager or master of a Gibraltar ship, or of any other ship which is in the harbour area, requiring that person–

- (a) not to cause or permit persons or property to go or be taken on board any ship to which the direction relates, or to come or be brought into proximity to any such ship, unless such searches of those persons or that property as are specified in the direction have been carried out in such manner and by an authorised person, or
- (b) not to cause or permit any such ship to go to sea unless such searches of the ship as are specified in the direction have been carried out.

(2) The Captain of the Port may give a direction in writing to the owner, charterer, manager or master of a Gibraltar ship, or any other ship which is in the harbour area, requiring him not to cause or permit the ship to go to sea unless the terms of the direction are first carried out:

Directions given under this subsection may provide for such modifications to, or alterations of, the ship or of apparatus or equipment installed in or carried on board the ship, or for the installation of such additional apparatus or equipment as the Captain of the Port may deem reasonable taking all material circumstances into account.

(3) Direction given under sub-section (2) shall specify a reasonable period of time at the end of which it is to take effect, and the direction shall not take effect before the end of the period so specified.

(4) Subject to the following provisions of this Part–

- (a) a direction given to an owner, charterer or manager of a ship under sub-section (1) or (2) may relate either to all ships within the harbour area which at the time when the direction is given or at any subsequent time he is the owner, charterer or manager or only to one or more such ships specified in the direction,
- (b) a direction given under sub-section (1) may be given so as to relate either to all ships which at the time when the direction is given or at any subsequent time are in any part of the harbour area, or to a class of such ships specified in the direction.

(5) Subject to the following provisions of this Part, a direction under sub-section (1) may be given so as to relate–

- (a) either to all persons or only to one or more persons, or persons of one or more descriptions, specified in the direction, and

- (b) either to property of every description or only to particular property, or property of one or more descriptions, so specified.
- (6) Subject to the following provisions of this Part, any direction given under this section to any person not to cause or permit anything to be done shall be construed as requiring him to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done.
- (7) A direction may be given under this section to a person appearing to the Captain of the Port to be about to become such a person as is mentioned in sub-section (1) or (2), but such a direction shall not take effect until that person becomes a person so mentioned and, in relation to a direction so given, the preceding provisions of this section shall apply with the necessary modifications.
- (8) Any person who, without reasonable excuse, fails to comply with a direction given to him under this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.
- (9) Where a person is convicted of an offence under sub-section (8), then, if without reasonable excuse, the failure in respect of which he was convicted is continued after the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of the amount at level 5 on the standard scale for each day during which the failure continues.

**General power to direct measures to be taken for purposes to which Part III applies.**

18.(1) Sub-section (2) applies to—

- (a) any person who is the owner, charterer or manager of one or more ships which—
  - (i) are Gibraltar ships, or
  - (ii) are in the harbour area,
- (b) the Captain of the Port,
- (c) any person other than the Captain of the Port who carries on harbour operations in the harbour area, and

- (d) any person who is permitted to have access to a restricted zone of the harbour area for the purposes of the activities of a business carried on by him.
- (2) Subject to the following provisions of this section, the Minister may give a direction in writing to any person to whom this sub-section applies requiring him to take such measures for purposes to which this Part applies as are specified in the direction—
- (a) in the case of a direction given to a person as the owner, charterer or manager of a ship, in respect of all the ships falling within sub-section (1)(a) of which (at the time when the direction is given or at any subsequent time) he is the owner, charterer or manager, or in respect of any such ships specified in the direction,
  - (b) in the case of a direction given to the Captain of the Port, in respect of the harbour area,
  - (c) in the case of a direction given to a person as a person falling within sub-section (1)(c), in respect of the harbour operations carried on by him, and
  - (d) in the case of a direction given to a person as a person who is permitted to have access to a restricted zone as mentioned in sub-section (1)(d), in respect of such activities carried on by that person in that zone as are specified in the direction.
- (3) Without prejudice to the generality of sub-section (2), the measures to be specified in a direction given under this section to any person to whom that sub-section applies may include the provision by that person of persons charged with the duty (at such times as may be specified in the direction)—
- (a) where the direction is given to a person as the owner, charterer or manager of ships, of guarding the ships against acts of violence,
  - (b) where the direction is given to the Captain of the Port, of guarding the harbour area, or persons or property (including ships) in any part of the harbour area, against acts of violence,
  - (c) where the direction is given to a person as falling within sub-section (1)(c), of guarding against acts of violence any ship in the harbour area which is for the time being under his control, or
  - (d) where the direction is given to a person as falling within sub-section (1)(d), of guarding against acts of violence—
    - (i) any land outside the harbour area occupied by him for the purpose of his business, any vehicles or equipment used for those purposes and any goods which are in his possession for those purposes, and

(ii) any ship which is for the time being under his control.

(4) A direction given under this section may be either of a general or of a specific character, and may require any measures specified in the direction to be taken at such time or within such period as may be so specified.

(5) A direction under this section—

- (a) shall not require any search, whether of persons or of property, and
- (b) shall not require the modification or alteration of any ship, or of any of its apparatus or equipment, or the installation or carriage of additional apparatus or equipment, or prohibit any ship from being caused or permitted to go to sea without some modification or alteration of the ship or its apparatus or equipment or the installation or carriage of additional apparatus or equipment;
- (c) shall not require a building or other works to be constructed, executed, altered, demolished or removed on land within the harbour area.

(6) A direction may be given under this section to a person appearing to the Minister to be about to become a person to whom sub-section (2) applies, but a direction given to a person by virtue of this sub-section shall not take effect until he becomes a person to whom sub-section (2) applies and, in relation to a direction so given, the preceding provisions of this section shall apply with the necessary modifications.

(7) A person, other than the Captain of the Port, who without reasonable excuse, fails to comply with a direction given to him under this section, shall be guilty of an offence.

(8) A person guilty of an offence under sub-section (7) shall be liable—

- (a) on summary conviction, to a fine at level 5 on the standard scale;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(9) Where a person convicted of an offence under subsection (7), without reasonable excuse, continues to do the act or omission that gave rise to the conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of the amount at level 5 on the standard scale for each day during which the failure continues.

**Matters which may be included in directions under sections 12, 17 and 18.**

19.(1) Subject to sub-section (3), a direction under section 12 or section 17(1) may specify the minimum number of authorised persons by whom any search to which the direction relates is to be carried out, the qualifications which persons carrying out any such search are to have, the manner in which any such search is to be carried out, and any apparatus, equipment or other aids to be used for the purpose of carrying out any such search.

(2) A direction under section 17(2) may specify the qualifications required to be had by persons carrying out any modifications or alterations, or the installation of any additional apparatus or equipment, to which the direction relates.

(3) A direction under section 18 may specify—

(a) the minimum number of persons to be employed for the purposes of any measures required by the direction to be taken by the person to whom it is given, and the qualifications which persons employed for those purposes are to have, and

(b) any apparatus, equipment or other aids to be used for those purposes.

(4) Nothing in sub-sections (1) to (3) shall be construed as limiting the generality of any of the preceding provisions of this Part.

(5) In this section “qualifications” includes training and experience.

**Limitations on scope of directions under section 12, 17 and 18.**

20.(1) Without prejudice to section 10 or 19(4), a direction shall not require or authorise any person to carry a gun, rifle, pistol, shotgun or other firearm.

(2) A direction shall not have effect in relation to any ship used in naval or police service or in the service of the Collector of Customs.

(3) A direction shall not have effect in relation to any ship which is registered outside Gibraltar and of which the owner is the Government of a country or territory outside Gibraltar, or is a department or agency of such a Government, except at a time when any such ship is being used for commercial purposes or is for the time being allocated by that Government, department or agency for such use.

(4) A direction shall not be construed as requiring or authorising the person to whom the direction was given, or any person acting as his servant or agent, to do anything which, apart from the direction, would constitute an act of violence:

Provided that nothing in this sub-section shall restrict the use of reasonable force by an authorised person.



(5) In so far as a direction requires anything to be done or not done at a place outside Gibraltar–

- (a) it shall not have effect except in relation to Gibraltar ships, and
- (b) it shall not have effect so as to require anything to be done or not done in contravention of any provision of the law in force at that place, other than any such provision relating to breach of contract.

(6) In so far as a direction given to the Captain of the Port or to any person mentioned in paragraphs (c) or (d) of section 18(1) requires a building or other works to be constructed, executed, altered, demolished or removed on land outside the harbour area, or requires any other measures to be taken on such land, the direction shall not confer on the person to whom it is given any rights as against a person having–

- (a) an interest in that land, or
- (b) a right to occupy that land, or
- (c) a right restrictive of its use;

and accordingly, the direction shall not be construed as requiring the person to whom it is given to do anything which would be actionable at the suit or instance of a person having such interest or right in his capacity as a person having that interest or right.

(7) Nothing in this section shall be construed as derogating from any exemption or immunity of the Crown in relation to the provisions of this Part.

(8) In this section “direction” means a direction under section 12,17 or 18.

**General or urgent directions under sections 12, 17 or 18.**

21.(1) A direction given to any person under section 12, 17 or 18 need not be addressed to that particular person, but may be framed in general terms applicable to all persons to whom such a direction may be given or to any class of such persons to which that particular person belongs.

(2) If it appears to the Minister that an exception from any direction given under any of sections 12, 17 or 18 is required as a matter of urgency in any particular case he may, by a notification to the person for the time being subject to the direction, authorise that person to disregard the requirements of the direction–

- (a) in relation to such ships or class of ships, or to such part of the harbour area, or to such land outside the harbour area, or to such activities or to such persons or property or such description of persons or property as he may specify, and
- (b) on such occasion or series of occasions, or for such period as he may specify,

and the direction shall have effect in that case subject to any exceptions so specified:

A notification under this subsection which is not by instrument in writing shall be committed to writing by the Minister at the first reasonable opportunity, and a copy thereof supplied to the person to which the notification is addressed.

(3) Unless otherwise provided, any notification given under sub-section (2) shall cease to have effect—

- (a) if a direction by instrument in writing is subsequently given to that person varying or revoking the original direction, or
- (b) otherwise, at the end of the period of thirty days beginning with the date on which notification was first given.

(4) Any notification given under sub-section (2) shall be regarded as having been given to the person to whom it is directed if it is given—

- (a) to any person authorised to receive any such direction or notification by the person to whom it is directed,
- (b) where that person is a body corporate, to the secretary, clerk or similar officer of the body corporate, and
- (c) in any other case, to anyone holding a comparable office or position in that person's employment.

#### **Objections to certain directions under section 18.**

22.(1) This section applies to any direction given under section 18 which—

- (a) requires a person to take measures consisting of or including the construction, execution, alteration, demolition or removal of a building or other works on land outside the harbour area, and
- (b) does not contain a statement that the measures are urgently required and that accordingly the direction is to take effect immediately.

(2) A person to whom a direction is given may serve on the Minister a notice in writing within thirty days from the date on which the direction is given, objecting to the direction, on the grounds that the measures specified in the direction, in so far as they relate to the construction, execution, alteration, demolition or removal of a building or other works on land outside the harbour area—

- (a) are unnecessary and should be dispensed with, or
- (b) are excessively onerous or inconvenient and should be modified in a manner specified in the notice.

(3) Where the person to whom such a direction is given serves a notice under sub-section (2) objecting to the direction, the Minister shall consider the merits of the grounds of the objection and, if so required by the objector, shall afford to him an opportunity of appearing before, and being heard by, a person nominated by the Minister for the purpose (hereinafter in this section referred to as “the nominated person”): and it shall be the duty of the nominated person to consider the merits of the grounds of the objection, and to communicate his opinion to the Minister.

(4) After considering the merits of the grounds of the objection pursuant to subsection (3) above, the Minister shall serve on the objector a notice in writing either—

- (a) confirming the direction as originally given, or
- (b) confirming it subject to one or more modifications specified in the notice under this sub-section, or
- (c) withdrawing the direction;

and the Minister may direct that the direction shall not take effect until it has been confirmed (with or without modification) by a notice served under this sub-section.

(5) It shall be the duty of the Minister, at all times, to have due regard for the opinion communicated to him by the nominated person.

#### **Enforcement notices.**

23.(1) Where the Minister, or a person appointed by him for this purpose, (in this section and sections 24, 27 and 29 referred to as the “appointed person”) is of the opinion that any person has failed to comply with any general requirement of a direction given to him under section 12, 17 or 18 of this Act, the Minister, or the appointed person, as the case may be, may serve on that person a notice (in this Part referred to as an “enforcement notice”)—

- (a) specifying those general requirements of the direction with which he has, in the opinion of the Minister, or the appointed person, as the case may be, failed to comply, and
  - (b) specifying, subject to section 24, the measures that ought to be taken in order to comply with those requirements.
- (2) For the purposes of this section a requirement of a direction given by the Minister under section 12, 17 or 18 is a “general requirement” if the provision imposing the requirement—
- (a) has been included in two or more directions given to different persons (whether or not at the same time), and
  - (b) is framed in general terms applicable to all the persons to whom those directions are given.
- (3) If an enforcement notice is served under this section on the owner, charterer or manager of a ship, then, whether or not that service is effected by virtue of section 35(8), the Minister or the appointed person, as the case may be, may serve on the master of the ship—
- (a) a copy of the enforcement notice and of the direction to which it relates, and
  - (b) a notice stating that the master is required to comply with the enforcement notice,
- and, if he does so, sections 25, 26 and 27 shall have effect as if the enforcement notice had been served on him as well as on the owner, charterer or manager of the ship.

#### **Contents of enforcement notice.**

24.(1) An enforcement notice may specify in greater detail measures which are described in general terms in those provisions of the direction to which it relates which impose general requirements, but may not impose any requirement which could not have been imposed by a direction given by the Minister under the provision under which the direction was given.

(2) An enforcement notice may be framed so as to afford the person on whom it is served a choice between different ways of complying with the specified general requirements of the direction.

(3) Subject to sub-section (4), an enforcement notice which relates to a direction given under section 17 shall require the person to whom the direction was given not to cause or permit things to be done as mentioned in paragraphs (a) or (b) of subsection (1) or in sub-section (2) of that section, as the case requires, until the specified measures have been taken.

(4) In serving an enforcement notice which relates to a direction under section 17(2), the Minister or the appointed person, shall allow, and shall specify in the notice, such period as appears to him to be reasonably required for taking the measures specified in the notice, and the Minister may direct that the notice shall not take effect before the end of the period so specified.

(5) An enforcement notice which relates to a direction given under section 12 or 18 shall either—

- (a) require the person to whom the direction was given to take the specified measures within a specified period which—
  - (i) where the measures consist of or include the construction, execution, alteration, demolition or removal of a building or other works on land outside of the harbour area, shall not be less than thirty days beginning with the date of service of the notice, and
  - (ii) in any other case, shall not be less than seven days beginning with that date; or
- (b) require him not to do specified things, or cause or permit specified things to be done, until the specified measures have been taken.

(6) Subject to section 27(2), an enforcement notice requiring a person not to cause or permit anything to be done shall be construed as requiring him to take all such steps as in any particular circumstances are practicable and necessary to prevent that thing from being done.

#### **Offences relating to enforcement notices.**

25.(1) Any person who, without reasonable excuse, fails to comply with an enforcement notice served on him shall be guilty of an offence and liable—

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

(2) Where following a person's conviction of an offence under subsection (1), without reasonable excuse, the failure in respect of which he was convicted is continued by that person, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 5 on the standard scale for each day during which the failure continues.

(3) Any person who intentionally interferes with any building constructed or works executed on any land in compliance with an enforcement notice or with anything installed on, under, over or across any land in compliance with such a notice is guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale or to a term of imprisonment not exceeding six months or to both;
- (b) on conviction on indictment, to a fine, to a term of imprisonment not exceeding six months or to both.

**Objections to enforcement notices.**

26.(1) The person on whom an enforcement notice is served may serve on the Minister a notice in writing of his objection to the enforcement notice, specifying the grounds of the objection.

- (2) Any notice of objection under sub-section (1) shall be served—
  - (a) where the enforcement notice specifies measures falling within section 24(5)(a)(i), before the end of the period of thirty days beginning with the date on which the enforcement notice was served, or
  - (b) in any other case, before the end of the period of seven days beginning with that date.
- (3) The grounds of objection to an enforcement notice are—
  - (a) that the general requirements of the direction which are specified in the notice for the purposes of section 23(1)(a) have been complied with,
  - (b) that the notice purports to impose a requirement which could not have been imposed by a direction given under the provision under which the direction to which the notice relates was given, or
  - (c) that any requirement of the notice—
    - (i) is unnecessary for complying with the general requirements specified as mentioned in paragraph (a) and should be dispensed with, or
    - (ii) having regard to the terms of those general requirements, is excessively onerous or inconvenient and should be modified in a manner specified in the notice of objection under subsection (1).

(4) Where the person to whom such a direction is given serves a notice under sub-section (1) objecting to the direction, the Minister shall consider the merits of the grounds of the objection and, if so required by the objector, shall afford to him an opportunity of appearing before, and being heard by, a person nominated by the Minister for the purpose (hereinafter in

this section referred to as “the nominated person”): and it shall be the duty of the nominated person to consider the merits of the grounds of the objection, and to communicate his opinion to the Minister.

(5) After considering the merits of the grounds of the objection pursuant to subsection (3) above, the Minister shall serve on the objector a notice in writing either—

- (a) confirming the enforcement notice as originally served, or
- (b) confirming it subject to one or more modifications specified in the notice under this sub-section, or
- (c) cancelling the enforcement notice.

(6) It shall be the duty of the Minister, at all times, to have due regard for the opinion communicated to him by the nominated person.

(7) An enforcement notice to which an objection has been made under sub-section (1)—

- (a) if it contains such a requirement as is mentioned in sub-section (3) or (5)(b) of section 24, shall continue to have effect as originally served until it has been cancelled, or it has been confirmed subject to modification by a notice under sub-section (4), and
- (b) in any other case, the Minister may direct that it shall not take effect until it has been confirmed (with or without modification) by a notice under sub-section (5).

**Enforcement notices: supplementary.**

27.(1) An enforcement notice served on any person—

- (a) may be revoked by a notice served on him by the Minister or an appointed person, as the case may be, and
- (b) may be varied by a further enforcement notice.

(2) Sections 19 and 20 apply to an enforcement notice as they apply to the direction to which the notice relates.

(3) The ownership of any property shall not be affected by reason only that it is placed on or under or affixed to, any land outside the harbour area in compliance with an enforcement notice.

(4) Where the Minister or an appointed person, as the case may be, has served an enforcement notice under section 23 above, the person on whom the notice is served shall not be taken for the purposes of section 12(3), 17(8) or 18(7), to have failed to comply with the direction by reason of the matters specified in the notice.

(5) Sub-section (4) does not apply in relation to any proceedings commenced before the service of the enforcement notice.

(6) Serving an enforcement notice under section 23 above, shall not, in any proceedings, be evidence that any other requirement of the direction to which the enforcement notice relates has been complied with.

(7) In this section “direction” means a direction under section 12,17 or 18.

**Operation of directions under Part III in relation to rights and duties under other laws.**

28.(1) In sub-section (2) to (4) below, references to a direction are references to a direction under section 12, 17 or 18 as it has effect subject to the following provisions–

- (a) section 20, or
- (b) any exemption or immunity of the Crown,

and any reference in those sub-sections to compliance with a direction is a reference to compliance with it subject to any limitation so imposed.

(2) In so far as a direction requires anything to be done or not to be done in Gibraltar, the direction shall have effect notwithstanding anything contained in any contract or contained in, or having effect by virtue of, any other statutory provision or any rule of law, and, accordingly, no proceedings shall lie against any person in any court in Gibraltar by reason of anything done or not done by him or on his behalf in compliance with a direction.

(3) In so far as a direction requires anything to be done or not to be done at a place outside Gibraltar, the direction shall have effect notwithstanding anything contained in any contract and, accordingly, where a direction is inconsistent with anything in such a contract, it shall, without prejudice to any proceedings in a court other than a court in Gibraltar, be construed as requiring compliance with the direction notwithstanding that compliance would be in breach of that contract.

(4) No proceedings for breach of contract shall lie against any person in a court in Gibraltar by reason of anything done or not done by him or on his behalf at a place outside Gibraltar in compliance with a direction, if the contract in question is a contract concluded in Gibraltar, governed by Gibraltar or over which the Supreme Court of Gibraltar has jurisdiction.



(5) Sub-sections (1) to (4) have effect in relation to an enforcement notice as they have effect in relation to a direction under section 12, 17 or 18.

### **Detention of ships.**

29.(1) Where the Captain of the Port or the appointed person, as the case may be, is satisfied that the owner, charterer, manager or master of a ship has failed to comply with –

- (a) a direction given to him under section 17 or 18 in respect of that ship, or
- (b) an enforcement notice which has been served on him in respect of that ship and which relates to such a direction,

and the Captain of the Port or the appointed person certifies in writing to that effect, stating particulars of the non-compliance, the ship may be detained until the Captain of the Port or the appointed person otherwise directs.

(2) Where the Captain of the Port or the appointed person, as the case may be, does not himself detain the ship, he shall deliver the certificate to the person acting on his behalf in detaining the ship.

(3) On detaining the ship, the Captain of the Port, the appointed person or other person acting on his behalf shall deliver to the master of the ship a copy of the certificate.

(4) Section 105 of the Gibraltar Merchant Shipping Act 1993 or section 208 of the Merchant Shipping Act or section 284 of the Merchant Shipping Act 1995, as the case may be, (enforcement of detention of ships) applies in the case of detention under this section as if it were authorised or ordered under that Act or Act, as the case may be.

### **Inspection of ships and harbour areas.**

30.(1) For the purpose of enabling the Minister to determine whether to give a direction to any person under any of sections 12, 17 or 18, or of ascertaining whether any such direction or any enforcement notice is being or has been complied with, an authorised person shall have power, on production (if required) of his credentials, to inspect–

- (a) any Gibraltar ship,
- (b) any other ship while in the harbour area,
- (c) any part of the harbour area, or
- (d) any land outside the harbour area which is occupied for the purposes of a business by a person who–

- (i) carries on (or appears to the authorised person to be about to carry on) harbour operations in the harbour area for the purposes of that business, or
- (ii) is permitted (or appears to the authorised person to be about to be permitted) to have access to a restricted zone of the harbour area for the purposes of the activities of that business.

(2) An authorised person inspecting a ship or any part of the harbour area or any land outside the harbour area under subsection (1) shall have power—

- (a) to subject any property found by him on the ship, but not the ship itself or any apparatus or equipment installed in it, or, as the case may be, to subject that part of the harbour area or any property found by him there or on that land, to such tests,
- (b) to take such steps—
  - (i) to ascertain what practices or procedures are being followed in relation to security, or
  - (ii) to test the effectiveness of any practice or procedure relating to security, or
- (c) to require the owner, charterer, manager or master of the ship, the Captain of the Port or the occupier of the land to furnish to him such information,

as the authorised person may consider necessary for the purpose for which the inspection is carried out.

(3) Subject to sub-section (4), an authorised person, for the purpose of exercising any power conferred on him by subsection (1) or (2) in relation to a ship, to the harbour area or to any land outside the harbour area, shall have power—

- (a) for the purpose of inspecting a ship, to go on board it and to take all such steps as are necessary to ensure that it is not moved, or
- (b) for the purpose of inspecting any part of the harbour area, to enter any building or works in the harbour area or enter upon any land in the harbour area, or
- (c) for the purpose of inspecting any land outside a harbour area, to enter upon the land and to enter any building or works on the land.

(4) The powers conferred by sub-section (3) shall not include power for an authorised person to use force for the purpose of going on board any ship, entering any building or works or entering upon any land.

(5) Any person, other than the Captain of the Port, who—

- (a) without reasonable excuse, fails to comply with a requirement imposed on him under sub-section (2)(c), or
- (b) in furnishing any information so required, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence.

(6) A person guilty of an offence under sub-section (5) shall be liable—

- (a) on summary conviction, to a fine not exceeding level 5 on the standard scale;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

**False statements relating to baggage, cargo etc.**

31.(1) Subject to sub-section (3), a person commits an offence if, in answer to a question which—

- (a) relates to any baggage, cargo or stores (whether belonging to him or to another) that is or are intended for carriage by sea—
  - (i) by a Gibraltar ship, or
  - (ii) by any other ship to or from Gibraltar, and
- (b) is put to him for purposes to which this Part applies—
  - (i) by any of the persons mentioned in sub-section (2),
  - (ii) by any employee or agent of such a person in his capacity as employee or agent, or
  - (iii) by a police officer,

he makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular.

(2) The persons referred to in sub-section (1)(b) are–

- (a) an authorised person;
- (b) the owner, charterer or manager of any ship, and
- (c) any person who–
  - (i) is permitted to have access to a restricted zone of the harbour area for the purpose of the activities of a business carried on by him, and
  - (ii) has control in that restricted zone over the baggage, cargo or stores to which the question relates.

(3) Sub-section (1) does not apply in relation to any statement made by an authorised person in the exercise of the power conferred by section 30(2)(b).

(4) A person guilty of an offence under sub-section (1) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In this section–

“cargo” includes mail;

“ship” does not include a ship used in naval or police service or in the service of the Collector of Customs; and

“stores” means any goods intended for sale or use in a ship, including fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

**False statements in connection with identity documents.**

32.(1) Subject to subsection (4), a person commits an offence if–

- (a) for the purpose of, or in connection with, an application made by him or another for the issue of an identity document to which this subsection applies, or
- (b) in connection with the continued holding by him or another of any such document which has already been issued,

he makes to any of the persons specified in subsection (3), to any employee or agent of such a person or to a police officer, a statement which he knows to be false in a material particular, or recklessly makes to any of those persons, to any such employee or agent or to a police officer, a statement which is false in a material particular.

(2) Subsection (1) applies to any identity document which is to be or has been issued by any of the persons specified in subsection (3) in accordance with arrangements the maintenance of which is required by a direction given by the Minister under section 18.

(3) The persons referred to in sub-section (1) are—

- (a) an authorised person,
- (b) the Captain of the Port,
- (c) the owner, charterer or manager of any ship, and
- (d) any person who is permitted to have access to a restricted zone of the harbour area for the purposes of the activities of a business carried on by him.

(4) Sub-section (1) does not apply in relation to any statement made by an authorised person in the exercise of the power conferred by section 30(2)(b).

(5) A person guilty of an offence under sub-section (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Sea cargo agents.**

33.(1) The Minister may make provision by regulations for any purpose to which this Part applies, and, in particular, but without prejudice to the generality of the foregoing, for the purpose of regulating the conduct and activities of persons (in this section referred to as “sea cargo agents”) who carry on a business of handling cargo which is to be delivered (whether by them or any other person) to the owner, charterer or manager of any ship for carriage by sea from the harbour area.

(2) Regulations under this section may, in particular—

- (a) enable the Minister to maintain a list of sea cargo agents who are approved by him for purposes related to maritime security, to include the name of a sea cargo agent on that list, on application being made to the Minister in accordance with the regulations, if he is satisfied as to such matters as are specified in the regulations, and to remove the name of any person from that list in such circumstances as are so specified,

- (b) provide that any provision of this Part which applies in relation to persons who are permitted to have access to a restricted zone of the harbour area for the purposes of the activities of a business shall also apply, with such modifications as are specified in the regulations, in relation to sea cargo agents included on any such list,
  - (c) amend sections 31(2) and 32(3) by including references to sea cargo agents included on any such list,
  - (d) make provision, including any such provision as is mentioned in paragraphs (a) to (c), relating to a class of sea cargo agents specified in the regulations and not to other sea cargo agents,
  - (e) make different provision for different cases,
  - (f) make such incidental, supplementary or transitional provision as the Minister considers necessary or expedient in consequence of any provision made by the regulations, and
  - (g) make such provision for offences and penalties therefor as the Minister considers necessary or expedient in consequence of any provision made by the regulations.
- (3) Before making any regulations under this section the Minister shall consult organisations appearing to him to represent persons affected by the proposed regulations.
- (4) Without prejudice to the generality of sections 17 and 18, the exemptions that may be included in any direction given to an owner, charterer, manager or master of a ship under section 17 or 18 which requires the carrying out of searches of cargo, or the taking of any other measures in relation to cargo, may include exemptions from such requirements in relation to cargo received from any sea cargo agent included on any list maintained by the Minister under regulations or from any sea cargo agent falling within a class of such sea cargo agents specified in the direction.
- (5) In this section—
- “cargo” includes stores and mail;
- “carriage by sea” does not include carriage by any ship used in naval or police service or the service of the Collector of Customs; and
- “stores” means any goods intended for sale or use in a ship, including fuel and spare parts and other articles of equipment, whether or not for immediate fitting.

**Duty to report certain occurrences.**

34.(1) The Minister may make regulations requiring such persons as may be prescribed, to report to him any occurrence of a prescribed description, in such manner and within such period as may be prescribed.

(2) Before making any regulations under this section, the Minister shall consult organisations appearing to him to represent persons affected by the proposed regulations.

(3) Regulations made under this section may—

(a) provide that any person who, in making a report required by the regulations, makes a statement which he knows to be false in a material particular, or recklessly makes a statement which is false in a material particular, is to be guilty of an offence and liable—

(i) on summary conviction, to a fine not exceeding level 5 on the standard scale;

(ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both; and

(b) provide for persons to be guilty of an offence in such other circumstances as may be specified in the regulations and to be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(c) make such provision for offences and penalties therefor as the Minister considers necessary or expedient in consequence of any provision made by the regulations.

(4) Regulations made under this section may require the reporting of occurrences taking place outside Gibraltar only if those occurrences relate to Gibraltar ships.

#### **Service of documents.**

35.(1) This section has effect in relation to any notice, any document containing a direction and any other document authorised or required by any provision of this Part to be served on or given to any person.

(2) Any such document may be given to or served on any person—

(a) by delivering it to him, or

(b) by leaving it at his proper address, or

(c) by sending it by post to him at that address, or

- (d) by sending it to him at that address by telex, facsimile transmission or other similar means which produce a document containing the text of the communication.
- (3) Any such document may, in the case of a body corporate, be given to or served on the secretary, clerk or similar officer of that body.
- (4) For the purposes of this section and of section 8 of the Interpretation and General Clauses Act (service of documents by post) in its application to this section, the proper address of any person to whom or to whom any document is to be given or served is his usual or last known address or place of business (whether in Gibraltar or elsewhere), except that in the case of a body corporate or its secretary, clerk or similar officer it shall be the address of the registered or principal office of that body in Gibraltar (or, if it has no office in Gibraltar, of its principal office, wherever it may be).
- (5) In the case of a person registered as the owner of any ship or as the representative person of such a person, as the case may be, under the Gibraltar registration provisions, the address for the time being recorded in relation to him in that register shall be treated for the purposes of this section and of section 8 of the Interpretation and General Clauses Act as his proper address.
- (6) If the person on whom any document mentioned in sub-section (1) is to be given or served has notified the Minister of an address within Gibraltar, other than an address determined under sub-section (4) or (5), as the one at which he or someone else on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this section and of section 8 of the Interpretation and General Clauses Act as his proper address.
- (7) In the case of two or more owners registered under the Gibraltar registration provisions, any document mentioned in sub-section (1) shall be deemed to have been duly served on each of those owners—
- (a) in the case of a ship in relation to which a representative person is registered under the provisions of the Gibraltar Merchant Shipping (Registration) Act 1993, if served on that person, and
  - (b) in the case of any other ship, if served on any one of the registered owners.
- (8) Where an enforcement notice is to be served under section 23 on the owner, charterer or manager of a ship, it shall be treated as duly served on him if it is served on the master of the ship in question, but except as provided by section 23(3), the master shall not be obliged by virtue of this subsection to comply with the notice.



(9) Where any document mentioned in sub-section (1) is to be served on the master of a ship, it shall be treated as duly served if it is left on board that ship with the person being or appearing to be in command or charge of the ship.

(10) In this section “the Gibraltar registration provisions” means—

- (a) Part I of the Merchant Shipping Act 1894 read with Part XA of the Merchant Shipping Act, or
- (b) Parts III, IV and VIII of the Gibraltar Merchant Shipping (Registration) Act 1993 and registration regulations made under that Act.

**Offences by bodies corporate.**

36.(1) Where an offence contrary to any provision of this Part, or any provision of this Part as applied by regulations made under section 33, or under regulations made under section 34 has been committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, sub-section (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

**Offences by partnerships.**

37. Where an offence against this Part committed by a partnership is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of a partner, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.