

**FIRST SUPPLEMENT TO THE GIBRALTAR
GAZETTE**

No. 3,095 of 25th March, 1999



I ASSENT,

RICHARD LUCE,

GOVERNOR.

25th March, 1999.



GIBRALTAR

No. 10 of 1999

AN ACT for the purpose of transposing into the law of Gibraltar Council Directive 95/21/EC as amended by Council Directive 98/25/EC and Commission Directive 98/42/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control).

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Merchant Shipping Act (Amendment) (Port State Control) Act, 1999.

Amendment of Merchant Shipping Act.

2. After Part V of the Merchant Shipping Act there shall be inserted the following –

“PART VA

IMPLEMENTATION OF COUNCIL DIRECTIVE 95/21/EC

PORT STATE CONTROL

Interpretation of Part VA.

132A. In this Part, unless the context otherwise requires –

“the Acts” means the Act and the Merchant Shipping Acts of the United Kingdom having effect in Gibraltar;

“British ship” means a ship which is –

- (a) registered in Gibraltar under the provisions of the Gibraltar Merchant Shipping (Registration) Act 1993; or
- (b) registered under Part II of the Merchant Shipping Act 1995; or
- (c) a Government ship, within the meaning of section 56 of the Gibraltar Merchant Shipping (Registration) Act 1993 or registered in the United Kingdom in pursuance of an Order in Council under section 308 of the Merchant Shipping Act 1995; or
- (d) registered under the law of another relevant British possession; or

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

- (e) a small ship other than a fishing vessel and –
- (i) is not registered under Part II of the Merchant Shipping Act 1995 but;
 - (ii) is wholly owned by qualified persons; and
 - (iii) is not registered under any jurisdiction outside Gibraltar,

and for the purposes of paragraph (e) –

“qualified persons” has the meaning given to that expression in section 7(3) of the Gibraltar Merchant Shipping (Registration) Act 1993; and

“small ship” means a ship less than 24 metres in length (“length” having the same meaning as in the tonnage regulations);

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

“clear grounds” means evidence which in the professional judgment of an inspector warrants a more detailed inspection of a ship, its equipment or its crew, including in particular criteria listed in Annex III of Schedule 1A;

“Conventions” means –

- (a) the International Convention on Load Lines, 1966 (LL 66);
- (b) the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
- (c) the International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol relating thereto (MARPOL 73/78);

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

- (d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78);
- (e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
- (f) the International Convention on Tonnage Measurement of Ships, 1969 and the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No. 147);

together with the Protocols and amendments to these Conventions and related Codes of mandatory status, in force at 1st July 1998, and

a reference to a Convention is a reference to any of the Conventions;

“Convention enactments” means –

- (a) the Acts; and
- (b) regulations and statutory instruments made, or treated as made, under the Acts, (including statutory instruments made, or treated as made, under an Order under the Acts) which implement the Conventions;

“Directive” means Council Directive 95/21/EC as amended by Council Directive 98/25/EC and Commission Directive 98/42/EC concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control);

“expanded inspection” means an inspection specified in section 132F;

“fishing vessel” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

“flag administration” in relation to a ship means the administration of the State whose flag the ship is entitled to fly;

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

“inspector” means a person –

- (a) duly appointed by the Minister to carry out inspections required by this Act; or
- (b) appointed under section 116(2) for the purposes of section 132H(2);

“Maritime and Coastguard Agency” means the Maritime and Coastguard Agency, an executive agency of the Department of the Environment, Transport and the Regions of the United Kingdom;

“Merchant Shipping Notice” means a notice described as such, issued by the Captain of the Port, and reference to a specific Merchant Shipping Notice includes a reference to any document amending or replacing that notice which is considered by the Captain of the Port to be relevant from time to time and is specified in a Merchant Shipping Notice;

“the Minister” means the Minister with responsibility for the Port;

“more detailed inspection” means an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected, in the circumstances specified in section 132E(3), to an in-depth inspection covering the ship’s construction, equipment, manning, living and working conditions and compliance with on-board operational procedures;

“MOU” means the Memorandum of Understanding on Port State Control, signed in Paris on 26th January 1982, as it stands on 14th January, 1998;

“offshore installation” means a fixed or floating platform operating for the time being in those tidal waters and parts of the sea adjacent to Gibraltar which are subject to the dominion of Her Majesty;

“owner” includes, in relation to a ship, any operator, manager, charterer or agent of the ship;

“Port” has the meaning given to it in the Port Act;

“ship” includes hovercraft;

“stoppage of an operation” means a formal prohibition of a ship to continue an operation due to established deficiencies which, individually or together, would render the continued operation hazardous.

Application of Part VA.

132B.(1) Subject to sub-section (2), this Part applies to any seagoing ship:

- (a) in the port or an offshore installation; or
- (b) anchored off such a port or such an installation (except in waters which are not Gibraltar waters),

and its crew.

(2) This Part does not apply to –

- (a) a British ship;
- (b) a fishing vessel;
- (c) a ship of war;
- (d) a naval auxiliary;
- (e) a wooden ship of a primitive build;
- (f) a government ship used for non-commercial purposes; or
- (g) a pleasure yacht not engaged in trade.

(3) In the case of a ship below 500 gross tonnage to the extent to which a Convention does not apply, an inspector shall, without prejudice to any other powers under the Acts or statutory instruments made under them, take such action as may be necessary to ensure that the ship is not clearly hazardous to safety, health or the environment and in his application of this sub-section, an inspector shall be guided by Annex 1 to the MOU.

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

(4) When inspecting a ship pursuant to sections 132D to 132G no more favourable treatment shall be given to a ship flying the flag of a State which is not a party to a Convention or to the crew of such a ship than that given to a ship flying the flag of a State which is a party to that Convention or to the crew of such a ship.

(5) Where –

- (a) a ship to which this Part applies is detained under a Convention enactment; or
- (b) the master of such a ship is served with a detention notice under such an enactment;

section 208 (enforcing detention of ship) shall apply in relation to the ship as if any reference to proceeding to sea were a reference to proceeding contrary to the detention notice and references to sending or taking to sea were construed accordingly.

Competent Authority.

132C.(1) The Captain of the Port is designated the competent authority for Gibraltar for the purpose of the Directive and this Part.

(2) In relation to the United Kingdom “competent authority” means the Maritime and Coastguard Agency.

(3) In relation to a member State other than the United Kingdom “competent authority” means the national maritime administration maintained by that State for the inspection of ships.

(4) In relation to a state other than a member State “competent authority” means any authority so designated by that State.

Inspection commitments.

132D.(1) The Captain of the Port shall carry out in Gibraltar such number of inspections of individual ships entering the Port and to which this Part applies as may be specified by the Minister and which will result in compliance in respect of Gibraltar with the obligation placed on the Member State United Kingdom by Article 5.1 of the Directive.

(2) In selecting ships for inspection the Captain of the Port shall give overriding priority to the ships referred to in Annex I, Part I of Schedule 1A. In determining the order of priority for inspection of the other ships listed in Annex I of Schedule 1A the Captain of the Port shall use the ship's overall target factor referred to in Annex I, Part II of that Schedule.

(3) The Captain of the Port shall refrain from inspecting a ship which has been inspected by the competent authority of any member State in accordance with the Directive within the previous six months, provided that –

- (a) the ship is not in a category listed in Annex I of Schedule 1A;
- (b) no deficiencies have been reported, following a previous inspection; and
- (c) no clear grounds exist for carrying out an inspection.

(4) The provisions of sub-section (3) shall not apply to any of the operational controls specifically provided for in the Convention enactments.

(5) For the purposes of subsection (1) a ship shall not be deemed to have entered the Port unless it is tied up alongside a harbour wall to load and unload.

Inspection procedure.

132E.(1) In carrying out an inspection referred to in section 132D, the inspector shall as a minimum –

- (a) check the certificates and documents listed in Annex II of Schedule 1A to the extent applicable; and
- (b) satisfy himself of the overall condition of the ship, including the engine room and accommodation and including hygienic conditions.

(2) The inspector may examine all relevant certificates and documents, other than those listed in Annex II of Schedule 1A which are required to be carried on board in accordance with the Convention enactments.

(3) Whenever there are clear grounds for believing, after the inspection referred to in sub-sections (1) and (2), that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention enactment, a more detailed inspection shall be carried out, including further checking of compliance with onboard operational requirements.

(4) The inspector shall also observe the relevant procedures and guidelines for the control of ships specified in Annex IV of Schedule 1A.

Expanded inspection of certain ships.

132F.(1) Where there are clear grounds for a more detailed inspection of a ship belonging to the categories listed in Annex V, section A of Schedule 1A an expanded inspection shall be carried out taking into account the guidelines in Annex V, section B of that Schedule.

(2) A ship referred to in sub-section (1) shall be subject to an expanded inspection by any of the competent authorities of the member States only once during a period of 12 months. However, the ship may be subject to the inspection provided for in section 132E(1) and (2).

(3) Subject to sub-section (2), in the case of a passenger ship operating on a regular schedule in or out of the Port, an expanded inspection of the ship shall be carried out before the ship starts operating on the schedule and every 12 months thereafter by the Captain of the Port subject to consultation with the competent authority of a member State, if the ship operates to ports in that member State.

Report of inspection to the master.

132G.(1) On completion of an inspection, a more detailed inspection, or an expanded inspection, the master of the ship shall be provided by the inspector with a document in the form specified in Annex 3 to the MOU, giving the results of the inspection and details of any decisions taken by the inspector, and of corrective action to be taken by the master, owner or operator.

(2) In the case of deficiencies warranting the detention of a ship, the document to be given to the master in accordance with sub-section (1) shall include information about the future publication of information concerning the detention in accordance with section 132o.

Rectification and detention.

132H.(1) The owner shall satisfy the Captain of the Port that any deficiencies confirmed or revealed by an inspection referred to in section 132E or 132F are or will be rectified in accordance with the Conventions.

(2) In case of deficiencies which are clearly hazardous to safety, health or the environment, the inspector shall detain the ship, or require the stoppage of the operation in the course of which the deficiencies have been revealed, using powers of detention in section 116 or other powers in the Convention enactments, as appropriate.

(3) A detention notice issued for the purposes of sub-section (2) may –

- (a) include a direction that a ship shall remain in a particular place, or shall move to a particular anchorage or berth;
- (b) specify circumstances when the master of the ship may move his ship from a specified place for reasons of safety or prevention of pollution; and

(c) inform the master of the ship of his rights under section 132J.

(4) The detention notice or stoppage of an operation shall not be lifted until Captain of the Port establishes that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the health and safety of passengers or crew, or risk to other ships, or without there being an unreasonable threat or harm to the marine environment.

(5) Without prejudice to any other requirement in the Convention enactments, when exercising his professional judgement as to whether or not a ship should be detained the inspector shall apply the criteria set out in Annex VI of Schedule 1A.

(6) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the inspector may, in addition to detaining the ship, suspend the inspection of that ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(7) Without prejudice to any other requirement in the Convention enactments, in the event that an inspection referred to in section 132E or 132F gives rise to detention, the Captain of the Port shall –

- (a) immediately inform in writing, the flag administration or the Consul or, in his absence, the diplomatic representative in the United Kingdom of the State of the flag administration, of all the circumstances in which intervention was deemed necessary; and
- (b) where relevant, notify nominated surveyors or recognized organisations responsible for the issue of the ship's certificates.

(8) The provisions of this Part shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

(9) When carrying out inspections under this Part, the inspector shall make all possible efforts to avoid a ship being unduly detained or delayed.

Procedures applicable in the absence of ISM certificates.

132I.(1) Where an inspection reveals that a copy of the document of compliance or the safety management certificate issued in accordance with the International Management Code for the safe operation of ships and for pollution prevention (ISM Code) is missing on board a ship to which, within the Community, the ISM Code is applicable at the date of that inspection, the inspector shall detain the ship.

(2) Notwithstanding the absence of the documentation referred to in subsection (1), if the inspector finds no other deficiencies warranting detention he may lift the detention order in order to avoid port congestion but shall forthwith inform the competent authorities of other Member States of that decision.

(3) Where a ship has been authorised to leave a port in a Member State under the circumstances described in paragraph (2), the Captain of the Port shall refuse entry of that ship to the Port except in the circumstances referred to in section 132L(9) until such time as the owner or operator of the ship has demonstrated to the Captain of the Port that he has satisfied the competent

authority of the Member State in which the detention was ordered, that the ship possesses valid certificates issued in accordance with the ISM Code. Where, however, the deficiencies referred to in section 132H(2) and (4) are revealed and cannot be rectified in the port of detention, the relevant provisions of section 132L shall apply.

References of detention notices to the Supreme Court.

132J.(1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of a power of detention to which this section applies in connection with any opinion formed by the inspector constituted a valid basis for that opinion shall, if the master or owner of the ship so requires by a notice given to the inspector within 21 days from the service of the detention notice, be referred to the Supreme Court (hereinafter referred to as “the Court”), following the procedure laid down in section 117(4).

(2) A reference to the Court under subsection (1) shall be given an expedited hearing.

(3) Where a notice is given by the master or owner of the ship in accordance with sub-section (1), the giving of the notice shall not suspend the operation of the detention notice.

(4) The Court shall have regard, in coming to its decision, to any other matters not specified in the detention notice which appear to it to be relevant as to whether the ship was or was not liable to be detained.

(5) Where on a reference under this section the Court decides as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector’s decision, it shall either cancel the detention notice or affirm it with such modifications as it may in the circumstances think fit; and in any other case the Court shall affirm the notice in its original form.

(6) The Court shall include in its decision a finding whether there was or was not a valid basis for the detention of the ship.

(7) In connection with its functions under this section the Court shall have powers to confer on inspectors the powers recited in section 259 of the Merchant Shipping Act 1995.

Compensation in connection with invalid detention of ship.

132K. If on a reference under section 132J relating to a detention notice in relation to a ship, the owner of the ship proves to the satisfaction of the Court that –

- (a) any matter did not constitute a valid basis for the relevant inspector's opinion, and
- (b) there were no reasonable grounds for the inspector to form that opinion,

the provisions of section 117(1) relating to costs and compensation shall apply.

Follow-up to inspections and detention.

132L.(1) Where deficiencies referred to in section 132H(2) and (4) cannot be rectified in Gibraltar, the Captain of the Port may allow the ship to proceed to the nearest appropriate repair yard available, as chosen by the master and the responsible parties, provided that the conditions determined by the competent authority of the flag administration and agreed by the Captain of the Port are complied with.

(2) The conditions referred to in sub-section (1) shall ensure that the ship can proceed without risk to the health and safety of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

(3) In the circumstances referred to in sub-sections (1) and (2), the Captain of the Port shall notify the competent authority of the State where the repair yard is situated, the parties referred to in section 132H(7) and any other authority, as appropriate, of all the conditions for the voyage.

(4) The notification of the parties referred to in sub-section (3) shall be in accordance with Annex 2 to the MOU.

(5) Where the Captain of the Port receives notification from the competent authority of the United Kingdom or another member State in respect of a ship which that authority ("the notifying authority") has, pursuant to Article 11.1

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

of the Directive as having effect in that State, allowed to proceed to a repair yard in Gibraltar, the Captain of the Port shall inform the notifying authority of the action he has taken.

- (6)
- (a) A ship to which this sub-section applies which proceeds to sea from any port in any member State:
 - (i) without complying with the conditions determined by the competent authority of the member State in the port of inspection; or
 - (ii) which fails to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard;

shall not enter the port in Gibraltar, until the owner has provided evidence to the satisfaction of the competent authority of the Member State where the ship was found defective that the ship fully complies with all applicable requirements of the Conventions.

- (b) This sub-section applies to a ship detained in a port in a member State after inspection has revealed deficiencies which are clearly hazardous to safety, health or the environment, which has been allowed by the competent authority to proceed to the nearest appropriate repair yard.

(7) If a ship proceeds to sea from the Port without complying with the conditions determined by the Captain of the Port in accordance with sub-section (1), the Captain of the Port shall immediately alert the competent authorities of the United Kingdom and the other member States.

(8) If a ship to which sub-section (5) applies is to proceed to a repair yard in Gibraltar, but fails to call into the indicated repair yard, the Captain of the Port shall immediately alert the competent authorities of the United Kingdom and the other member States.

(9) Notwithstanding the provisions of sub-section (6), access to the Port may be permitted by the Captain of the Port in the event of force majeure or overriding safety considerations, or to reduce or minimize the risk of

pollution or to have deficiencies rectified, provided adequate measures to the satisfaction of the Captain of the Port have been implemented by the owner or the master of the ship to ensure safe entry.

Professional Profile of Inspectors.

132M.(1) Inspections under this Part shall be carried out only by inspectors who fulfill the criteria specified in Annex VII of Schedule 1A.

(2) When the required professional expertise cannot be provided by the Captain of the Port, the inspector may be assisted by any person with the required professional expertise.

(3) An inspector and any person assisting him shall have no commercial interest either in the Port or in the ships inspected, nor shall an inspector be employed by or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.

(4) An inspector shall carry a personal document in the form of an identity card issued by the Captain of the Port indicating that the inspector is authorised to carry out inspections.

Report from pilots and persons concerned in the operation of the Port.

132N.(1) A pilot, engaged in the berthing or unberthing of a ship to which this Part applies in Gibraltar or engaged on such a ship bound for a port within a member State, shall immediately inform –

- (a) in the case of a pilot appointed and licensed in accordance with section 180, the Captain of the Port; or
- (b) in the case of other pilots:
 - (i) the Captain of the Port; or
 - (ii) the competent authority of another member State,

as appropriate, whenever they learn in the course of their normal duties that there are deficiencies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.

(2) Where any person concerned in the operation of the Port when exercising his normal duties, learns that such a ship within the Port has deficiencies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, he shall immediately inform the Captain of the Port.

Publication of detentions.

132O.(1) The Minister shall, as a minimum, publish quarterly information concerning ships to which this Part applies detained during the previous 3 month period and which have been detained more than once during the past 24 months.

(2) The following shall be included in the information published under sub-section (1) –

- (a) the name of the ship;
- (b) the name of the shipowner or the operator of the ship;
- (c) the IMO number;
- (d) the flag State;
- (e) the classification society, where relevant, and, if applicable, any other Party which has issued certificates to such ship in accordance with the Conventions on behalf of the flag State;
- (f) the reason or reasons for detention; and
- (g) the date of detention.

Reimbursement of costs.

132P.(1) The Minister may make regulations prescribing the fees payable in respect of an inspection which results in the detention of a ship under this Part.

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

(2) All costs relating to any inspection carried out by the Captain of the Port for the purposes of, or in connection with section 132L(6) shall be charged to the owner or his representative in Gibraltar.

(3) Any detention made pursuant to this Part shall not be lifted until any fees payable under this Act or regulations made thereunder in respect of any inspection leading to it, or arising from it, have been paid.

Offences.

132Q.(1) If there is any contravention of a direction made pursuant to section 132H(2), (3) or (4) in respect of a ship, the owner and master of the ship shall each be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale or to a term of imprisonment not exceeding six months, or both.

(2) The owner and master shall each be guilty of an offence, and liable on summary conviction to a fine not exceeding level 4 on the standard scale or to a term of imprisonment not exceeding six months, or to both, where a ship

- (a) fails to proceed to the yard specified in section 132L(1); or
- (b) enters a port in contravention of section 132L(6);

(3) If a person obstructs an inspector or any person assisting the inspector he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) A pilot who contravenes section 132N shall be guilty of offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) It shall be a defence for a person charged under this section to prove that the person charged took all reasonable steps to avoid committing the offence.

Merchant Shipping Notices.

132R. The Captain of the Port may from time to time issue Merchant Shipping Notices.”.

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

Schedule.

3. After Schedule 1 of the Merchant Shipping Act there shall be inserted the provisions of the Schedule to this Act.

SCHEDULE

Section 3

“SCHEDULE 1A

**containing Annexes I to VII to Council Directive 95/21/EC as amended
by Commission Directive 98/42/EC.**

Annex I

Section 132D(2)

SHIPS TO BE CONSIDERED FOR PRIORITY INSPECTION.

PART I Overriding factors.

Regardless of the value of the target factor, the following ships shall be considered as an overriding priority for inspection.

1. Ships which have been reported by pilots or port authorities as having deficiencies which may prejudice their safe navigation (pursuant to Directive 93/75/EEC and Article 13 of this Directive).
2. Ships which have failed to comply with the obligations laid down in Directive 93/75/EEC.
3. Ships which have been the subject of a report or notification by another Member State.
4. Ships which have been the subject of a report or complaint by the master, a crew member, or any person or organization with a legitimate interest in the safe operation of the ship, shipboard living and working conditions or the prevention of pollution, unless the Member State concerned deems the report or complaint to be manifestly unfounded; the identity of the person lodging

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

the report or complaint must not be revealed to the master or the shipowner of the ship concerned.

5. Ships which have been:

- involved in a collision, grounding or stranding on their way to the port,
- accused of an alleged violation of the provisions on discharge of harmful substances or effluents,
- manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed, or
- otherwise operated in such a manner as to pose a danger to persons, property or the environment.

6. Ships which have been suspended from their class for safety reasons in the course of the preceding six months.

PART II Overall targeting factor.

The following ships shall be considered as priority for inspection.

	Target factor value
1. Ships visiting a port of a Member State for the first time or after an absence of 12 months or more. In applying these criteria Member States shall also take into account those inspections which have been carried out by members of the MOU. In the absence of appropriate data for this purpose, Member States shall rely upon the available Sirenac data and inspect those ships which have not been registered in the Sirenac following the entry into force of that database on 1 January 1993.	+ 20
2. Ships not inspected by any Member State within the previous six months.	+10

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

3. Ships whose statutory certificates on the ship's construction and equipment, issued in accordance with the Conventions, and the classification certificates, have been issued by an organization which is not recognized under the terms of Council Directive 94/57/EC of 22 November 1994 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations (1). +5

(1) OJ L 139, 12.12.1994, p.20.

4. Ships flying the flag of a State appearing in the three-year rolling average table of above-average detentions and delays published in the annual report of the MOU:

- 0 - 3% above average +3
- 3,1 - 6% above average +4
- more than 6% above average +5

5. Ships which have been permitted to leave the port of a Member State on certain conditions:

- (a) for each deficiency to be rectified before departure +1
- (b) for each deficiency to be rectified at the next port +1
- (c) for every two deficiencies to be rectified within 14 days +1
- (d) for every two deficiencies for which other conditions have been specified +1
- (e) if ship-related action has been taken and all deficiencies have been rectified - 2

6. Ships for which deficiencies have been recorded during a previous inspection, according to the number of deficiencies:

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

– 0	- 15
- 1 - 5	0
– 6 - 10	+5
– 11 - 20	+ 10
– More than 20 deficiencies	+ 15
7. Ships which have been detained in a previous port	+ 15
8. Ships flying the flag of a county which has not ratified all relevant international conventions referred to in Article 2 of this Directive	+ 1
9. Ships flying the flag of a country with a deficiency ratio above average	+ 1
10. Ships with class deficiency above average	+ 1
11. Ships which are in a category for which expanded inspection has been decided (pursuant to Article 7 of this Directive)	+ 5
12. Other ships:	
– between 13 and 20 years old	+ 1
– between 21 and 24 years old	+ 2
– above 25 years old	+ 3

The target factor means the numerical value allocated to an individual ship in accordance with the provisions of this Annex and displayed on the Sirenac information system.

In determining the order of priority of the ships listed above, the competent authority shall take into account the order indicated by the overall target factor. A higher target factor is indicative of a higher priority. The target

factor is the sum of the applicable target factor values indicated above. Items 5,6 and 7 shall only apply to inspections carried out in the last 12 months. The overall target factor shall not be less than the sum of items 4,8,9, 10, 11 and 12.

Annex II

Section 132E(1)(a) & (2)

LIST OF CERTIFICATES AND DOCUMENTS.

1. - International Tonnage Certificate (1969);
2. - Passenger Ship Safety Certificate;
- Cargo Ship Safety Construction Certificate;
- Cargo Ship Safety Equipment Certificate;
- Cargo Ship Safety Radiotelegraphy Certificate;
- Cargo Ship Safety Radiotelephony Certificate;
- Cargo Ship Safety Radio Certificate;
- Exemption Certificate;
- Cargo Ship Safety Certificate;
3. - International Certificate of Fitness for Carriage of Liquefied Gases in Bulk;
- Certificate of Fitness for the Carriage of Liquefied Gases in Bulk;
4. - International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
- Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk;
5. - International Oil Pollution Prevention Certificate;
6. - International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk;
7. - International Load Line Certificate (1966);
- International Load Line Exemption Certificate;
8. - Oil Record Book, parts I and II;
9. - Cargo Record Book;

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

10. - Minimum Safe Manning Document;
- Certificates of Competency including dangerous goods endorsement;
11. - Medical Certificates, (see ILO Convention No 73 concerning Medical Examination of Seafarers);
12. - Stability information including grain loading information and document of authorisation;
13. - Copy of the Document of Compliance and the Safety Management Certificate issued, in accordance with The International Management Code for the Safe Operation of Ships and for Pollution Prevention (SOLAS, Chapter IX);
14. - Certificates as to the ship's hull strength and machinery installations issued by the classification society in question (only to be required if the ship maintains its class with a classification society);
15. - Document of Compliance with the special requirements for ships carrying dangerous goods;
16. - High speed craft safety certificate and permit to operate high speed craft;
17. - Dangerous goods special list or manifest, or detailed stowage plan;
18. - Ship's log book with respect to the records of tests and drills and the log for records of inspection and maintenance of lifesaving appliances and arrangements;
19. - Special purpose ship safety certificate;
20. - Mobile offshore drilling unit safety certificate;
21. - For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage;

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

22. - The muster list, fire and control plan, and for passenger ships, a damage control plan;
23. - Shipboard oil pollution emergency plan;
24. - Survey report files (in case of bulk carriers and oil tankers);
25. - Reports of previous port State control inspections;
26. - For ro-ro passenger ships, information on the A/A - maximum ratio;
27. - Document of authorisation for the carriage of grain;
28. - Cargo securing manual.

Annex III

Section 132A

EXAMPLES OF “CLEAR GROUNDS” FOR A MORE DETAILED INSPECTION.

1. Ships identified in Annex I, Part I and Part II, paragraphs II-3, II-4, II-5b, II-5c, II-8 and II-11.
2. The oil record book has not been properly kept.
3. During examination of the certificates and other documentation, (see Article 6(1)(a) and (2)), inaccuracies have been revealed.
4. Indications that the crew members are unable to comply with the requirements of Article 8 of Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers (1).
5. Evidence of cargo and other operations not being conducted safely, or in accordance with IMO guidelines, e.g. the content of oxygen in the inert-gas main supply to the cargo tanks is above the prescribed maximum level.
6. Failure of the master on an oil tanker to produce the record of the oil discharge monitoring and control system for the last ballast voyage.

7. Absence of an up-to-date muster list, or crew members not aware of their duties in the event of fire or an order to abandon the ship.
8. The emission of false distress alerts not followed by proper cancellation procedures.
9. The absence of principal equipment or arrangements required by the conventions.
10. Excessively unsanitary conditions on board the ship.
11. Evidence from the inspector's general impression and observations that serious hull or structural deterioration or deficiencies exist that may place at risk the structural, watertight or weathertight integrity of the ship.
12. Information or evidence that the master or crew is not familiar with essential shipboard operations relating to the safety of ships or the prevention of pollution, or that such operations have not been carried out.

—
(1) OJ L 319, 12. 12. 1994, p.28

Annex IV

Section 132E(4)

PROCEDURES FOR THE CONTROL OF SHIPS.

1. Principles of safe manning (IMO resolution A.481 (XII) and Annexes which are contents of Minimum Safe Manning Document (Annex 1) and Guidelines for the Application of Principles of Safe Manning (Annex 2)).
2. The provisions of the International Maritime Dangerous Goods Code.

3. International Labour Organisation (ILO) publication “Inspection of Labour Conditions on Board Ship: Guidelines for procedures”.
4. Annex I, “Port State Control Procedures” to the Paris MOU.

Annex V

Section 132F(1)

A. CATEGORIES OF SHIPS SUBJECT TO EXPANDED INSPECTION.

1. Oil tankers, 5 years or less from the date of phasing out in accordance with MARPOL 73/78, Annex I, Regulation 13G, i.e.
 - a crude oil tanker of 20,000 tonnes deadweight and above or a product carrier of 30,000 tonnes deadweight and above, not meeting the requirements of a new oil tanker as defined in Regulation 1(26) of Annex I to MARPOL 73/78, will be subject to expanded inspection 20 years after its date of delivery as indicated on the Supplement, Form B, to the IOPP Certificate, or 25 years after that date, if the ship's wing tanks or double-bottom spaces not used for the carriage of oil meet the requirements of Regulation 13G(4) of that Annex, unless it has been reconstructed to comply with Regulation 13F of the same Annex;
 - an oil tanker as mentioned above meeting the requirements of a new oil tanker as defined in Regulation 1(26) of Annex I to MARPOL 73/78 will be subject to expanded inspection 25 years after its date of delivery as indicated on the Supplement, Form B, to the IOPP Certificate, unless it complies with or has been reconstructed to comply with Regulation 13F of that Annex.
2. Bulk carriers, older than 12 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates;
3. Passenger ships;
4. Gas and chemical tankers older than 10 years of age, as determined on the basis of the date of construction indicated in the ship's safety certificates.

**B. NON-MANDATORY GUIDELINES FOR EXPANDED
INSPECTION OF CERTAIN CATEGORIES OF SHIPS.**
(as referred to in section 132F(1))

To the extent applicable the following items may be considered as part of an expanded inspection. Inspectors must be aware that it may jeopardise the safe execution of certain on-board operations, e.g. cargo operation, if tests having a direct effect thereon, are required to be carried out during such operations.

1. SHIPS IN GENERAL (CATEGORIES IN SECTION A):

- Black-out and start of emergency generator;
- Inspection of emergency lighting;
- Operation of emergency fire-pump with two fire-hoses connected to the fire main-line;
- Operation of bilge pumps;
- Closing of watertight doors;
- Lowering of one seaside lifeboat to the water;
- Test of remote emergency stop for e.g. boilers, ventilation and fuel pumps;
- Testing of steering gear including auxiliary steering gear;
- Inspection of emergency source of power to radio installations;
- Inspection and, to the extent possible, test of engine-room separator.

2. OIL TANKERS.

In addition to the items listed under Section 1, the following items may also be considered as part of the expanded inspection for oil tankers:

- Fixed-deck foam system;
- Fire-fighting equipment in general;
- Inspection of fire dampers to engine room, pump room and accommodation;
- Control of pressure of inert gas and oxygen content thereof;
- Check of the Survey Report File (see IMO Resolution A.744(18)) to identify possible suspect areas requiring inspection.

3. BULK CARRIERS.

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

In addition to the items listed under Section 1, the following items may also be considered as part of the expanded inspection for bulk carriers:

- Possible corrosion of deck machinery foundations;
- Possible deformation and/or corrosion of hatch covers;
- Possible cracks or local corrosion in transverse bulkheads;
- Access to cargo holds;
- Check of the Survey Report File, (see IMO Resolution A.744(18)) to identify possible suspect areas requiring inspection.

4. GAS AND CHEMICAL TANKERS

In addition to the items listed under section 1, the following items can also be considered as part of the expanded inspection for gas and chemical tankers:

- Cargo tank monitoring and safety devices relating to temperature, pressure and ullage;
- Oxygen analysing and explosimeter devices, including their calibration. Availability of chemical detection equipment (bellows) with an appropriate number of suitable gas detection tubes for the specific cargo being carried;
- Cabin escape sets giving suitable respiratory and eye protection, for every person on board (if required by the products listed on the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk as applicable);
- Check that the product being carried is listed in the International Certificate of Fitness or Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk or Liquefied Gases in Bulk as applicable;
- The fixed fire-fighting installations on deck whether they be foam or dry chemical or other as required by the product carried.

5. PASSENGER SHIPS.

In addition to the items listed under section (1), the following items may also be considered as part of the expanded inspection for passenger ships:

- Testing of fire detection and alarm system;
- Testing of proper closing of fire doors;
- Test of public address system;

- Fire drill where, as a minimum, all sets of fireman's outfits must be demonstrated and part of the catering crew take part;
- Demonstration that key crew members are acquainted with the damage control plan.

If deemed appropriate the inspection may be continued while the ship is on passage to or from the port in Gibraltar, with the consent of the shipmaster or the operator. Inspectors must not obstruct the operation of the ship, nor must they induce situations that, in the master's judgment, could endanger the safety of the passengers, the crew and the ship.

Annex VI

Section 132H(5)

CRITERIA FOR DETENTION OF A SHIP.

Introduction

Before determining whether deficiencies found during an inspection warrant detention of the ship involved, the inspector must apply the criteria mentioned below in sections 1 and 2.

Section 3 includes examples of deficiencies that may for themselves warrant detention of the ship involved (see section 132H(5)).

Where the ground for detention is the result of accidental damage suffered on the ship's voyage to a port, no detention order shall be issued, provided that:

1. due account has been given to the requirements contained in Regulation I/11(c) of SOLAS 74 regarding notification to the flag State administration, the nominated surveyor or the recognised organisation responsible for issuing the relevant certificate;
2. prior to entering a port, the master or shipowner has submitted to the port State control authority details on the circumstances of the accident and the damage suffered and information about the required notification of the flag State administration;

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

3. appropriate remedial action, to the satisfaction of the Authority, is being taken by the ship; and
4. the authority has ensured, having been notified of the completion of the remedial action, that deficiencies which were clearly hazardous to safety, health or the environment have been rectified.

1. Main Criteria

When exercising his professional judgement as to whether or not a ship should be detained the inspector must apply the following criteria:

Timing:

Ships which are unsafe to proceed to sea must be detained upon the first inspection irrespective of how much time the ship will stay in port.

Criterion:

The ship is detained if its deficiencies are sufficiently serious to merit an inspector returning to satisfy himself that they have been rectified before the ship sails.

The need for the inspector to return to the ship is a measure of the seriousness of the deficiencies. However, it does not impose such an obligation for every case. It implies that the Captain of the Port must verify one way or another, preferably by a further visit, that the deficiencies have been rectified before departure.

2. Application of main criteria

When deciding whether the deficiencies found in a ship are sufficiently serious to merit detention the inspector must assess whether:

1. the ship has relevant, valid documentation;
2. the ship has the crew required in the Minimum Safe Manning Document.

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

During inspection the inspector must further assess whether the ship and/or crew is able to:

3. navigate safely throughout the forthcoming voyage;
4. safely handle, carry and monitor the condition of the cargo throughout the forthcoming voyage;
5. operate the engine room safely throughout the forthcoming voyage;
6. maintain proper propulsion and steering throughout the forthcoming voyage;
7. fight fires effectively in any part of the ship if necessary during the forthcoming voyage;
8. abandon ship speedily and safely and effect rescue if necessary during the forthcoming voyage;
9. prevent pollution of the environment throughout the forthcoming voyage;
10. maintain adequate stability throughout the forthcoming voyage;
11. maintain adequate watertight integrity throughout the forthcoming voyage;
12. communicate in distress situations if necessary during the forthcoming voyage;
13. provide safe and healthy conditions on board throughout the forthcoming voyage.

If the answer to any of these assessments is negative, taking into account all deficiencies found, the ship must be strongly considered for detention. A combination of deficiencies of a less serious nature may also warrant the detention of the ship.

3. To assist the inspector in the use of these guidelines, there follows a list of deficiencies, grouped under relevant conventions and/or codes, which are

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

considered of such a serious nature that they may warrant the detention of the ship involved. This list is not intended to be exhaustive. However, the detainable deficiencies in the area of STCW 78 listed under item 3.8 below are the only grounds for detention under this Convention.

3.1. General

1. The lack of valid certificates as required by the relevant instruments. However, ships flying the flag of States not party to a Convention (relevant instrument) or not having implemented another relevant instrument, are not entitled to carry the certificates provided for by the Convention or other relevant instrument. Therefore, absence of the required certificates should not by itself constitute reason to detain these ships; however, in applying the "no more favourable treatment" clause, substantial compliance with the provisions is required before the ship sails.

3.2. Areas under the SOLAS Convention (References are given in brackets)

1. Failure of the proper operation of propulsion and other essential machinery, as well as electrical installations.
2. Insufficient cleanliness of engine room, excess amount of oily-water mixtures in bilges, insulation of piping including exhaust pipes in engine room contaminated by oil, improper operation of bilge pumping arrangements.
3. Failure of the proper operation of emergency generator, lighting, batteries and switches.
4. Failure of the proper operation of the main and auxiliary steering gear.
5. Absence, insufficient capacity or serious deterioration of personal life-saving appliances, survival craft and launching arrangements.
6. Absence, non-compliance or substantial deterioration of fire detection system, fire alarms, firefighting equipment, fixed fire-extinguishing installation, ventilation valves, fire dampers, quick-closing devices to the extent that they cannot comply with their intended use.

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

7. Absence, substantial deterioration or failure of proper operation of the cargo deck area fire protection on tankers.
 8. Absence, non-compliance or serious deterioration of lights, shapes or sound signals.
 9. Absence or failure of the proper operation of the radio equipment for distress and safety communication.
 10. Absence or failure of the proper operation of navigation equipment, taking the provisions of SOLAS Regulation V/12(o) into account.
 11. Absence of corrected navigational charts, and/or all other relevant nautical publications necessary for the intended voyage, taking into account that electronic charts may be used as a substitute for the charts.
 12. Absence of non-sparking exhaust ventilation for cargo pump rooms (SOLAS Regulation II-2/59.3.1).
 13. Serious deficiency in the operation requirements, as described in Section 5.5 of Annex I to the MOU.
 14. Number, composition or certification of crew not corresponding with the safe manning document.
- 3.3. Areas under the IBC Code (References are given in brackets)
1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information (16.2)
 2. Missing or damaged high-pressure safety devices (8.2.3.)
 3. Electrical installations not intrinsically safe or not corresponding to code requirements (10.2.3)
 4. Sources of ignition in hazardous locations referred to in 10.2 (11.3.15)
 5. Contraventions of special requirements (15)

6. Exceeding of maximum allowable cargo quality per tank (16.1)
 7. Insufficient heat protection for sensitive products (16.6)
- 3.4. Areas under the IGC Code (References are given in brackets)
1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information (18.1)
 2. Missing closing devices for accommodations or service spaces (3.2.6)
 3. Bulkhead not gastight (3.3.2)
 4. Defective air locks (3.6)
 5. Missing or defective quick-closing valves (5.6)
 6. Missing or defective safety valves (8.2)
 7. Electrical installations not intrinsically safe or not corresponding to code requirements (10.2.4)
 8. Ventilators in cargo area not operable (12.1)
 9. Pressure alarms for cargo tanks not operable (13.4.1)
 10. Gas detection plant and/or toxic gas detection plant defective (13.6)
 11. Transport of substances to be inhibited without valid inhibitor certificate (17/19)
- 3.5. Areas under the LOAD LINES Convention
1. Significant areas of damage or corrosion, or pitting of plating and associated stiffening in decks and hull affecting seaworthiness or strength to take local loads, unless proper

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

temporary repairs for a voyage to a port for permanent repairs have been carried out.

2. A recognised case of insufficient stability.
 3. The absence of sufficient and reliable information, in an approved form, which by rapid and simple means, enables the master to arrange for the loading and ballasting of his ship in such a way that a safe margin of stability is maintained at all stages and at varying conditions of the voyage, and that the creation of any unacceptable stresses in the ship's structure are avoided.
 4. Absence, substantial deterioration or defective closing devices, hatch closing arrangements and watertight doors.
 5. Overloading.
 6. Absence of draft mark or draft mark impossible to read.
- 3.6. Areas under the MARPOL Convention, Annex I (References are given in brackets)
1. Absence, serious deterioration or failure of proper operation of the oily-water filtering equipment, the oil discharge monitoring and control system or the 15 ppm alarm arrangements.
 2. Remaining capacity of slop and/or sludge tank insufficient for the intended voyage.
 3. Oil Record Book not available. (20(5))
 4. Unauthorised discharge bypass fitted.
- 3.7. Areas under the MARPOL Convention, Annex II (References are given in brackets)
1. Absence of the P&A Manual.
 2. Cargo is not categorised. (3(4))

3. No cargo record book available. (9(6))
4. Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate. (14)
5. Unauthorised discharge bypass fitted.

3.8. Areas under the STCW Convention

1. Failure of seafarers to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the flag State administration.
2. Failure to comply with the applicable safe manning requirements of the flag state administration.
3. Failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag State administration.
4. Absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution.
5. Failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution.
6. Inability to provide for the first watch at the commencement of a voyage and for subsequent relieving watches persons who are sufficiently rested and otherwise fit for duty.

3.9 Areas under the ILO Conventions

1. Insufficient food for voyage to next port.(Convention 68 Article 5(2)(a))

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

2. Insufficient potable water for voyage to next port. (Convention 68 Article 5(2)(a))
 3. Excessively unsanitary conditions on board.
 4. No heating in accommodation of a ship operating in areas where temperatures may be excessively low.(Convention 92 Article 8)
 5. Excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/accommodations. (Convention 134 Art 4)
- 3.10. Areas which may not warrant a detention, but where e.g. cargo operations have to be suspended.

Failure of the proper operation (or maintenance) of inert gas system, cargo-related gear or machinery are considered sufficient grounds for stopping cargo operation.

Annex VII

Section 132M(1)

Minimum criteria for inspectors.

1. The inspector must be authorised to carry out port-State control by the Captain of the Port.
2. Either:
 - The inspector must have completed a minimum of one year's service as a flag-State inspector dealing with surveys and certification in accordance with the Conventions,
 - and be in possession of:
 - (a) a certificate of competency as Master, enabling that person to take command of a ship of 1 600 GT or more (STCW Regulation II/2); or

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

- (b) a certificate of competency as chief engineer enabling him to take up that task on board a ship whose main power plant has power equal or superior to 3000 KW, (STCW, Regulation III/2); or
 - (c) has passed an examination as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years,
- The inspectors mentioned under (a) and (b) must have served for a period of not less than five years at sea as officer in the deck - or engine department respectively.

Merchant Shipping Act (Amendment) (Port State Control) Act, 1999
[No. 10 of 1999]

Or:

The inspector must:

- hold a relevant University degree or an equivalent training, and
- have been trained and qualified at a school for ship safety inspectors, and
- have served at least two years as a flag-State inspector dealing with surveys and certification in accordance with other Conventions.

3. Ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.

4. Appropriate knowledge of the provisions of the International Conventions and of the relevant procedures on port-State control.

5. Inspectors not fulfilling the above criteria are also accepted if they are employed by the Government of Gibraltar or the Maritime and Coastguard Agency for port-State control at the date of adoption of the Directive.”.

Passed by the Gibraltar House of Assembly on the 18th day of March, 1999.

D. J. REYES,

Clerk to the Assembly.