

# Merchant Shipping

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## MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS, 2003

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**Repealed**  
**Subsidiary**  
**2003/001**

Regulations made under section 223A of the Merchant Shipping Act.

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**Repealed by LN. 2011/055 as from 12.4.2011**

(LN 2003/001)

1.3.2003

Amending enactments	Relevant current provisions	Commencement date
2004/054 r. 2.		1.7.2004

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### **Title and commencement.**

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Port State Control) Regulations, 2003 and come into operation on the same day on which the Merchant Shipping (Amendment) Act, 2002 (Act. 2002 No. 24) comes into operation.

### **Interpretation.**

2. In these Regulations, unless the context otherwise requires—

“Administration” means the Maritime Administrator appointed under the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993 in the case of Gibraltar, and in other cases the corresponding authority of the relevant flag State;

“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
- (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

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“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 the Schedule;

“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);
- (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 (ITC 69);
- (g) the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No. 147);
- (h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92); and

together with the Protocols and amendments to these Conventions and related Codes of mandatory status, in its up-to-date version as in force in Member States at the time of reference and a reference to a Convention is a reference to any of the Conventions;

“Convention enactments” means–

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- (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, Commission Directive 98/42/EC, Commission Directive 1999/97/EC Directive 2001/106/EC and Directive 2002/84/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 regulation 7;

“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;

“flag State” means the State whose flag the ship flies;

“inspector” means a person—

- (a) duly appointed by the Minister to carry out inspections required by the Act or by the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;
- (b) appointed under section 116(2) of the Act for the purposes of regulation 10 (2); or
- (c) appointed as or authorised to be a surveyor of ships under section 52(1) of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“Maritime Administrator” means the person appointed under section 3 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“Merchant Shipping administrative instruction” means an instruction described as such, issued by the Maritime Administrator, and reference to a specific Merchant Shipping administrative instruction includes a reference to any document amending or

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replacing that instruction which is considered by the Maritime Administrator to be relevant from time to time and is specified in a Merchant Shipping administrative instruction;

“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 regulation 6(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, in its up-to-date version as in force at the time of reference;

“Act” means the Merchant Shipping Act;

“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;

“port State control” means the taking of the responsibility by an Administration, while a foreign flag ship is in its port Waters, for the enforcement of international standards for ships safety, pollution, prevention and shipboard living and working conditions, in pursuance of Council Directive 95/21/EC as amended by Commission Directive 1999/97/EC and Directive 2001/106/EC and the Paris MOU;

“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.

“UK–MCA” means the Maritime and Coastguard Agency of the United Kingdom;

#### **Application of these Regulations.**

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3.(1) Subject to subregulation (2), these Regulations apply to any seagoing ship and its crew while in Gibraltar waters—

- (a) in the port or at an offshore installation; or
- (b) anchored off the port or such an installation.

(2) These Regulations do 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) The inspector shall, at the time of inspection of a ship to which any of the requirements of the Convention does not apply, ensure that—

- (a) the ship complies with the minimum standards determined by the flag administration as evidenced by a certificate of survey or a safety certificate or a permit issued by the flag administration; and
- (b) the continued operation of the ship is apparently not hazardous to safety, health or the environment, and

in his application of this subregulation, the inspector shall be guided by Annex 1 to the MOU.

(4) When inspecting a ship pursuant to regulations 5 to 10 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—

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- (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) of the Act 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.**

4.(1) The Maritime Administrator is designated the competent authority for Gibraltar for the purpose of the Directive and these Regulations.

(2) In relation to the United Kingdom “competent authority” means the UK-MCA.

(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.**

5.(1) The Maritime Administrator shall carry out in Gibraltar such number of inspections of individual ships entering the Port and to which these Regulations apply 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 as amended from time to time.

(2) The Maritime Administrator shall, subject to regulation 8, ensure that an inspection pursuant to regulation 6 is carried out on any ship not subject to an expanded inspection with a target factor greater than 50 in the Sirenac information system:

Provided that a period of at least one month has elapsed since the last inspection carried out in a port in the MOU region.

(3) In selecting other ships for inspection, the Maritime Administrator shall determine the order of priority as follows—



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- (a) the first ships to be selected for inspection shall be those listed in Annex I, Part I of the Schedule, irrespective of their target factor; and
- (b) the ships listed in Annex I, Part II of the Schedule, shall be selected in decreasing order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the Sirenac information system.

(4) The Maritime Administrator shall refrain from inspecting ships which have been inspected by any Member State within the previous six months:

Provided that—

- (i) the ship is not listed in Part II of Annex I of the Schedule;
- (ii) no deficiencies have been reported, following a previous inspection;
- (iii) no clear grounds exist for carrying out an inspection; and
- (iv) the ship is not covered by subregulation (2).

(5) Subregulation (4) shall not apply to any of the operational controls specifically provided for in the Conventions enactments.

(6) For the purposes of subregulation (1) above, regulation 8(3) and Annex X of the Schedule, 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.**

6.(1) In carrying out an inspection referred to in regulation 5, the inspector shall as a minimum—

- (a) check the certificates and documents listed in Annex II of the Schedule 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 other relevant certificates and documents relating to safe operation of the ship and protection of the environment except those listed in Annex II of the Schedule which are

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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 subregulations (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 following the examples set out in Annex III of the Schedule, 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 the Schedule.

#### **Mandatory expanded inspection of certain ships.**

7.(1) A ship in one of the categories in Annex V, section A of the Schedule, is liable to an expanded inspection after a period of 12 months since the last expanded inspection carried out in a port of a State signatory of the MOU.

(2) Where a ship referred to in subregulation (1) is selected for inspection in accordance with regulation 5(3), an expanded inspection shall be carried out and an inspection pursuant to regulation 6 may also be carried out in the period between two expanded inspections.

(3) The operator or master of a ship to which subregulation (1) applies, shall provide the Maritime Administrator, at least three days before the expected time of arrival in the Port or before leaving the previous port, if the voyage is expected to take fewer than three days, with all the information listed in Annex V, section B of the Schedule, after a period of 12 months since the last expanded inspection.

(4) Any ship which fails to comply with subregulation (3) shall be subject to an expanded inspection at the port of destination.

(5) The Maritime Administrator shall, subject to regulation 7, ensure that an expanded inspection is carried out on a ship to which subregulation (3) applies and which has a target factor of 7 or more if the Port is the first port visited after a period of 12 months since the last expanded inspection.

(6) An expanded inspection shall be carried out in accordance with the procedures set out in Annex V, section C of the Schedule.

#### **Procedure in case certain ships cannot be inspected.**

8.(1) In cases where, for operational reasons, the Maritime Administrator is unable to carry out an inspection of a ship with a target factor of more than

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50 as referred to in regulation 5(2) or a mandatory expanded inspection as referred to in regulation 7(3), the Maritime Administrator shall, without delay, inform the Sirenac system that such inspection did not take place.

(2) The Maritime Administrator shall cause the cases referred to in subregulation (1) to be notified to the Commission, at intervals of six months, together with the reasons for not inspecting the ships concerned.

(3) Non-inspections of ships referred to in subregulation (1) shall not, during any calendar year, exceed 5% of the average annual number of individual ships eligible for the inspections entering the Port of Gibraltar, calculated on the basis of the three most recent calendar years for which statistics are available.

(4) Ships referred to in subregulation (1) shall be subject to an inspection, as provided in regulation 5 or a mandatory expanded inspection as referred to in regulation 7(3), as appropriate, in the next port of call in the Community.

#### **Procedures applicable in the absence of ISM certificates.**

9.(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 subregulation (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 subregulation (2), the Captain of the Port shall refuse entry of that ship to the Port except in the circumstances referred to in regulation 15(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 and in cases where the deficiencies referred to in regulation 10(2) and (4) are revealed and cannot be rectified in the port of detention, the relevant provisions of regulation 15 shall apply.

#### **Rectification and detention.**

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10.(1) The Maritime Administrator shall be satisfied that any deficiencies confirmed or revealed by an inspection referred to in regulations 5 and 7 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 of the Act or other powers in the Convention enactments, as appropriate.

(3) Without prejudice to subregulation (2), the Maritime Administrator may detain a ship and prevent it from proceeding to sea if any serious deficiency is revealed during inspection which in his opinion may pose a danger to the ship, persons, property or the environment, until such time as the deficiencies are corrected to an extent that they no longer pose any danger to life, property or the environment.

(4) A detention notice issued for the purposes of subregulation (2) or (3) 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 regulation 13.

(5) The detention notice or stoppage of an operation shall not be lifted until Maritime Administrator 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.

(6) The inspector shall, when exercising his professional judgment as to whether or not a ship should be detained, apply the criteria set out in Annex VI of the Schedule and in such case, the ship shall be detained, if not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Annex XII of the Schedule.

(7) If the deficiency cannot be readily rectified in Gibraltar, the Maritime Administrator may

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- (a) allow the ship to proceed to the nearest appropriate port where it shall be readily rectified; or
- (b) require that the deficiency is rectified within a maximum period of 30 days,

and for the purposes of this subregulation, the procedure laid down in regulation 15 shall apply.

(8) 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.

(9) Without prejudice to any other requirement in the Convention enactments, in the event that an inspection referred to in regulations 5 and 7 gives rise to detention, the Maritime Administrator shall—

- (a) immediately inform, in writing and including the report of inspection, the flag administration or when this is not possible, 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 recognised organisations responsible for the issue of the ship's certificates.

(10) Where the Maritime Administrator detains a ship under these Regulations, he may take into custody and retain the principal documents of the ship until the detention notice is lifted.

(11) The provisions of these Regulations shall be, without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control, applicable.

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

### **Report of inspection to the master.**

11.(1) On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report in accordance with Annex IX of the Schedule.

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(2) A copy of the report referred to in subregulation (1) shall be provided to the ship's master.

**Access refusal measures concerning certain ships.**

12.(1) The Maritime Administrator shall ensure that a ship in one of the categories of Annex XI, section A of the Schedule, is refused access to the Port in Gibraltar, except in the situations described in regulation 15(9), if the ship—

- (a) (i) flies the flag of a State appearing in the black list as published in the annual report of the MOU, and
- (ii) has been detained more than twice in the course of the preceding 24 months in a port of a State signatory of the MOU; or
- (b) (i) flies the flag of a State described as “very high risk” or “high risk” in the black list as published in the annual report of the MOU, and
- (ii) has been detained more than once in the course of the preceding 36 months in a port of a State signatory of the MOU.

(2) The refusal of access under this regulation shall become applicable immediately the ship has been authorised to leave the Port where it has been the subject of a second or third detention as appropriate.

(3) For the purpose of subregulation (1), the Maritime Administrator shall comply with the procedures laid down in Annex XI, section B of the Schedule.

**Right of appeal.**

13.(1) The owner or operator of a ship or his representative in Gibraltar may prefer an appeal against a decision of detention or refusal of access, taken by the Maritime Administrator in pursuance of the provisions of these Regulations, to the Supreme Court (“the Court”) by notice given within 21 days from the service of the detention notice or the refusal of access and in such case the provisions of section 117(4) of the Act shall have effect.

(2) Where notice is given by the master or owner of the ship or his representative in Gibraltar in accordance with subregulation (1), the giving

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of notice of an appeal shall not suspend the operation of the detention notice or the refusal to access.

(3) Where an appeal is preferred under this regulation, the Court shall give an expedited hearing to that appeal.

(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 or the refusal of access was proper.

(5) Where on an appeal under this regulation the Court decides as respects any matter to which the appeal relates, that in all the circumstances the matter did not constitute a valid reason for the decision made by the Maritime Administrator for detention of the ship or for refusal of access of the ship by the Captain of the Port, it shall either cancel the decision or 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 or refusal of access of the ship.

#### **Compensation in connection with invalid detention of ship.**

14. If on an appeal under regulation 13 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) of the Act relating to costs and compensation shall apply.

#### **Follow-up to inspections and detention.**

15.(1) Where it is established that the deficiencies for which the ship has been detained under these Regulations cannot be rectified or repaired in Gibraltar or the work can be done in Gibraltar but it will take too long and that the ship is safe to proceed to the next port or the nearest repair yard, the Maritime Administrator may allow the ship to proceed to the nearest appropriate repair yard available, as chosen by the master and the

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responsible parties, provided that the conditions determined by the competent authority of the flag administration and agreed by the Maritime Administrator are complied with.

(2) The conditions referred to in subregulation (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 subregulations (1) and (2), the Maritime Administrator shall notify the competent authority of the State where the repair yard is situated, the parties referred to in regulation 10(9) and any other authority, as appropriate, of all the conditions for the voyage.

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

(5) Where the Maritime Administrator 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 of the Directive as having effect in that State, allowed to proceed to a repair yard in Gibraltar, the Maritime Administrator shall inform the notifying authority of the action he has taken.

(6)

(a) A ship to which this subregulation 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 subregulation 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,



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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 Maritime Administrator in accordance with subregulation (1), the Maritime Administrator shall immediately alert the competent authorities of the United Kingdom and the other member States.

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

(9) Notwithstanding the provisions of subregulation (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.**

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

(2) When the required professional expertise cannot be provided by the Maritime Administrator, 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 Maritime Administrator indicating that the inspector is authorised to carry out inspections.

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

17.(1) A pilot, engaged in the berthing or unberthing of a ship, to which these Regulations apply, in Gibraltar, shall immediately inform the Captain of the Port who in turn, shall inform the Maritime Administrator, whenever he learns in the course of his normal duties that there are deficiencies which

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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 Maritime Administrator.

#### **Publication of information.**

18.(1) The Maritime Administrator shall take such measures as may be necessary in order to ensure that information listed in Part I of Annex VIII of the Schedule, concerning ships which have been detained in, or which are subject to refusal of access to the Port during the previous month, is published at least every month.

(2) The information listed in Parts I and II of Annex VIII of the Schedule, and the information on changes, suspensions and withdrawals of class referred to in regulation 17 of the Gibraltar Merchant Shipping (Organisations for Inspection, Survey and Certification of Ships) Regulations, 2002, shall be available in the Sirenac system and it shall be made public as soon as possible after the inspection has been completed or the detention has been lifted.

#### **Reimbursement of costs.**

19.(1) All costs relating to any inspection carried out by the Maritime Administrator for the purposes of, or in connection with regulation 15(6) shall be charged to the owner or his representative in Gibraltar.

(2) In the case of detention of a ship for deficiencies or lack of valid certificates as laid down in regulation 10 and Annex VI of the Schedule, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

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

#### **Offences.**

20.(1) If there is any contravention of a direction made pursuant to regulation 10(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,

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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 regulation 15(1);
- (b) in the case of a ship to which regulation 15(5) applies, which is to proceed to a repair yard in Gibraltar but fails to call into the indicated repair yard; or
- (c) enters the Port in contravention of regulation 15(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 regulation 17 shall be guilty of an 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 regulation to prove that the person charged took all reasonable steps to avoid committing the offence.

#### **Merchant Shipping Administrative Instructions.**

21. The Maritime Administrator may, with the approval of the Minister, by notice in the Gazette, from time to time, issue Merchant Shipping administrative instructions.

#### **Captain of the Port to cooperate with the Maritime Administrator.**

22. The Captain of the Port shall—

- (a) provide the Maritime Administrator with an updated daily list of vessels in Port or expected to arrive at the Port; and
- (b) render all possible assistance in respect of inspection of those vessels by an inspector or the Maritime Administrator.

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23. The Maritime Administrator shall cause the information listed in Annex X to be notified to the Commission, at the intervals stated therein in that Annex.

#### **Payment for services rendered.**

24.(1) Notwithstanding that port State control inspections are done free of costs in public interest, if any inspection under these Regulations reveals any defect or deficiency which need to be rectified before the vessel is allowed to proceed to sea, the Maritime Administrator shall require the owner or operator or its agents to pay for the services rendered by the Administration.

(2) For the purpose of subregulation (1), time spent for inspection, survey or audit including the travel time and cost, and any administrative cost shall be included while accounting for the services rendered.

(3) For the purpose of this regulation, the Gibraltar Merchant Shipping (Survey Fees) Regulations, 1999 shall have effect.

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**Annexes I to XII to the Directive.**

**Annex I**

Regulation 5(3)

**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 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

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- otherwise operated in such a manner as to pose a danger to persons, property or the environment.

6. Ships which have been suspended or withdrawn 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:

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.
2. Ships not inspected by any Member State within the previous six months.
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 organisations which are not recognised under the provisions of the Gibraltar Merchant Shipping ( Organisations for Inspection, Survey and Certification of Ships) Regulations, 2002.
4. Ships flying the flag of a State appearing in the black list as published in the annual report of the MOU.
5. Ships which have been permitted to leave the port of a Member State on certain conditions, such as:
  - (a) deficiencies to be rectified before departure;
  - (b) deficiencies to be rectified at the next port of call;
  - (c) deficiencies to be rectified within 14 days;

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- (d) deficiencies for which other conditions have been specified.

If ship-related action has been taken and all deficiencies have been rectified, this is taken into account.

6. Ships for which deficiencies have been recorded during a previous inspection, according to the number of deficiencies.
7. Ships which have been detained in a previous port.
8. Ships flying the flag of a country which has not ratified all relevant international conventions referred to in Article 2 of this Directive.
9. Ships classed with a classification society with a deficiency ratio above average.
10. Ships of the categories referred to in Annex V(A).
11. Ships above 13 years old.

In determining the order of priority for the inspection of the ships listed above, the competent authority shall take into account the overall target factor displayed on the Sirenac information system, according to Annex I, Section I, of the MOU. A higher target factor is indicative of a higher priority. The overall target factor is the sum of the applicable target factor values as defined within the framework of the MOU. 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 the values established for items 3, 4, 8, 9, 10 and 11.

However, for the purpose of regulation 7, the overall target factor shall not take into account item 10.

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**Annex II**

Regulation 6(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, including where appropriate, the list of cargoes;
  - 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;



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- 10.-Minimum Safe Manning Document;
- 11.-Certificates issued in accordance with the STCW Convention;
- 12.-Medical Certificates, (see ILO Convention No 73 concerning Medical Examination of Seafarers);
- 13.-Stability information including grain loading information and document of authorisation;
- 14.-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);
- 15.-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);
- 16.-Document of Compliance with the special requirements for ships carrying dangerous goods;
- 17.-High speed craft safety certificate and permit to operate high speed craft;
- 18.-Dangerous goods special list or manifest, or detailed stowage plan;
- 19.-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;
- 20.-Special purpose ship safety certificate;
- 21.-Mobile offshore drilling unit safety certificate;
- 22.-For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage;
- 23.-The muster list, fire and control plan, and for passenger ships, a damage control plan;
- 24.-Shipboard oil pollution emergency plan;
- 25.-Survey report files (in case of bulk carriers and oil tankers);
- 26.-Reports of previous port State control inspections;

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- 27.-For ro-ro passenger ships, information on the A/A - maximum ratio;
- 28.-Document of authorisation for the carriage of grain;
- 29.-Cargo securing manual.
- 30.-Garbage management plan and garbage record book.
- 31.-Decision support system for masters of passenger ships.
- 32.-SAR cooperation plan for passenger ships trading on fixed routes.
- 33.-List of operational limitations for passenger ships.
- 34.-Bulk carrier booklet.
- 35.-Loading and unloading plan for bulk carriers.
- 36.-Certificates of insurance or any other financial security in respect of civil liability for oil pollution damage (International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92)).

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**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, and II-8.
2. The oil record book has not been properly kept.
3. During examination of the certificates and other documentation, (see regulation 6(1)(a) and (2)), inaccuracies have been revealed.
4. Indications that the crew members are unable to comply with the requirements of Article 17 of Directive 2001/25/EC of 4 April 2001 on the minimum level of training of seafarers<sup>(a)</sup>.
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.

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<sup>(a)</sup> OJ L 136, 8-5-2001, p. 17.

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**Annex IV**

Regulation 6(4)

**PROCEDURES FOR THE CONTROL OF SHIPS.**

1. Principles of safe manning (IMO resolution A.890 (21) 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**

**A. CATEGORIES OF SHIPS SUBJECT TO EXPANDED INSPECTION**  
(as referred to in regulation 7(1))

1. 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.
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. Oil tankers with a gross tonnage of more than 3,000 gross tonnes and older than 15 years of age, as determined on the basis of the date of construction indicated in the ship’s safety certificates.
4. Passenger ships older than 15 years of age other than the passenger ships referred to in Article 2(a) and (b) of Council Directive 1999/35/EDC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high speed passenger craft services<sup>(1)</sup>.

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<sup>(1)</sup> OJ L 136 8.5.2001, p. 1.

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#### B. INFORMATION TO BE NOTIFIED TO THE COMPETENT AUTHORITY (as referred to in regulation 7(3))

- A. name,
- B. flag,
- C. IMO identification number, if any,
- D. dead-weight tonnage,
- E. date of construction of the ship, as determined on the basis of the date indicated in the ship's safety certificates,
- F. for tankers:

F.a.configuration: single hull, single hull with SBT, double hull,

F.b.condition of the cargo and ballast tanks: full, empty, inerted,

F.c.volume and nature of the cargo,

- G. probable time of arrival at the port of destination or pilot station, as required by the competent authority,
- H. planned duration of the call,
- I. planned operations at the port of destination (loading, unloading, other),
- J. planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port of destination.

#### C. PROCEDURES RELATING TO EXPANDED INSPECTION OF CERTAIN CATEGORIES OF SHIPS (as referred to in regulation 7(6))

Subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, the following items at least must be part of an expanded inspection. Inspectors must be aware that it may jeopardise the safe execution of certain on-board operations, e.g. cargo handling, if tests having a direct effect thereon are required to be carried out during such operations.

1. SHIPS IN GENERAL (categories in section A)

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- 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,
- the lowering of one 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. GAS AND CHEMICAL TANKERS

In addition to the items listed under section 1, the following items are to 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),

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- 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.

### 3. BULK CARRIERS

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

- possible corrosion of deck machinery mountings,
- possible deformation and/or corrosion of hatch covers,
- possible cracks or local corrosion in transverse bulkheads,
- access to cargo holds,
- verification that the following documents are on board, review them and confirm that the flag State or classification society has endorsed them:
  - (1) reports of structural surveys,
  - (2) condition evaluation reports,
  - (3) thickness measurement reports,
  - (4) descriptive document referred to by IMO resolution A.744(18).

### 4. OIL TANKERS

In addition to the items listed under section 1, the following items are to be considered as part of an expanded inspection of oil tankers:

- fixed deck foam system,

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- fire-fighting equipment in general,
  - inspection of fire dampers in engine room, pump room and accommodation,
  - control of pressure of inert gas and oxygen content thereof,
  - ballast tanks: at least one of the ballast tanks within the cargo area to be examined from tank manhole/deck access in first instance and entered if inspector establishes clear ground for further inspection,
  - verification that the following documents are on board, review them and confirm that the flag State or classification society has endorsed them:
    - (1) reports of structural surveys,
    - (2) condition evaluation reports,
    - (3) thickness measurement reports,
    - (4) descriptive document referred to by IMO resolution A.744(18).
5. PASSENGER SHIPS NOT COVERED BY DIRECTIVE 1999/35/EC

In addition to the items listed under section C 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 firemen'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.



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

## **Annex VI**

Regulation 10(6)

### **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 regulation 10(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;
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

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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 inspector 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.

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;

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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.
14. provide the maximum of information in case of accident.

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 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 and documents 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.

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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 bilge's, 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.
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.

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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.
15. Failure to carry out the enhanced survey programme in accordance with SOLAS 74, Chapter XI, Regulation 2.
16. Absence or failure of a VDR, when its use is compulsory.

### 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 quantity 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)

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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 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)

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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.
5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of the Marpol Convention.

#### 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.

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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))
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

Regulation 16(1)

#### Minimum criteria for inspectors.

1. The inspector must be authorised to carry out port State control by the Maritime Administrator.
2. Either:



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- 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
  - (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 3000KW, (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.

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.

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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.

#### Annex VIII

Publication of information related to detentions and inspections in ports of Member States (as referred to in regulation 18).

#### Part I.

Information published in accordance with regulation 18(1) must include the following:

- name of the ship,
- IMO number,
- type of ship,
- tonnage (gt),
- year of construction as determined on the basis of the date indicated in the ship's safety certificates,
- name and address of the shipowner or operator of the ship,
- in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,
- flag State,
- the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
- the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
- port and date of the last expanded inspection stating, where appropriate, whether a detention was ordered,

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- port and date of the last special survey and the name of the organisation which carried out the survey,
- number of detentions during the 24 previous months,
- country and port of detention,
- date when the detention was lifted,
- duration of detention, in days,
- number of deficiencies found and the reasons for detention, in clear and explicit terms,
- description of the measures taken by the competent authority and, where relevant, by the classification society as a follow-up to detention,
- if the ship has been refused access to any port within the Community, the reasons for such measure in clear and explicit terms,
- indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention,
- description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, or which has been refused access to a Community port.

### Part II.

Information concerning ships inspected made public in accordance with regulation 18(2) must include the following:

- name of the ship,
- IMO number,
- type of ship,
- tonnage (gt),

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- year of construction,
- name and address of shipowner or operator of the ship,
- in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,
- flag State,
- the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
- the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
- country, port and date of inspection,
- number and nature of deficiencies.

#### Annex IX

Inspection report drawn up in accordance with regulation 11(1).

The inspection report must contain at least the following items.

#### **I.** *General*

1. Competent authority that wrote the report
2. Date and place of inspection
3. Name of the ship inspected
4. Flag
5. Type of ship
6. IMO number
7. Call sign
8. Tonnage (gt)

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9. Deadweight tonnage (where relevant)
10. Year of construction as determined on the basis of the date indicated in the ship's safety certificates
11. The classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any
12. The classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State
13. Name and address of the ship's owner or the operator
14. Name and address of the charterer responsible for the selection of the vessel and type of charter in the case of ships carrying liquid or solid cargoes in bulk
15. Final date of writing the inspection report
16. Indication that detailed information on an inspection or a detention may be subject to publication.

### **II. *Information relating to inspection***

1. Certificates issued in application of the relevant international conventions, authority or organisation that issued the certificate(s) in question, including the date of issue and expiry
2. Parts or elements of the ship that were inspected (in the case of more detailed or expanded inspection)
3. Type of inspection (inspection, more detailed inspection, expanded inspection)
4. Nature of the deficiencies
5. Measures taken.

### **III. *Additional information in the event of detention***

1. Date of detention order

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2. Date of lifting the detention order
3. Nature of the deficiencies warranting the detention order (references to Conventions, if relevant)
4. Information on the last intermediate or annual survey
5. Indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention
6. Measures taken.

#### Annex X

Data provided in the context of monitoring implementation in application of regulation 23

1. Every year the Maritime Administrator must provide the UK-MCA for onward transmission to the Commission with the following data for the preceding year by 1 April at the latest.

- 1.1 Number of inspectors in the framework of port State control of shipping.

This information must be communicated to the Commission using the following model table.

Port/area	Number of full-time inspectors	Number of part-time inspectors <sup>(1)</sup>	Conversion to full-time
Port of Gibraltar			

- 1.2 Total number of individual ships that entered the Port.

2. The Maritime Administrator must either:

- (a) provide the UK-MCA for onward transmission to the Commission every six months with a list of movements of individual ships, other than regular ferry services, that entered

<sup>(1)</sup> Where the inspections carried out in the context of port State control represent only part of the inspectors' work, the total number of inspectors must be converted to a number equivalent to full-time inspectors.

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the port, containing the IMO number of the ships and the date of arrival; or alternatively

- (b) provide the UK-MCA for onward transmission to Sirenac with the IMO numbers and the date of arrival of the ships, other than regular ferry services, that daily entered the port.

The Maritime Administrator must provide the UK-MCA for onward transmission to the Commission with the list of regular ferry services referred to in points (a) and (b), not later than six months following the implementation of the Directive, and thereafter each time changes take place in such services.

## **Annex XI**

**A. CATEGORIES OF SHIPS SUBJECT TO REFUSAL OF ACCESS TO COMMUNITY PORTS (as referred to in regulation 12(1) and (3))**

- 1. Gas and chemical tankers.
- 2. Bulk carriers.
- 3. Oil tankers.
- 4. Passenger ships.

**B. PROCEDURES RELATING TO REFUSAL OF ACCESS TO COMMUNITY PORTS (as referred to in regulation 12(3))**

- 1. If the conditions described in regulation 12(3) are met, the Maritime Administrator must, where the ship is detained for the second or third time, as appropriate, inform the captain and the owner or the operator of the ship in writing of the access refusal order served on the ship.

The Maritime Administrator must also inform the flag State administration, the classification society concerned, the other Member States, the Commission, the Centre administratif des affaires maritimes and the MOU Secretariat.

The access refusal order will take effect as soon as the ship has been authorised to leave the port after the deficiencies leading to the detention have been remedied.

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2. In order to have the access refusal order lifted, the owner or the operator must address a formal request to the Maritime Administrator. This request must be accompanied by a certificate from the flag State administration showing that the ship fully conforms to the applicable provisions of the international conventions. The request for the lifting of the access refusal order must also be accompanied, where appropriate, by a certificate from the classification society which has the ship in class showing that the ship conforms to the class standards stipulated by that society.
3. The access refusal order may only be lifted following a re-inspection of the ship at an agreed port by inspectors and if evidence is provided to the satisfaction of the Maritime Administrator that the vessel fully complies with the applicable requirements of the International Conventions.

If the agreed port is located within the Community, the competent authority of the Member State of the port of destination may, with the agreement of the Maritime Administrator, authorise the ship to proceed to the port of destination in question, for the sole purpose of verifying that the ship meets the conditions specified in paragraph 2.

The re-inspection shall consist of an expanded inspection that must cover at least the relevant items of Annex V, section C.

All costs of this expanded inspection will be borne by the owner or the operator.

4. If the results of the expanded inspection satisfy the Maritime Administrator in accordance with paragraph 2, the access refusal order must be lifted. The owner or the operator of the ship must be informed thereof in writing.

The competent authority must also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, the Commission, the Centre administratif des affaires maritimes and the MOU Secretariat.

5. Information relating to ships that have been refused access to Community ports must be made available in the Sirenac system and published in conformity with the provisions of section 18 and of Annex VIII.



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**Annex XII**

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International and Community requirements concerning voyage data recorder systems (see Article 1, paragraph 25 of Directive 2001/106/EC).

Ships in the following classes must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the performance standards of IMO Resolution A.861(20) and the testing standards set by Standard No 61996 of the International Electronics Commission (IEC):

- passenger ships built on or after 1 July 2002,
- ro-ro passenger ships built before 1 July 2002, not later than the first survey on or after 1 July 2002,
- passenger ships other than ro-ro passenger ships, built before 1 July 2002, not later than 1 January 2004,
- ships other than passenger ships, of 3,000 gross tonnage and upwards, built on or after 1 July 2002.

Ships in the following classes and built before 1 July 2002 must, inasmuch as they call at a port of a Member State of the Community, be fitted with a voyage data recorder system meeting the relevant IMO standards:

- cargo ships of 20,000 gross tonnage and upwards, not later than the date fixed by the IMO or, in the absence of a decision in IMO, not later than 1 January 2007,
- cargo ships of 3,000 gross tonnage and upwards but less than 20,000 gross tonnage, not later than the date fixed by the IMO or, in the absence of a decision in IMO, not later than 1 January 2008.