

**FIRST SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 2,550 of 3rd MAY, 1990.

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I ASSENT,  
DEREK REFFELL,  
GOVERNOR.  
3rd May, 1990.



**GIBRALTAR**

**No. 13 of 1990.**

AN ACT to amend the Merchant Shipping Act.

ENACTED by the Legislature of Gibraltar.

**Title.**

1. This Act may be cited as the Merchant Shipping (Amendment) Act, 1990.

**Amendment to section 3H.**

2. Section 3H of the Merchant Shipping Act (hereinafter called "the principal Act") is amended by the omission of the words "Secretary of State" and the insertion in place thereof of the word "Governor".

**New section 33.**

3. The principal Act is amended by inserting after section 32 the following section.

"Account of wages under crew agreement.

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33. (1) Subject to subsections (4) and (5), the master of every ship registered in Gibraltar shall deliver to every seaman employed in the ship under a crew agreement an account of the wages due to him under that crew agreement and of the deductions subject to which the wages are payable.
- (2) The account shall indicate that the amounts stated therein are subject to any later adjustment that may be found necessary and shall be delivered not later than twenty-four hours before the time of discharge or, if the seaman is discharged without notice or at less than twenty-four hours' notice, at the time of discharge.
- (3) If the amounts stated in the account require adjustment the persons who employed the seaman shall deliver to him a further account stating the adjusted amounts; and that account shall be delivered not later than the time at which the balance of his wages is payable to the seaman.
- (4) Where subsection (4) or (5) of section 35 applies to the payment of any amount of wages due to a seaman under a crew agreement
- (a) the persons who employed the seaman shall deliver to him an account of the wages payable to him under that subsection and of the deductions subject to which the wages are payable; and
- (b) any such account shall be so delivered at the time when the wages are paid to him; and
- (c) subsections (1) to (3) of this section shall not apply; and section 35(10) shall apply for the purposes of this subsection as it applies for the purposes of that section.
- (5) Where a seaman is employed under a crew agreement relating to more than one ship any account which under the preceding provisions of this section would be required to be delivered to him by the master shall instead be delivered to him by the persons employing him and shall be so delivered on

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or before the termination of his employment under the crew agreement.

(6) If a person fails without reasonable cause to comply with the preceding provisions of this section he shall be liable on summary conviction to a fine of £100."

**New section 35.**

4. Section 35 of the principal Act is repealed and the following section is substituted therefor

"Payment of seamen's wages.

35. (1) Where a seaman employed under a crew agreement relating to a ship leaves the ship on being discharged from it, then, except as provided by or under this Act or any other enactment, the wages due to the seaman under the agreement shall either
- (a) be paid to him in full at the time when he so leaves the ship (in this section and section 31 referred to as the time of discharge), or
  - (b) be paid to him in accordance with subsections (4) and (5).
- (2) If the amount shown in the account delivered to a seaman under section 31 as being the amount payable to him under subsection (1)(a) of this section is replaced by an increased amount shown in a further account delivered to him under section 31(3), the balance shall be paid to him within seven days of the time of discharge; and if the amount so shown in the account delivered to him under section 31(1) exceeds f50 and it is not practicable to pay the whole of it at the time of discharge, not less than £50 nor less than one-quarter of the amount so shown shall be paid to him at that time and the balance within seven days of that time.
- (3) If any amount which, under subsection (1)(a) or (2) is payable to a seaman is not paid at the time at which it is so payable the seaman shall be entitled to wages at the rate last payable under the crew agreement for every day on which it remains unpaid

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during the period of fifty-six days following the time of discharge; and if any such amount or any amount payable by virtue of this subsection remains unpaid after the end of that period it shall carry interest at the rate of 20 per cent per annum.

- (4) Where the crew agreement referred to in subsection (1) provides for the seaman's basic wages to be payable up-to-date at specified intervals not exceeding one month, and for any additional amounts of wages to be payable within the pay cycle following that to which they relate, any amount of wages due to the seaman under the agreement shall (subject to subsection (5)) be paid to him not later than the date on which the next payment of his basic wages following the time of discharge would have fallen due if his employment under the agreement had continued.
- (5) If it is not practicable, in the case of any amount due to the seaman by way of wages additional to his basic wages, to pay that amount by the date mentioned in subsection (4), that amount shall be paid to him not later than what would have been the last day of the pay cycle immediately following that date if his employment under the crew agreement had continued.
- (6) If any amount which, under subsection (4) or (5) is payable to a seaman is not paid at the time at which it is so payable, it shall carry interest at the rate of 20 per cent per annum.
- (7) The provisions of subsection (3) or (6) shall not apply if the failure to pay was due to a mistake, to a reasonable dispute as to liability or to the act or default of the seaman or to any other cause, not being the wrongful act or default of the persons liable to pay his wages or of their servants or agents; and so much of that subsection as relates to interest on the amount due shall not apply if a court in proceedings for its recovery so directs.
- (8) Where a seaman is employed under a crew agreement relating to more than one ship the preceding provisions of this section shall have effect, in relation to wages due to him under the agreement, as if for any reference to the time of discharge there

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were substituted a reference to the termination of his employment under the crew agreement.

- (9) Where a seaman is discharged from a ship outside Gibraltar but returns to Gibraltar under arrangements made by the persons who employed him, the preceding provisions of this section shall have effect, in relation to the wages due to him under a crew agreement relating to the ship, as if for the references in subsections (1) to (4) to the time of discharge there were substituted references to the time of his return to Gibraltar.
- (10) For the purposes of this section any amount of wages shall, if not paid to him in cash, be taken to have been paid to a seaman
- (a) on the date when a cheque, or a money or postal order issued by the Post Office, for that amount was despatched by the recorded delivery service to the seaman's last-known address, or
  - (b) on the date when any account kept by the seaman with a bank or other institution was credited with that amount."

**Safety of navigation etc.**

5. The principal Act is further amended by inserting after section 101A the following new sections.

"Saving.

101B Sections 101C to 101E inclusive shall have effect without prejudice to section 101A

Owner and master liable in respect of dangerously unsafe ship.

101C (1) If, having regard to the nature of the service for which it is intended -

- (a) a ship in Gibraltar, or
- (b) a ship registered in Gibraltar which is in any other port, is, by reason of, any of the matters mentioned in

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subsection (3), not fit to go to sea without serious danger to human life, then, subject to subsections (5) and (6), the master and the owner of the ship shall each be guilty of an offence.

- (2) Where, at the time when a ship is not fit to go to sea as mentioned in subsection (1), any responsibilities of the owner with respect to the particular matters by reason of which the ship is not fit to go to sea have been assumed (whether wholly or in part) by any person or persons other than the owner, and have been so assumed by that person or (as the case may be) by each of those persons either
  - (a) directly, under the terms of a charter-party or management agreement made with the owner, or
  - (b) indirectly, under the terms of a series of charter-parties or management agreements, the reference to the owner in subsection (1) shall be construed as including a reference to that other person or (as the case may be) to each of those other persons.
- (3) The matters referred to in subsection (1) are
  - (a) the condition, or the unsuitability for its purpose, of
    - (i) the ship or its machinery or equipment, or
    - (ii) any part of the ship or its machinery or equipment;
  - (b) undermanning;
  - (c) overloading or unsafe or improper loading;
  - (d) any other matter relevant to the safety of the ship. .
- (4) A person guilty of an offence under this section shall be liable-
  - (a) on summary conviction, to a fine not exceeding 50,000;
  - (b) on conviction on indictment, to imprisonment for a term of two years and a fine.

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- (5) It shall be a defence in proceedings for an offence under this section to prove that at the time of the alleged offence -
    - (a) arrangements had been made which were appropriate to ensure that before the ship went to sea it was made fit to do so without serious danger to human life by reason of the matters falling within subsection (3) which are specified in the charge; or
    - (b) it was reasonable for such arrangements not to have been made.
  
  - (6) It shall also be a defence in proceedings for an offence under this section to prove -
    - (a) that, under the terms of one or more charterparties or management agreements entered into by the defendant, the relevant responsibilities, namely –
      - (i) where the defendant is the owner, his responsibilities with respect to the matters referred to in subsection (5)(a), or
      - (ii) where the defendant is liable to proceedings under this section by virtue of subsection (2), so much of those responsibilities as had been assumed by him as mentioned in that subsection
- had at the time of the alleged offence been wholly assumed by some other person or persons party thereto; and
- (b) that in all the circumstances of the case the defendant had taken such steps as it was reasonable for him to take, and exercised such diligence as it was reasonable for him to exercise, to secure the proper discharge of the relevant responsibilities during the period during which they had been assumed by some other person or persons as mentioned in paragraph (a);

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and, in determining whether the defendant had done so, regard shall be had in particular to the matters mentioned in subsection (7).

- (7) Those matters at
- (a) whether prior to the time of the alleged offence the defendant was, or in all the circumstances ought reasonably to have been, aware of any deficiency in the discharge of the relevant responsibilities; and
  - (b) the extent to which the defendant was or was not able, under the terms of any such charterparty or management agreement as is mentioned in subsection (6)(a) -
    - (i) to terminate it, or
    - (ii) to intervene in the management of the ship, in the event of any such deficiency, and whether it was reasonable for the defendant to place himself in that position.
- (8) No proceedings for an offence under this section shall be instituted except by or with the consent of the Attorney-General.
- (9) In this section -

"management agreement", in relation to a ship, means any agreement (other than a charterparty or a contract of employment) under which the ship is managed, either wholly or in part, by a person other than the owner (whether on behalf of the owner or on behalf of some other person);

"relevant responsibilities" shall be construed in accordance with subsection (6);

and any reference in this section to going to sea shall, in a case where the service for which a ship is intended consists of going on voyages or excursions that do not involve going to sea, be construed as a reference to going on such a voyage or excursion.



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- (10) References in this section to responsibilities being assumed by any person under the terms of a charter-party or management agreement are references to their being so assumed by him whether or not he has entered into a further charter-party or management - agreement providing for them to be assumed by some other person.

**Owner liable for unsafe operation of ship.**

101D (1) It shall be the duty of the owner of a ship to which this section applies to take all reasonable steps to secure that the ship is operated in a safe manner.

- (2) This section applies to -
- (a) any ship registered in Gibraltar; and
  - (b) any ship which -
    - (i) is registered under the law of any country outside Gibraltar, and
    - (ii) is within the seaward limits of the territorial waters of Gibraltar while proceeding to or from Gibraltar, unless the ship would not be so proceeding but for weather conditions or any other unavoidable circumstances.
- (3) If the owner of a ship to which this section applies fails to discharge the duty imposed on him by subsection (1), he shall be guilty of an offence and liable -
- (a) on summary conviction, to a fine not exceeding M000;
  - (b) on conviction on indictment, to imprisonment for two years and a fine.
- (4) Where any such ship -
- (a) is chartered by demise, or

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- (b) is managed, either wholly or in part, by a person other than the owner under the terms of a management agreement within the meaning of section 101C,

any reference to the owner of the ship in subsection (1) or (3) shall be construed as including a reference -

- (i) to the charterer under the charter by demise, or
- (ii) to any such manager as is referred to in paragraph (b), or
- (iii) (if the ship is both chartered and managed as mentioned above) to both the charterer and any such manager,

and accordingly the reference in subsection (1) to We taking of all reasonable steps shall, in relation to the owner, the charterer or any such manager, be construed as a reference to the taking of all such steps as it is reasonable for him to take in the circumstances of the case.

- (5) No proceedings for an offence under this section shall be instituted except by or with the consent of the Attorney-General.

**Conduct endangering ships, structures or individuals.**

101E (1) This section applies-

- (a) to the master of, or any seaman employed in, a or ship registered in Gibraltar; and
- (b) to the master of, or any seaman employed in, a ship which—
  - (i) is registered under the law of any country outside Gibraltar, and
  - (ii) is in Gibraltar or within the seaward limits of the territorial waters of Gibraltar while proceeding to or from Gibraltar.

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- (2) If a person to whom this section applies, while on board his ship or in its immediate vicinity
- (a) does any act which causes or is likely to cause -
    - (i) the loss or destruction of or serious damage to his ship or its machinery, navigational equipment or safety equipment, or
    - (ii) the loss or destruction of or serious damage to any other ship or any structure, or
    - (iii) the death of or serious injury to any person, or
  - (b) omits to do anything required
    - (i) to preserve his ship or its machinery, navigational equipment or safety equipment from being lost, destroyed or seriously damaged, or
    - (ii) to preserve any person on board his ship from death or serious injury, or
    - (iii) to prevent his ship from causing the loss or destruction of or serious damage to any other ship or any structure, or the death of or serious injury to any person not on board his ship, and either of the conditions specified in subsection (3) is satisfied with respect to that act or omission, he shall (subject to subsections (b) and (7)) be guilty of an offence.
- (3) Those conditions are
- (a) that the act or omission was deliberate or amounted to a breach or neglect of duty;
  - (b) that the master or seaman in question was under the influence of drink or a drug at the time of the act or omission.

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- (4) If a person to whom this section applies -
- (a) discharges any of his duties, or performs any other function in relation to the operation of his ship or its machinery or equipment, in such a manner as to cause, or to be likely to cause, any such loss, destruction, death or injury as is mentioned in subsection (2)(a), or
  - (b) fails to discharge any of his duties, or to perform any such function, properly to such an extent as to cause, or to be likely to cause, any of those things, he shall (subject to subsections (6) and (7)) be guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable-
- (a) on summary conviction, to a fine not exceeding £2,000;
  - (b) on conviction on indictment, to imprisonment for two years and a fine.
- (6) In proceedings for an offence under this section it shall be a defence to prove -
- (a) in the case of an offence under subsection (2) where the act or omission alleged against the defendant constituted a breach or neglect of duty, that the defendant took all reasonable steps to discharge that duty;
  - (b) in the case of an offence under subsection (4) that the defendant took all reasonable precautions and exercised all due diligence to avoid committing the offence; or
  - (c) in the case of an offence under either of those subsections -
    - (i) that he could have avoided committing the offence only by disobeying a lawful command, or

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- (ii) that in all the circumstances the loss, destruction, damage, death or injury in question, or (as the case may be) the likelihood of its being caused, either could not reasonably have been foreseen by the defendant or could not reasonably have been avoided by him.
  
- (7) In the application of this section to any person falling within subsection (1)(b), subsections (2) and (4) shall have effect as if paragraphs (a)(i) and (b)(i) of subsection (2) were omitted; and no proceedings for an offence under this section shall be instituted against any such person, except by or with the consent of the Attorney-General.
  
- (8) In this section
  - "breach or neglect of duty", except in relation to a master, includes any disobedience to a lawful command;
  
  - "duty"—
    - (a) in relation to a master or seaman, means any duty falling to be discharged by him in his capacity as such; and
  
    - (b) in relation to a master, includes his duty with respect to the good management of his ship and his duty with respect to the safety of operation of his ship, its machinery and equipment; and
  
  - "structure" means any fixed or movable structure (of whatever description) other than a ship."

**New section 142A.**

6. The principal Act is further amended by inserting after section 142 the following section -

**Power to summon witness to inquiry.**

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142A. (1) The persons holding an inquiry under section 142 may -

- (a) by summons require any person to attend, at a time and place stated in the summons, to give evidence or to produce any documents in his custody or under his control which relate to any matter in question at the inquiry; and
  - (b) take evidence on oath (and for that purpose administer oaths) or, instead of administering an oath, require the person examined to make a solemn affirmation.
- (2) If on the failure of a person to attend such an inquiry in answer to a summons under this section -
- (a) the persons holding the inquiry are satisfied by evidence on oath
    - (i) that the person in question is likely to be able to give material evidence or produce any document which relates to any matter in question at the inquiry, and
    - (ii) that he has been duly served with the summons, and
    - (iii) that a reasonable sum has been paid or tendered to him for costs and expenses, and
  - (b) it appears to them that there is no just excuse for the failure, they may issue a warrant to arrest him and bring him before the inquiry at a time and place specified in the warrant.
- (3) If any person attending or brought before such an inquiry refuses without just excuse to be sworn or give evidence, or to produce any document, the persons holding the inquiry may
- (a) commit him to custody until the end of such period not exceeding one month as may be specified in the

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warrant or until he gives evidence or produces  
the - document (whichever occurs first), or

- (b) impose on him a fine not exceeding £1,000, or both.
- (4) A fine imposed under subsection (3)(b) shall be treated for the purposes of its collection, enforcement and remission as having been imposed by the magistrates' court, and the persons holding the enquiry shall, as soon as practicable after imposing the fine, give particulars of it to the clerk of that court."

**Amendment to section 204.**

7. Section 204 of the principal Act is amended -

- (a) by repealing subsection (1) and substituting therefor the following subsection -

"(1) No person other than

- (a) a British citizen;
- (b) a British Dependent Territories citizen;
- (c) a British Overseas citizens;
- (d) a person who under the British Nationality Act 1981 is a British subject;
- (e) persons who under the Hong Kong (British Nationality) Order 1986 are British Nationals (Overseas);
- (f) a citizen of the Republic of Ireland;
- (g) such other persons as may be specified by the Governor by notice in the Gazette.

shall be employed or act at master, chief officer or chief engineer of a ship registered in Gibraltar;

Provided that the Governor may exempt any person from the provisions of this subsection for such time and subject to such conditions as the Governor may think fit. "

- (b) in subsection (5) by omitting the words "British subject" and substituting therefor the words "is a person mentioned in paragraphs (a) to (g) inclusive of subsection (1)".

**Amendment to Schedule 3.**

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8. Schedule 3 of the principal Act is amended by

- (a) the omission in Part A Regulation 3.1. of the words "Subject to paragraph (3) M this regulation,";
- (b) the omission in Part A Regulation 3 of paragraph 2;
- (c) the omission in Part A New Regulation of everything after "country - " and the insertion in place thereof of the following words –
  - "(a) that has ratified the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978; or,
  - (b) not being a country to which (a) above applies, that has been specified by the Governor by notice in the Gazette as such a country;

and has been specified by the Governor by notice in the Gazette for the purposes of this regulation, shall be deemed to be the holder of a certificate of competency of a corresponding class granted under these regulation.";

- (d) the omission in Part B of Regulation 3 and the replacement thereof as follows -

**“Regulation 3**

1. For paragraph (1) substitute

"(1) Subject to paragraphs (2) and (3) of this regulation Parts II to IV of these regulations apply to

- (a) all ships registered in Gibraltar; or
- (b) any other ships which carry passengers on a voyage which begins and end` in Gibraltar and on which the ship calls at no place outside Gibraltar."..
- (e) the omission in Part B New Regulation of everything after "country - " and the insertion in place thereof of the following words



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- “(a) that has ratified the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978;  
or
- (b) not being a country to which (a) above applies that has been specified by the Governor by notice in the Gazette as such a country;

and has been specified by the Governor by notice in the Gazette for the purposes of this regulation, shall be deemed to be the holder of a certificate of competency of a corresponding class granted under these regulations:"  
".

Passed by the. Gibraltar House of Assembly on the 15th day of February, 1990.

C. M. COOM,

Clerk to the Assembly.