

# Merchant Shipping

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## MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS 2011

Subsidiary  
2011/055

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Subsidiary Legislation made under s. 223A.

## MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS 2011

(LN. 2011/055)

*Commencement*      **12.4.2011**

Amending enactments	Relevant current provisions	Commencement date
LN. 2013/102	<i>Corrigendum</i>	
2013/120	r. 2(1)	20.8.2013
2014/214	rr. 2(1), (3), 3(4), (5), (6), 18(3), (4), (5), 18A, 19(6), 20(3A), (3B), (3C), (8), (8A), (8B), (8C), Schs. 1, 4, 5, 10	21.11.2014
2015/044	rr. 2(1), Sch. 4	19.3.2015

**Transposing:**

Directive 96/40/EC  
Directive 2009/16/EC  
Directive 2013/38/EU

**Implementing:**

Regulation (EU) No. 428/2010  
Regulation (EU) No. 1257/2013

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*In exercise of the powers conferred on him by section 223A of the Merchant Shipping Act and all other enabling powers, and for the purpose of transposing and implementing into the law of Gibraltar Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port state control, Commission Directive 96/40/EC of 25 June 1996 establishing a common model for an identity card for inspectors carrying out port State control and Commission Regulation (EU) No. 428/2010 of 20 May 2010 implementing Article 14 of Directive 2009/16/EC, the Minister has made the following Regulations—*

**Title and commencement.**

1. These Regulations may be cited as the Merchant Shipping (Port State Control) Regulations 2011 and come into operation on the day of publication.

**Interpretation.**

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

“Act” means the Merchant Shipping Act;

“Administration” means the Maritime Administrator in the case of Gibraltar, and in other cases the corresponding authority of the relevant flag State;

“BGTW” means British Gibraltar Territorial Waters which is the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

“British ship” means a ship which is—

- (a) a Gibraltar ship;
- (b) registered under Part II of the United Kingdom’s Merchant Shipping Act 1995;
- (c) a Government ship, within the meaning of section 56 of the Merchant Shipping (Registration) Act 1993 or registered in the United Kingdom in pursuance of an Order in Council under

section 308 of the United Kingdom's Merchant Shipping Act 1995;

- (d) registered under the law of another relevant British Overseas Territory or Crown Dependency; or
- (e) a small ship other than a fishing vessel and—
  - (i) is not registered under Part II of the United Kingdom's Merchant Shipping Act 1995 but;
  - (ii) is wholly owned by qualified owners; and
  - (iii) is not registered under any jurisdiction outside the United Kingdom;

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

“classification certificate” means a document confirming compliance with SOLAS 74, Chapter II-1, Part A-1, Regulation 3-1;

“company” means the owner of the ship or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code;

“competent authority” means the Maritime Administrator as designated under regulation 4;

“competent security authority” means the authority referred to in regulation 62 of the Gibraltar Merchant Shipping (Survey, Certification and Safety) Regulations 2004;

“complaint” means any information or report submitted by any person or organisation with a legitimate interest in the safety of the ship, including an interest in safety or health hazards to its crew, on-board living and working conditions and the prevention of pollution;

“Conventions” means—

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- (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 78/95);
- (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) *Deleted*
- (h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
- (i) the Maritime Labour Convention, 2006 (MLC 2006);
- (j) the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS 2001);
- (k) the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunkers Convention, 2001),

together with the Protocols and amendments to these Conventions and related Codes of mandatory status, all in their 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;

“Declaration of maritime labour compliance” means the declaration referred to in Regulation 5.1.3 of the Maritime Labour Convention, 2006;

“detention” means the formal prohibition for a ship to proceed to sea due to established deficiencies which, individually or together, make the ship unseaworthy;

“Directive” means the Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on Port State Control, as the same may be amended from time to time;

“Directive 1999/35/EC” means Council Directive 1999/35/EC of 29 April 1999 on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger services, as the same may be amended from time to time;

“expanded inspection” means an inspection, which covers at least the items listed in Schedule 7 and which inspection may include a more detailed inspection whenever there are clear grounds in accordance with regulation 14(3);

“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;

“framework and procedures for the Voluntary IMO Member State Audit Scheme” means IMO Assembly Resolution A.974(24);

“Gibraltar ship” means a ship which is registered in Gibraltar under the provisions of the Gibraltar Merchant Shipping (Registration) Act 1993;

“initial inspection” means a visit on board a ship by an inspector, in order to check compliance with the relevant Conventions and regulations and including at least the checks required by regulation 14(1);

“inspection database” means the information system contributing to the implementation of the port State control system within the European Union and concerning the data related to inspections carried out in the European Union and the Paris MOU region;

“inspector” means a person—

- (a) duly appointed by the Minister to carry out inspections required by the Act or by the Merchant Shipping (Safety, etc.) Act, 1993;

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- (b) appointed under section 116(2) of the Act for the purposes of regulation 20(2); or
- (c) appointed as or authorised to be a surveyor of ships under section 52(1) of the Merchant Shipping (Safety, etc.) Act, 1993;

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

“Maritime labour certificate” means the certificate referred to in Regulation 5.1.3 of MLC 2006;

“Maritime Labour Convention, 2006” and “MLC 2006” means the Maritime Labour Convention, 2006 adopted on 23 February 2006 by the General Conference of the International Labour Organisation;

“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 14(4), to an in-depth inspection covering the ship’s construction, equipment, manning, living and working conditions and compliance with on-board operational procedures;

“night time” means the period from 11.00 p.m to 6.00 a.m unless otherwise defined, and where so defined and for the purposes of these Regulations, that meaning shall be construed as including—

- (a) a period of not less than seven hours; and
- (b) the hours between midnight and 5.00 a.m.;

“offshore installation” means a fixed or floating platform operating for the time being in BGTW;

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

“Paris 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;



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“Paris MOU region” means the geographical area in which the signatories to the Paris MOU conduct inspections in the context of the Paris MOU;

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

“port authority” means the authority established by section 3 of the Port Authority Act 2005;

“port State control” means the taking of 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 accordance with the Directive and the Paris MOU;

“recognised organisation” means a classification company or other private body, carrying out statutory tasks on behalf of a flag State administration;

“refusal of access order” means a decision issued to the master of a ship, to the company responsible for the ship and to the flag State notifying them that the ship will be refused access to all ports and anchorages of the European Union;

“ship” means any seagoing vessel to which one or more of the Conventions apply, flying a flag other than that of the port State;

“ship/port interface” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship;

“ship at anchorage” means a ship in a port or another area within the jurisdiction of a port, but not at berth, carrying out a ship/port interface;

“statutory certificate” means a certificate issued by or on behalf of a flag State in accordance with Conventions;

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

(2) For the purposes of paragraph (e) of the definition of “British ship” in subregulation (1)–

“qualified owners” shall have the meaning given to that expression in any relevant United Kingdom legislation; and

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

(3) All the references in these Regulations to the Conventions, International Codes and Resolutions, including for certificates and other documents, shall be deemed to be references to those Conventions, International Codes and Resolutions in their up-to-date versions.

**Application of these Regulations.**

3.(1) Subject to subregulation (2), these Regulations apply to any seagoing ship and its crew while in the port or at an anchorage within BGTW to engage in a ship/port interface.

(2) These Regulations do not apply to–

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

(3) The inspector shall, at the time of inspection of a ship, ensure–

- (a) in the case of a ship whose gross tonnage is less than 500, that the ship complies with such of the Conventions as apply to it;

- (b) to the extent that a Convention does not apply, that he is satisfied that the continued operation of the ship is clearly not hazardous to safety, health or the environment,

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

(4) When inspecting a ship flying the flag of a State which is not a party to a Convention, the Administration shall ensure that the treatment of that ship and its crew is not more favourable than that of a ship flying the flag of a State party to that Convention and such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris MOU.

(5) The Administration shall ensure that the measures adopted to give effect to the Directive do not lead to a reduction in the general level of protection of seafarers under European Union social law in the areas to which the Directive applies, as compared to the situation which already prevails in Gibraltar.

(6) In implementing the measures referred to in subregulation (5), if the Administration in Gibraltar becomes aware of a clear violation of European Union law on board ships flying the flag of a Member State, it shall, in accordance with the law and practice in Gibraltar, forthwith inform any other relevant competent authority in order for further action to be taken as appropriate.

### **Competent Authority.**

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

(2) In relation to a Member State “competent authority” means the national maritime administration maintained by that State for the inspection of ships.

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

### **Inspection powers.**

5.(1) The Administration shall be responsible for carrying out all inspections in Gibraltar under these Regulations and such inspections shall

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be carried out by the Administration or by an inspector duly authorised by the Administration.

(2) Where the Administration or an inspector carries out an inspection in BGTW, other than at the Gibraltar port, that inspection shall be deemed to be an inspection under these Regulations and shall be conducted in such manner as these Regulations provide.

(3) Nothing in this regulation or in regulation 3(1) shall affect the rights of intervention under the Conventions which are available to a Member State.

**Inspection system and annual inspection commitment.**

6.(1) The inspections referred to in regulation 5 shall be carried out in accordance with the selection scheme described in regulation 13 and the provisions of Schedule 1.

(2) The Administration shall, in order to comply with the annual inspection commitment, make arrangements to—

- (a) inspect all Priority I ships, referred to in regulation 13(2)(a), calling at the port and anchorages in Gibraltar; and
- (b) carry out annually a total number of inspections of Priority I and Priority II ships, referred to in regulation 13(2) (a) and (b), corresponding at least to its share of the total number of inspections to be carried out annually within the European Union and the Paris MOU region.

(3) The inspection share of Gibraltar shall be based on the number of individual ships calling at the port of Gibraltar in relation to the sum of the number of individual ships calling at ports of each State within the European Union and the Paris MOU region.

(4) For the purpose of calculating the share of the total number of inspections to be carried out annually within the European Union and the Paris MOU region referred to in subregulation (3), ships at anchorage shall not be counted unless the Government has otherwise specified by Notice in the Gazette.

**Modalities of compliance with the inspection commitment.**

7.(1) Where the Administration fails to carry out the inspections required by regulation 6(2)(a), it shall be deemed to have complied with the

commitment in accordance with that provision if such missed inspections do not exceed-

- (a) 5% of the total number of Priority I ships with a high risk profile calling at the port and anchorages in Gibraltar; or
- (b) 10% of the total number of Priority I ships other than those with a high risk profile calling at the port and anchorages in Gibraltar.

(2) Notwithstanding the percentages in paragraphs (a) and (b) of subregulation (1), the Administration shall prioritise inspection of ships—

- (a) which, according to the information provided by the inspection database, call at ports within the European Union infrequently; and
- (b) which are Priority I ships with a high risk profile calling at anchorages in Gibraltar, which ships, according to the information provided by the inspection database, call at ports within the European Union infrequently.

### **Modalities allowing a balanced inspection share within the Community.**

8.(1) Where the total number of calls of Priority I ships exceeds its inspection share referred to in regulation 6(2)(b), the Administration shall be regarded as complying with such commitment, if a number of inspections on Priority I ships carried out by the Administration corresponds at least to such inspection share and if the Administration does not miss more than 30% of the total number of Priority I ships calling at the port and anchorages in Gibraltar.

(2) Where the total number of calls of Priority I and Priority II ships is less than the inspection share referred to in regulation 6(2)(b), the Administration shall be regarded as complying with such commitment, if the Administration carries out the inspections of Priority I ships required under regulation 6(2)(a) and inspections on at least 85% of the total number of Priority II ships calling at the port and anchorages in Gibraltar.

### **Postponement of inspections and exceptional circumstances.**

9.(1) The Administration may postpone the inspection of a Priority I ship where the inspection may be carried out in another port of call within the European Union or the Paris MOU region within 15 days and the State in

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which such port of call is located has agreed in advance to perform the inspection.

(2) If an inspection is postponed in accordance with subregulation (1) and recorded in the inspection database, a missed inspection shall not be counted as a missed inspection.

(3) Where the port of Gibraltar is the next port of call for a Priority I ship in respect of which an inspection has been postponed in a Member State in accordance with Article 8(1) of the Directive, that ship shall not be exempted from inspection under these Regulations.

(4) Where an inspection is not performed on a Priority I ship for operational reasons, it shall not be counted as a missed inspection provided that the reason for missing the inspection is recorded in the inspection database and the following exceptional circumstances occur-

- (a) in the judgement of the Administration the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment; or
- (b) the ship call takes place only during night time.

(5) Where subregulation (4)(b) applies, the Administration shall take the measures necessary to ensure that ships which call regularly during night time are inspected as appropriate.

(6) Where the inspection is not performed on a ship at anchorage, it shall not be counted as a missed inspection if-

- (a) the ship is inspected in another port or anchorage within the European Union or the Paris MOU region in accordance with Annex I of the Directive within 15 days;
- (b) the ship call takes place only during night time or its duration is too short for the inspection to be carried out satisfactorily, and the reason for missing the inspection is recorded in the inspection database; or
- (c) in the judgement of the Administration the conduct of the inspection would create a risk to the safety of inspectors, the ship, its crew or to the port, or to the marine environment, and the reason for missing the inspection is recorded in the inspection database.

## Notification of arrival of ships.

10.(1) The operator, agent or master of a ship which, in accordance with regulation 15, is eligible for an expanded inspection and bound for a port or anchorage of Gibraltar, shall notify the port authority of its arrival in accordance with the provisions laid down in Schedule 3.

(2) On receipt of the notification referred to in subregulation (1) and in regulation 5 of the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004, the port authority shall forward such information to the Administration.

(3) Electronic means shall be used whenever possible for any communication provided for in this regulation.

(4) The procedures and formats developed by the Administration for the purposes of Schedule 3 shall comply with the relevant provisions of the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004 regarding ships' notifications.

## Ship risk profile.

11.(1) All ships calling at the port or anchorage of Gibraltar shall, in the inspection database, be attributed a ship risk profile which determines their respective priority for inspection, the intervals between the inspections and the scope of inspections.

(2) The risk profile of a ship shall be determined by a combination of generic and historical risk parameters as follows—

- (a) in respect of generic parameters, it shall be based on the type, age, flag, recognised organisations involved and company performance in accordance with Schedule 1, Part 1, paragraph 1 and Schedule 2; and
- (b) in respect of historical parameters, it shall be based on the number of deficiencies and detentions during a given period in accordance with Schedule 1, Part 1, paragraph 2 and Schedule 2.

## Frequency of inspections.

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12. Ships calling at the port or anchorages in Gibraltar shall be subject to periodic inspections or to additional inspections in accordance with subregulations (2) to (4).

(2) Every ship shall be subject to periodic inspections at predetermined intervals depending on their risk profile in accordance with Schedule 1, Part 1.

(3) The interval between periodic inspections of ships shall increase as the risk decreases and for high risk ships, this interval shall not exceed six months.

(4) Every ship shall be subject to additional inspections regardless of the period since their last periodic inspection as follows—

- (a) the Administration shall ensure that ships to which overriding factors listed in Schedule 1, Part 2, paragraph 2A, apply are inspected; and
- (b) ships to which unexpected factors listed in Schedule 1, Part 2, paragraph 2B, apply may be inspected and the decision to undertake such an additional inspection is left to the professional judgement of the Administration.

#### **Selection of ships for inspection.**

13.(1) The Administration shall ensure that every ship is selected for inspection on the basis of its risk profile as described in Schedule 1, Part 1, and when overriding or unexpected factors arise in accordance with Schedule 1, Part 2, paragraphs 2A and 2B.

(2) The Administration, for the purpose of inspection of ships—

- (a) shall select ships which are due for a mandatory inspection, referred to as ‘Priority I’ ships, in accordance with the selection scheme described in Schedule 1, Part 2, paragraph 3A; and
- (b) may select ships which are eligible for inspection, referred to as ‘Priority II’ ships, in accordance with Schedule 1, Part 2, paragraph 3B.

#### **Initial and more detailed inspections.**



14.(1) The Administration shall ensure that ships which are selected for inspection in accordance with regulation 13 are subject to an initial inspection or a more detailed inspection in accordance with the provisions of this regulation.

(2) The Administration shall ensure that on each initial inspection of a ship, the inspector, as a minimum—

- (a) checks the certificates and documents listed in Schedule 4 required to be kept on board in accordance with Community maritime legislation and Conventions relating to safety and security;
- (b) verifies, where appropriate, whether outstanding deficiencies found during the previous inspection carried out by a Member State or by a State signatory to the Paris MOU have been rectified; and
- (c) satisfies himself of the overall condition of the ship, including the hygiene of the ship, including in the engine room and in respect of accommodation.

(3) A more detailed inspection shall be carried out, including further checking of compliance with on-board operational requirements, whenever there are clear grounds for believing, after the inspection referred to in subregulation (2), that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention.

(4) Clear grounds shall exist when the inspector finds evidence which in his professional judgement warrants a more detailed inspection of the ship, its equipment or its crew.

(5) Examples of clear grounds are set out in Schedule 5.

(6) When a ship has been inspected pursuant to Article 13(1) of the Directive and deficiencies to be rectified at the next port of call have been recorded in the inspection database, if the port of Gibraltar is the next port of call for that ship, the Administration shall decide whether or not to carry out the verifications set out in subregulation (2)(a) to (c).

## **Expanded inspections.**

15.(1) The following categories of ships are eligible to an expanded inspection in accordance with Schedule 1, Part 2, paragraphs 3A and 3B—

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- (a) ships with a high risk profile;
- (b) passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age;
- (c) ships with a high risk profile or passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years of age, in cases of overriding or unexpected factors; and
- (d) ships subject to a re-inspection following a refusal of access order issued in accordance with regulation 17.

(2) The operator or master of the ship shall ensure that sufficient time is available in the operating schedule to allow the expanded inspection to be carried out.

(3) Without prejudice to control measures required for security purposes, the ship shall remain in the port until the inspection is completed.

(4) On receipt of a pre-notification provided by a ship eligible for a periodic expanded inspection, the Administration shall inform the ship if no expanded inspection will be carried out.

(5) The scope of an expanded inspection, including the risk areas to be covered, is set out in Schedule 7.

(6) An expanded inspection under this regulation must, where applicable, as a minimum comprise the verification of the specific items listed in Schedule 13.

(7) In the case where no specific areas are indicated for a particular type of ship, as defined in these Regulations, the inspector shall use his professional judgement to decide which items must be inspected, and to what extent, in order to check the overall condition in these areas.

#### **Safety and security guidelines and procedures.**

16.(1) The Administration shall ensure that the inspectors follow the procedures and guidelines specified in Schedule 6.

(2) The Administration shall, as far as security checks are concerned, apply the relevant procedures set out in Schedule 6 to all ships referred to in Articles 3(1), 3(2) and 3(3) of Regulation (EC) No 725/2004 of the

European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security, calling at the port and anchorages in Gibraltar, unless they are registered in Gibraltar.

(3) The provisions of regulation 15 of these Regulations concerning expanded inspections shall apply to ro-ro ferries and high-speed passenger craft, defined by regulation 2 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2005.

(4) When a ship has been surveyed in accordance with regulations 7 and 9 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2005, the Administration shall record such specific surveys as a more detailed or an expanded inspection, as relevant, in the inspection database and taken into account for the purposes of regulations 11, 12 and 13 of these Regulations and for calculating the fulfilment of the inspection commitment of the Administration in as much as all the items referred to in Schedule 7 are covered.

(5) Without prejudice to a prevention of operation of a ro-ro ferry or a high-speed passenger craft decided in accordance with regulation 12 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2005, the provisions of these Regulations concerning rectification of deficiencies, detention, refusal of access, follow-up to inspections, detentions and refusal of access, as appropriate, shall apply.

#### **Access refusal measures concerning certain ships.**

17.(1) The Administration shall ensure that any ship which—

- (a) flies the flag of a State whose detention rate falls into the black list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and as published annually by the European Commission, and has been detained or has been issued with a prevention of operation order under Directive 1999/35/EC more than twice in the course of the preceding 36 months in the port or anchorage of a Member State or of a State signatory of the Paris MOU; or
- (b) flies the flag of a State whose detention rate falls into the grey list, adopted in accordance with the Paris MOU on basis of information recorded in the inspection database and as published annually by the European Commission, and has been

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detained or has been issued with a prevention of operation order under Directive 1999/35/EC more than twice in the course of the preceding 24 months in the port or anchorage of a Member State or of a State signatory of the Paris MOU,

is refused access to the port and anchorage in Gibraltar, except in the situations described in regulation 22(1).

(2) Refusal of access pursuant to subregulation (1) shall become applicable as soon as the ship leaves the port or anchorage where it has been the subject of a third detention and where a refusal of access order has been issued.

(3) The refusal of access order shall be lifted only after a period of 3 months has passed from the date of issue of the order and when the conditions in paragraphs 3 to 9 of Schedule 8 are met and if the ship is subject to a second refusal of access order, the period shall be 12 months.

(4) Any subsequent detention in the port or anchorages within the European Union shall result in the ship being refused access to the port and anchorages in Gibraltar and this third refusal of access order may be lifted after a period of 24 months has passed from the issue of the order and only if—

- (a) the ship flies the flag of a State whose detention rate falls neither into the black list nor the grey list referred to in subregulation (1);
- (b) the statutory and classification certificates of the ship are issued by an organisation or organisations recognised under Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations;
- (c) the ship is managed by a company with a high performance according to Schedule 1, Part 1, paragraph 1; and
- (d) the conditions in paragraphs 3 to 9 of Schedule 8 are met.

(5) Any ship not meeting the criteria specified in subregulation (4) after a period of 24 months has passed from the issue of the order, shall be permanently refused access to any port and anchorage within the European Union.

(6) Any subsequent detention in a port or anchorage within the European Union after the third refusal of access order shall result in the ship being permanently refused access to the port and anchorage in Gibraltar.

(7) For the purpose of this regulation, the Administration shall comply with the procedures laid down in Schedule 8.

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

18.(1) On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report in accordance with Schedule 9.

(2) The ship's master shall be provided with a copy of the inspection report.

(3) Where, following a more detailed inspection, the living and working conditions on the ship are found not to conform to the requirements of the Maritime Labour Convention, 2006, the inspector shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification.

(4) In the event that the inspector considers the deficiencies referred to in subregulation (3) to be significant, or if they relate to a possible complaint under point 19 of Part A of Schedule 5, the inspector shall also bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organisations in Gibraltar and may—

- (a) notify a representative of the flag State;
- (b) provide the competent authorities of the next port of call with the relevant information.

(5) In respect of matters concerning the Maritime Labour Convention, 2006, the Administration shall have the right to transmit a copy of the inspector's report, to be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties who might be interested in availing themselves of relevant recourse procedures.

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### **Onshore Maritime Labour Convention, 2006 complaint-handling procedures.**

18A.(1) A complaint by a seafarer alleging a breach of the requirements of the Maritime Labour Convention, 2006 (including seafarers' rights) may be reported to an inspector in the port and in such cases, the inspector shall undertake an initial investigation.

(2) Where appropriate, given the nature of the complaint, the initial investigation referred to in subregulation (1) shall include consideration of whether the on-board complaint procedures provided for under Regulation 5.1.5 of the Maritime Labour Convention, 2006 have been pursued.

(3) Where a complaint is reported to an inspector under subregulation (1), the inspector may also conduct a more detailed inspection in accordance with regulation 14.

(4) The inspector shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.

(5) In the event that the investigation or the inspection reveals a non-conformity that falls within the scope of regulation 20, that regulation shall apply.

(6) Where subregulation (5) does not apply and a complaint by a seafarer related to matters covered by the Maritime Labour Convention, 2006 has not been resolved at the ship-board level, the inspector shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action to be submitted by the flag State.

(7) In a situation under subregulation (6), a report of any inspection carried out shall be transmitted by electronic means to the inspection database referred to in regulation 25.

(8) Where the complaint has not been resolved following action taken in accordance with subregulation (6), the Administration shall transmit a copy of the inspector's report to the Director-General of the International Labour Office and the report shall be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State.

(9) In a situation under subregulation (6)–

- (a) the appropriate seafarers' and shipowners' organisations in Gibraltar shall be similarly informed; and

- (b) statistics and information regarding complaints that have been resolved shall be regularly submitted by the Administration to the Director-General of the International Labour Office,

in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and brought to the attention of parties, including seafarers' and shipowners' organisations, which might be interested in availing themselves of relevant recourse procedures.

- (10) This regulation shall be without prejudice to regulation 19.

(11) Regulation 19(5) and (6) shall also apply to complaints relating to matters covered by the Maritime Labour Convention, 2006.

## Complaints.

19.(1) Any person or organisation with a legitimate interest in the safety of the ship, including an interest in safety or health hazards to its crew, on-board living and working conditions and the prevention of pollution may lodge a complaint to the Administration.

(2) Every complaint under subregulation (1) shall be subject to a rapid initial assessment by the Administration and such assessment shall make it possible to determine whether a complaint is justified.

(3) If the complaint is justified, the Administration shall take the necessary action on the complaint, in particular, ensuring that anyone directly concerned by that complaint can make their views known.

(4) Where the Administration deems the complaint to be manifestly unfounded, it shall inform the complainant of its decision and of the reasons therefor.

(5) The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned.

- (6) the inspector shall—
  - (a) take appropriate steps to safeguard the confidentiality of complaints made by seafarers; and
  - (b) ensure confidentiality during any interviews of seafarers.

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(7) The Administration shall inform the flag State administration, with a copy to the International Labour Organisation if appropriate, of complaints not manifestly unfounded and of follow-up actions taken.

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

20.(1) The Administration shall be satisfied that any deficiencies confirmed or revealed by an inspection under these Regulations are, or will be, rectified in accordance with the Conventions.

(2) In the case of deficiencies which are clearly hazardous to safety, health or the environment, the Administration shall issue an order requiring the detention of the ship or that the operation in the course of which the deficiencies are revealed is stopped, (a detention order or stoppage order).

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

(3A) In the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers or deficiencies which constitute a serious or repeated breach of the Maritime Labour Convention, 2006 requirements (including seafarers' rights), where the ship is being inspected, the Administration shall ensure that the ship is detained or that the operation in the course of which the deficiencies are revealed is stopped.

(3B) The detention order or stoppage of an operation shall not be lifted until those deficiencies have been rectified or if the Administration has accepted a plan of action to rectify those deficiencies and it is satisfied that the plan will be implemented in an expeditious manner.

(3C) Prior to accepting a plan of action referred to in subregulation (3B), the inspector may consult the flag State.

(4) When exercising his professional judgement as to whether or not a ship is to be detained, the inspector shall apply the criteria set out in Schedule 10.



(5) If the inspection reveals that the ship is not equipped with a functioning voyage data recorder, when use of such recorder is compulsory in accordance with the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004, the Administration shall ensure that the ship is detained.

(6) If the deficiency under subregulation (5) cannot be readily rectified in the port, the Administration may either allow the ship to proceed to the appropriate repair yard nearest to the port of Gibraltar where it may be readily rectified or direct that the ship's deficiency shall be rectified within a maximum period of 30 days, as provided for in the guidelines developed by the Paris MOU and for these purposes, the procedures laid down in regulation 22 of these Regulations shall apply.

(7) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the Administration may suspend the inspection of that ship until the responsible parties take the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(8) The Administration shall, in the event of detention, immediately inform, in writing and including the report of inspection, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary.

(8A) In addition, the Administration, if relevant, shall notify the nominated surveyors or recognised organisations responsible for the issue of classification certificates or statutory certificates in accordance with Conventions.

(8B) If a ship is prevented from sailing due to serious or repeated breach of the requirements of the Maritime Labour Convention, 2006 (including seafarers' rights) or due to the living and working conditions on board being clearly hazardous to the safety, health or security of seafarers, the Administration shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline.

(8C) In a situation under subregulation (8B), the Administration shall also inform forthwith the appropriate seafarers' and shipowners' organisations in Gibraltar.

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(9) These Regulations shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

(10) When port State control is exercised under these Regulations, all possible efforts shall be made to avoid a ship being unduly detained or delayed.

(11) If a ship is unduly detained or delayed, the owner or operator shall be entitled to compensation under section 117 of the Act for any loss or damage suffered and in any instance of alleged undue detention or delay the burden of proof shall lie with the owner or operator of the ship, and in determining such an application, a reference in that section to a ship being detained or delayed shall be construed as a reference to a ship being detained or delayed under these Regulations.

(12) In order to alleviate port congestion, the Administration may allow a detained ship to be moved to another part of the port if it is safe to do so but, the risk of port congestion shall not be a consideration when deciding on a detention or on a release from detention.

(13) The port authority shall—

- (a) cooperate with the Administration with a view to facilitating the accommodation of detained ships; and
- (b) be informed at the earliest convenience when a detention order is issued.

**Right of appeal.**

21.(1) Where a ship is the subject of a detention order or a refusal of access order, the Administration shall ensure that the master of that ship is informed of the right of appeal and the practical arrangements relating thereto.

(2) The owner or operator of a ship or his representative in Gibraltar may lodge an appeal against a detention order or a refusal of access order, issued in pursuance of the provisions of these Regulations, by filing a notice of appeal in the Supreme Court (“the Court”) within 21 days from the service of the detention order or the refusal of access order, and in such a case the provisions of section 117(4) of the Act shall have effect.

(3) Where notice of appeal is given by the master or owner of the ship or his representative in Gibraltar in accordance with subregulation (2), the giving of the notice of an appeal shall not suspend the operation of the detention order or the refusal of access order.

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

(5) The Court shall have regard, in coming to its decision, to any other matters not specified in the detention order or the refusal of access order 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.

(6) 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 order made by the Administration for detention of the ship or for refusal of access of the ship by the Captain of the Port, it shall either cancel the detention order or the refusal of access order or affirm it with such modifications as it may in the circumstances think fit; and in any other case the Court shall affirm the order in its original form.

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

(8) Where as a result of an appeal, a detention order or a refusal of access order is revoked or amended the inspection database shall be amended accordingly without delay.

(9) Where the detention order or refusal of access order is revoked or amended by the Court, the Administration shall ensure, within 24 hours of such a decision, that the information published in accordance with Article 26 of the Directive is rectified.

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

22.(1) Where deficiencies referred to in regulation 20(2) and (3) cannot be rectified whilst the ship is in the port of Gibraltar, the Administration may allow the ship to proceed without undue delay to the nearest appropriate repair yard, as chosen by the master and the authorities concerned, where follow-up action can be taken, if the conditions determined by the competent authority of the flag State and agreed by the Maritime Administrator are complied with.

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

(3) Where the decision to send a ship to a repair yard is due to a lack of compliance with IMO Resolution A. 744(18), either with respect to a ship's documentation or with respect to a ship's structural failures and deficiencies, the Administration may require that the necessary thickness measurements be carried out in the port of detention before the ship is allowed to sail.

(4) In the circumstances referred to in subregulations (1) and (2), the Administration shall notify the competent authority of the State where the repair yard is situated, the parties mentioned in regulation 20(8) and any other authority as appropriate of all the conditions for the voyage.

(5) If a Gibraltar ship is detained elsewhere and the Administration receives any notification similar to one issued under subregulation (4), it shall inform the notifying authority of the action taken.

(6) The Captain of the Port shall take measures to ensure that access to the port or anchorages in Gibraltar is refused to ships referred to in subregulations (1) and (2) which proceed to sea-

- (a) without complying with the conditions determined by the competent authority of any Member State in the port of inspection; or
- (b) which refuses to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard.

(7) Any refusal under subregulation (6) shall be maintained until the owner or operator provides evidence to the satisfaction of the Administration where the ship was found defective, demonstrating that the ship fully complies with all applicable requirements of the Conventions.

(8) In the circumstances referred to in subregulation (6)(a), the Administration shall, where the ship was found defective, immediately alert the competent authorities of all the Member States.

(9) In the circumstances referred to in subregulation (6)(b), the Administration shall, where the repair yard lies in Gibraltar, immediately alert the competent authorities of all the Member States.

(10) Before denying entry, the Administration may request consultations with the flag administration of the ship concerned.

(11) Notwithstanding subregulations (6) and (7), access to the port or anchorage in Gibraltar may be permitted by the Captain of the Port—

- (a) in the event of force majeure;
- (b) in the event of overriding safety considerations;
- (c) to reduce or minimise the risk of pollution; or
- (d) to have deficiencies rectified,

provided that adequate measures to the satisfaction of the port authority have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

### **Professional profile of inspectors.**

23.(1) An inspection under these Regulations shall be carried out only by inspectors who fulfil the qualification criteria specified in Schedule 11 and who are authorised to carry out port State control by the Administration.

(2) When the required professional expertise cannot be provided by the Administration of the port State, the inspector of that Administration may be assisted by any person with the required expertise.

(3) The Administration, the inspectors carrying out port state control and the persons assisting them shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall the inspectors 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) Each inspector shall carry a personal document in the form of an identity card issued by the Administration in accordance with Schedule 14.

(5) The Administration shall ensure that the competence of inspectors and their compliance with the minimum criteria referred to in Schedule 11 are verified, before authorising them to carry out inspections and periodically thereafter in the light of the training scheme referred to in Article 22(7) of the Directive.

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(6) The Administration shall ensure that inspectors receive appropriate training in relation to changes to the port State control system applied in the European Union as laid down in the Directive and amendments to the Conventions.

#### **Reports from pilots and port authorities.**

24.(1) The pilot of a Gibraltar ship who—

- (a) is engaged in the berthing or unberthing of a ship; or
- (b) is engaged on a ship—
  - (i) bound for a port; or
  - (ii) in transit within a Member State,

must immediately inform the Administration of the port State or the coastal State, as appropriate, whenever he learns, in the course of his normal duties, that there are apparent anomalies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.

(2) If the Captain of the Port, in the course of his normal duties, learns that a ship within the port of Gibraltar has apparent anomalies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, he shall immediately inform the Administration.

(3) The pilot and the Captain of the Port shall report at least the following information, in electronic format whenever possible—

- (a) ship information (name, IMO identification number, call sign and flag);
- (b) sailing information (last port of call, port of destination); and
- (c) description of apparent anomalies found on board.

(4) The Administration shall ensure that proper follow-up action is taken on apparent anomalies notified by pilots and the Captain of the Port and shall record the details of action taken.

#### **Inspection database.**

25.(1) The Captain of the Port shall take the appropriate measures to ensure that the information on the actual time of arrival and the actual time of departure of any ship calling at the port and anchorages in Gibraltar, together with an identifier of the port, is transferred within a reasonable time to the inspection database established under Article 24(1) of the Directive through the Community maritime information exchange system 'SafeSeaNet' as defined in regulation 2 of the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004.

(2) The Administration shall ensure that the information related to inspections performed in accordance with these Regulations is transferred to the inspection database as soon as the inspection report is completed or the detention lifted.

(3) The Administration shall ensure that the information transferred to the inspection database is validated for publication purposes within 72 hours of its transfer.

#### **Exchange of information and cooperation.**

26. The port authority shall provide the Administration with the following types of information in its possession—

- (a) information notified in accordance with regulation 10 and Schedule 3;
- (b) information concerning ships which have failed to notify any information according to the requirements of these Regulations, and to the Gibraltar Merchant Shipping (Port Waste Reception Facilities) Regulations 2002 and the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004, as well as, if appropriate, with Regulation (EC) No 725/2004;
- (c) information concerning ships which have proceeded to sea without having complied with regulation 13 or 16 of the Gibraltar Merchant Shipping (Port Waste Reception Facilities) Regulations 2002;
- (d) information concerning ships which have been denied entry or expelled from port on security grounds; and

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- (e) information on apparent anomalies in accordance with regulation 24.

### Reimbursement of costs.

27.(1) If the inspections referred to in regulation 14 and 15 confirm or reveal deficiencies in relation to the requirements of a Convention warranting the detention of a ship, all costs relating to the inspections in any normal accounting period shall be covered by the shipowner or the operator or by his representative in Gibraltar.

(2) All costs relating to inspections carried out by the Administration under the provisions of regulation 17 and 22(6) shall be charged to the owner or operator of the ship.

(3) In the case of detention of a ship, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

(4) The detention shall not be lifted until full payment is made or a sufficient guarantee is given for reimbursement of the costs.

### Data to monitor implementation.

28.(1) The Administration shall ensure that the European Commission is provided with the information listed in Schedule 12 at the intervals stated in that Schedule.

(2) Where the Captain of the Port has supplied the information set out in regulation 25(1) through SafeSeaNet, the Administration is exempted from providing the information required under paragraphs 1.2 and 2(a) and (b) of Schedule 12.

### Offences and penalties.

29.(1) If there is any contravention of a direction made pursuant to regulation 20(2) or (6) 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 fails to proceed to the yard specified in regulation 22 (1).



(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 24(3) 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.

### **Repeal.**

30. The Merchant Shipping (Port State Control) Regulations 2003 are repealed.

### **Saving and transitional provisions.**

31.(1) In this regulation a reference to the “repealed Regulations” shall be construed as a reference to the regulations repealed by regulation 30.

(2) Any proceedings which have been instituted under the repealed Regulations (including any appeal) which have not been concluded at the time of the coming into operation of these Regulations shall be continued as though the repealed Regulations had not been repealed.

(3) Where proceedings for an offence committed under the repealed Regulations have not been commenced at the commencement of these Regulations—

- (a) if there is an equivalent offence under these Regulations- proceedings must be brought under these Regulations;
- (b) if there is no equivalent offence- proceedings cannot be brought.

(4) Any order, instruction direction, exemption, notice, permit, complaint or other non-legislative instrument made or issued by any person or body under the repealed Regulations which could be made or issued by an equivalent person or body under these Regulations continues to have effect as if made or issued by that person or body under these Regulations until it expires, it is varied or revoked under these Regulations.

**1935-09**

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**Subsidiary  
2011/055**

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## SCHEDULE 1

Regulations 6, 11 and 12

### ELEMENTS OF THE COMMUNITY PORT STATE INSPECTION SYSTEM

#### Part 1

The following elements shall be included in the Community Port State Inspection System:

#### 1. Ship risk profile

The risk profile of a ship shall be determined by a combination of the following generic and historical parameters:

##### 1. Generic parameters

###### (a) Type of ship

Passenger ships, oil and chemical tankers, gas carriers and bulk carriers shall be considered as posing a higher risk.

###### (b) Age of ship

Ships of more than 12 years old shall be considered as posing a higher risk.

###### (c) Flag State performance

(i) Ships flying the flag of a State with a high detention rate within the Community and the Paris MOU region shall be considered as posing a higher risk.

(ii) Ships flying the flag of a State with a low detention rate within the Community and the Paris MOU region shall be considered as posing a lower risk.

(iii) Ships flying the flag of a State for which an audit has been completed and, where relevant, a corrective action plan submitted, both in accordance with the Framework and procedures for the Voluntary IMO Member State

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Audit Scheme shall be considered as posing a lower risk. As soon as the measures referred to in Article 10(3) of the Directive are adopted, the flag State of such a ship shall demonstrate compliance with the Code for the implementation of mandatory IMO instruments.

- (d) Recognised organisations
  - (i) Ships which have been delivered certificates from recognised organisations having a low or very low performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a higher risk.
  - (ii) Ships which have been delivered certificates from recognised organisations having a high performance level in relation with their detention rates within the Community and the Paris MOU region shall be considered as posing a lower risk.
  - (iii) Ships with certificates issued by organisations recognised under the terms of Regulation (EC) No 391/2009.
- (e) Company performance
  - (i) Ships of a company with a low or very low performance as determined by its ships' deficiency and detention rates within the Community and the Paris MOU region shall be considered as posing a higher risk.
  - (ii) Ships of a company with a high performance as determined by its ships' deficiency and detention rates within the Community and the Paris MOU region shall be considered as posing a lower risk.

### 2. Historical parameters

- (i) Ships which have been detained more than once shall be considered as posing a higher risk.
- (ii) Ships which, during inspection(s) carried out within the period referred to in Schedule 2 have had less than the number of deficiencies referred to in Schedule 2, shall be considered as posing a lower risk.

- (iii) Ships which have not been detained during the period referred to in Schedule 2, shall be considered as posing a lower risk.

The risk parameters shall be combined by using a weighting which reflects the relative influence of each parameter on the overall risk of the ship in order to determine the following ship risk profiles:

- high risk,
- standard risk,
- low risk.

In determining these risk profiles greater emphasis shall be given to the parameters for type of ship, flag State performance, recognised organisations and company performance.

## Part 2

### Inspection of ships

#### 1. Periodic inspections

Periodic inspections shall be carried out at predetermined intervals. Their frequency shall be determined by the ship risk profile. The interval between periodic inspections of high risk ships shall not exceed six months. The interval between periodic inspections of ships of other risk profiles shall increase as the risk decreases.

Member States shall carry out a periodic inspection on:

- Any ship with a high risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last six months. High risk ships become eligible for inspection as from the fifth month.
- Any ship with a standard risk profile which has not been inspected in a port or anchorage within the Community

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or of the Paris MOU region during the last 12 months. Standard risk ships become eligible for inspection as from the 10th month.

- Any ship with a low risk profile which has not been inspected in a port or anchorage within the Community or of the Paris MOU region during the last 36 months. Low risk ships become eligible for inspection as from the 24th month.

### 2. Additional inspections

Ships, to which the following overriding or unexpected factors apply, are subject to an inspection regardless of the period since their last periodic inspection. However, the need to undertake an additional inspection on the basis of unexpected factors is left to the professional judgement of the inspector.

#### 2A. Overriding factors

Ships to which the following overriding factors apply shall be inspected regardless of the period since their last periodic inspection:

- Ships which have been suspended or withdrawn from their class for safety reasons since the last inspection in the Community or in the Paris MOU region.
- Ships which have been the subject of a report or notification by another Member State.
- Ships which cannot be identified in the inspection database.
- Ships which:
  - have been involved in a collision, grounding or stranding on their way to the port,
  - have been accused of an alleged violation of the provisions on discharge of harmful substances or effluents, or

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- have manoeuvred in an erratic or unsafe manner whereby routing measures, adopted by the IMO, or safe navigation practices and procedures have not been followed.

## 2B. Unexpected factors

Ships to which the following unexpected factors apply may be subject to inspection regardless of the period since their last periodic inspection. The decision to undertake such an additional inspection is left to the professional judgement of the competent authority:

- Ships which have not complied with the applicable version of IMO Recommendation on navigation through the entrances to the Baltic Sea.
- Ships carrying certificates issued by a formerly recognised organisation whose recognition has been withdrawn since the last inspection in the Community or in the Paris MOU region.
- Ships which have been reported by pilots or port authorities or bodies as having apparent anomalies which may prejudice their safe navigation or pose a threat of harm to the environment in accordance with regulation 24 of these Regulations.
- Ships which have failed to comply with the relevant notification requirements referred to in regulation 10 of these Regulations, in the Gibraltar Merchant Shipping (Port Waste Reception Facilities) Regulations, 2002, in the Gibraltar Merchant Shipping (Community Vessel Traffic Monitoring and Information System) Regulations 2004, and if appropriate in Regulation (EC) No 725/2004.
- Ships which have been the subject of a report or complaint, including an onshore complaint, by the master, a crew member, or any person or organisation with a legitimate interest in the safe operation of the ship, on-board living and working conditions or the prevention of pollution, unless the Administration deems the report or complaint to be manifestly unfounded.

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- Ships which have been previously detained more than three months ago.
- Ships which have been reported with outstanding deficiencies, except those for which deficiencies had to be rectified within 14 days after departure, and for deficiencies which had to be rectified before departure.
- Ships which have been reported with problems concerning their cargo, in particular noxious and dangerous cargoes.
- Ships which have been operated in a manner posing a danger to persons, property or the environment.
- Ships where information from a reliable source became known, to the effect that their risk parameters differ from those recorded and the risk level is thereby increased.
- Ships for which a plan of action to rectify deficiencies as referred to in regulation 20(3B) has been agreed but in respect of which the implementation of that plan has not been checked by an inspector.

### 3. Selection scheme

#### 3A. Priority I ships shall be inspected as follows:

##### (a) An expanded inspection shall be carried out on:

- any ship with a high risk profile not inspected in the last six months,
- any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 12 months.

##### (b) An initial or a more detailed inspection, as appropriate, shall be carried out on:

- any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years



of age, with a standard risk profile not inspected in the last 12 months.

- (c) In case of an overriding factor:
- A more detailed or an expanded inspection, according to the professional judgement of the inspector, shall be carried out on any ship with a high risk profile and on any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age.
  - A more detailed inspection shall be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.
- 3B. Where the Administration decides to inspect a Priority II ship, the following shall apply:
- (a) An expanded inspection shall be carried out on:
- any ship with a high risk profile not inspected in the last five months,
  - any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or
  - any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.
- (b) An initial or a more detailed inspection, as appropriate, shall be carried out on:
- any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a standard risk profile not inspected in the last 10 months, or

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- any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age, with a low risk profile not inspected in the last 24 months.
- (c) In case of an unexpected factor:
- a more detailed or an expanded inspection according to the professional judgement of the inspector, shall be carried out on any ship with a high risk profile or any passenger ship, oil tanker, gas or chemical tanker or bulk carrier, older than 12 years of age,
  - a more detailed inspection shall be carried out on any ship other than a passenger ship, an oil tanker, a gas or chemical tanker or a bulk carrier, older than 12 years of age.

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## SCHEDULE 2

Regulations 11(2) and 23 (4)

### DESIGN OF SHIP RISK PROFILE

		Profile					
		High Risk Ship (HRS)		Standard Risk Ship (SRS)	Low Risk Ship (LRS)		
Generic Parameters		Criteria	Weighting points	Criteria	Criteria		
1	Type of Ship	Chemical tankship Gas carrier Oil tankship Bulk carrier Passenger ship	2	Neither a high risk nor a low risk ship	All types		
2	Age of Ship	All types > 12 y	1		All ages		
3a	Flag	BGW-list	Black – VHR, HR, M to HR		2	White	
			Black - MR		1		
3b		IMO-Audit	-		-	Yes	
4a	Recognised organisation	Performance	H		-	-	High
			M		-	-	-
			L		Low	1	-
			VL		Very Low		-
4b		EU recognised	-		-	Yes	
5	Company	Performance	H	-	-	High	
			M	-	-	-	
			L	Low	2	-	
			VL	Very Low		-	
Historical Parameters							
6	Number of deficiencies recorded in each insp. within previous 36 months	Deficiencies	Not eligible	-	≤ 5 (and at least one inspection carried out in previous 36 months)		

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7	Number of detentions within previous 36 months	Deficiencies	≥ 2 detentions	1		No detention
HRS are ships which meet criteria to a total value of 5 or more weighting points. LRS are ships which meet all the criteria of the Low Risk Parameters. SRS are ships which are neither HRS nor LRS.						

## SCHEDULE 3

Regulations 10(1) and (4) and 26

### NOTIFICATION

#### **Information to be provided in accordance with regulation 10(1):**

The information listed below shall be submitted to the port authority at least three days before the expected time of arrival in the port or anchorage or before leaving the previous port or anchorage if the voyage is expected to take fewer than three days—

- (a) ship identification (name, call sign, IMO identification number or MMSI number);
- (b) planned duration of the call;
- (c) for tankers—
  - (i) configuration: single hull, single hull with SBT, double hull;
  - (ii) condition of the cargo and ballast tanks: full, empty, inerted;
  - (iii) volume and nature of the cargo;
- (d) planned operations at the port or anchorage of destination (loading, unloading, other);
- (e) planned statutory survey inspections and substantial maintenance and repair work to be carried out whilst in the port of destination;
- (f) date of last expanded inspection in the Paris MOU region.

**SCHEDULE 4**

Regulation 14(2)

**LIST OF CERTIFICATES AND DOCUMENTS**

1. International Tonnage Certificate (1969).
2. — Passenger Ship Safety Certificate,
  - (a) Cargo Ship Safety Construction Certificate,
  - (b) Cargo Ship Safety Equipment Certificate,
  - (c) Cargo Ship Safety Radio Certificate,
  - (d) Exemption certificate, including, where appropriate, the list of cargoes,
  - (e) Cargo Ship Safety Certificate.
3. International Ship Security Certificate (ISSC).
4. Continuous Synopsis Record.
- 5.(a) International Certificate of Fitness for Carriage of Liquefied Gases in Bulk.
- 5.(b) Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.
- 6.(a) International Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
- 6.(b) Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
7. International Oil Pollution Prevention Certificate.
8. International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.
- 9.(a) International Load Line Certificate (1966).

- 9.(b) International Load Line Exemption Certificate.
10. Oil record book, parts I and II.
11. Cargo record book.
12. Minimum Safe Manning Document.
13. Certificates or any other documents required in accordance with the provisions of the STCW 78/95.
14. Medical certificates (see the Maritime Labour Convention 2006).
15. Table of shipboard working arrangements (see the Maritime Labour Convention 2006 and STCW 78/95).
16. Records of hours of work and rest of seafarers (see the Maritime Labour Convention 2006).
17. Stability information.
18. 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 74, Chapter IX).
19. Certificates as to the ship's hull strength and machinery installations issued by the recognised organisation in question (only to be required if the ship maintains its class with a recognised organisation).
20. Document of compliance with the special requirements for ships carrying dangerous goods.
21. High speed craft safety certificate and permit to operate high speed craft.
22. Dangerous goods special list or manifest, or detailed stowage plan.
23. Ship's log book with respect to the records of tests and drills, including security drills, and the log for records of inspection and maintenance of lifesaving appliances and arrangements and of fire fighting appliances and arrangements.
24. Special purpose ship safety certificate.

25. Mobile offshore drilling unit safety certificate.
26. For oil tankers, the record of oil discharge monitoring and control system for the last ballast voyage.
27. The muster list, fire control plan, and for passenger ships, a damage control plan.
28. Shipboard oil pollution emergency plan.
29. Survey report files (in case of bulk carriers and oil tankers).
30. Reports of previous port State control inspections.
31. For ro ro passenger ships, information on the A/A maximum ratio.
32. Document of authorisation for the carriage of grain.
33. Cargo securing manual.
34. Garbage management plan and garbage record book.
35. Decision support system for masters of passenger ships.
36. SAR cooperation plan for passenger ships trading on fixed routes.
37. List of operational limitations for passenger ships.
38. Bulk carrier booklet.
39. Loading and unloading plan for bulk carriers.
40. Certificate 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).
41. Certificates required under Directive 2009/20/EC of the European Parliament and of the Council of 23 April 2009 on the insurance of shipowners for maritime claims.
42. Certificate required under Regulation (EC) No 392/2009 of the European Parliament and of the Council of 23 April 2009 on the liability of carriers of passengers by sea in the event of accidents.



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43. International Air Pollution Prevention Certificate.
44. International Sewage Pollution Prevention Certificate.
45. Maritime labour certificate.
46. Declaration of maritime labour compliance, parts I and II.
47. International Anti-Fouling System Certificate.
48. Certificate of insurance or other financial security in respect of civil liability for bunker oil pollution damage.
49. A certificate on the inventory of hazardous materials or a statement of compliance as applicable under Regulation (EU) No 1257/2013 of the European Parliament and of the Council of 20 November 2013 on ship recycling and amending Regulation (EC) No 1013/2006 and Directive 2009/16/EC.

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### SCHEDULE 5

Regulations 14(4), (5) and (6)

#### EXAMPLES OF 'CLEAR GROUNDS'

##### **A. Examples of clear grounds for a more detailed inspection**

1. Ships identified in Schedule 1, Part 2, paragraphs 2A and 2B.
2. The oil record book has not been properly kept.
3. During examination of the certificates and other documentation, inaccuracies have been revealed.
4. Indications that the crew members are unable to comply with the requirements related to on-board communication set out in Article 18 of Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008 on the minimum level of training of seafarers as transposed in the Gibraltar Merchant Shipping (Manning, Training, Certification and Related Seafarers' Matters) Regulations, 2002 as amended.
5. A certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued.
6. The ship has a master, officer or rating holding a certificate issued by a country which has not ratified the STCW 78/95.
7. 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.
8. 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.
9. 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.
10. The emission of false distress alerts not followed by proper cancellation procedures.
11. The absence of principal equipment or arrangements required by the Conventions.

12. Excessively unsanitary conditions on board the ship.
13. 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 weather tight integrity of the ship.
14. 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.
15. The absence of a table of shipboard working arrangements or of records of hours of work or rest of seafarers.
16. The documents required under the Maritime Labour Convention 2006 are not produced or maintained or are falsely maintained or the documents produced do not contain the information required by the Maritime Labour Convention 2006 or are otherwise invalid.
17. The living and working conditions on the ship do not conform to the requirements of the Maritime Labour Convention 2006.
18. There are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with the Maritime Labour Convention 2006.
19. There is a complaint alleging that specific living and working conditions on the ship do not conform to the requirements of the Maritime Labour Convention 2006.

## **B. Examples of clear grounds for the control of ships on security aspects**

1. The inspector may establish clear grounds for further control measures on security during the initial PSC inspection as follows:
  - 1.1. ISSC is not valid or it has expired.
  - 1.2. The ship is at a lower security level than the port.
  - 1.3. Drills related to the security of the ship have not been carried out.

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- 1.4. Records for the last 10 ship/port or ship/ship interfaces are incomplete.
  - 1.5. Evidence or observation that key members of the ship's personnel cannot communicate with each other.
  - 1.6. Evidence from observations that serious deficiencies exist in security arrangements.
  - 1.7. Information from third parties such as a report or a complaint concerning security-related information.
  - 1.8. The ship holds a subsequent, consecutively issued Interim International Ship Security Certificate (ISSC) and in the professional judgement of the inspector one of the purposes of the ship or company in requesting such a certificate is to avoid full compliance with SOLAS 74 Chapter XI-2 and Part A of the ISPS Code, beyond the period of the initial Interim Certificate. ISPS Code Part A specifies the circumstances when an Interim Certificate may be issued.
2. If clear grounds as described above are established, the inspector shall immediately inform the competent security authority. The competent security authority shall then decide on what further control measures are necessary taking into account the security level in accordance with Regulation 9 of SOLAS 74, Chapter XI.
3. Clear grounds other than those above are a matter for the competent security authority.

## SCHEDULE 6

Regulation 16(1)

### PROCEDURES FOR THE CONTROL OF SHIPS

Annex I, 'Port State Control Procedures', to the Paris MOU and the following instructions from the Paris MOU, in their up-to-date version:

- Instruction 33/2000/02: Operational Control on Ferries and Passenger Ships,
- Instruction 35/2002/02: Guidelines for PSCOs on Electronic Charts,
- Instruction 36/2003/08: Guidance for Inspection on Working and Living Conditions,
- Instruction 37/2004/02: Guidelines in Compliance with STCW 78/95 Convention as Amended,
- Instruction 37/2004/05: Guidelines on the Inspection of Hours of Work/Rest,
- Instruction 37/2004/10: Guidelines for Port State Control Officers on Security Aspects,
- Instruction 38/2005/02: Guidelines for PSCO's Checking a Voyage Data Recorder (VDR),
- Instruction 38/2005/05: Guidelines on MARPOL 73/78 Annex I,
- Instruction 38/2005/07: Guidelines on Control of the Condition Assessment Scheme (CAS) of Single Hull Oil Tankers,
- Instruction 39/2006/01: Guidelines for the Port State Control Officer on the ISM-Code,
- Instruction 39/2006/02: Guidelines for Port State Control Officers on Control of GMDSS,
- Instruction 39/2006/03: Optimisation of Banning and Notification Checklist,

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- Instruction 39/2006/10: Guidelines for PSCOs for the Examination of Ballast Tanks and Main Power Failure Simulation (black-out test),
- Instruction 39/2006/11: Guidance for Checking the Structure of Bulk Carriers,
- Instruction 39/2006/12: Code of Good Practice for Port State Control Officers,
- Instruction 40/2007/04: Criteria for Responsibility Assessment of Recognised Organisations (R/O),
- Instruction 40/2007/09: Guidelines for Port State Control Inspections for Compliance with Annex VI of MARPOL 73/78.

## **SCHEDULE 7**

Regulations 15 and 16

### **EXPANDED INSPECTIONS OF SHIPS**

An expanded inspection concerns in particular the overall condition of the following risk areas:

- Documentation.
- Structural condition.
- Weather tight condition.
- Emergency systems.
- Radio communication.
- Cargo operations.
- Fire safety.
- Alarms.
- Living and working conditions.
- Navigation equipment.
- Life saving appliances.
- Dangerous goods.
- Propulsion and auxiliary machinery.
- Pollution prevention.

In addition, subject to their practical feasibility or any constraints relating to the safety of persons, the ship or the port, an expanded inspection shall include the verification of specific items of risk areas depending on the type of vessel inspected, as established in accordance with regulation 15(4).

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### SCHEDULE 8

#### Regulation 17

#### PROVISIONS CONCERNING REFUSAL OF ACCESS TO PORTS AND ANCHORAGES WITHIN THE COMMUNITY

1. If the conditions described in regulation 17(1) are met, the Administration if it has detained the ship for the third time shall inform the master of the ship in writing that a refusal of access order will be issued which will become applicable immediately after the ship has left the port. The refusal of access order shall become applicable immediately after the ship has left the port after the deficiencies leading to the detention have been remedied.
2. The Administration shall send a copy of the refusal of access order to the flag State administration, the recognised organisation concerned, the other Member States, and the other signatories to the Paris MOU, the Commission and the Paris MOU Secretariat. The Administration shall also update the inspection database with information on the refusal of access without delay.
3. In order to have the refusal of access order lifted, the owner or the operator must address a formal request to the Administration and this request must be accompanied by a document from the flag State administration issued following an on-board visit by a surveyor duly authorised by the flag State administration, showing that the ship fully conforms to the applicable provisions of the Conventions. The Administration shall request the flag State administration to provide evidence that a visit on board has taken place.
4. The request for the lifting of the refusal of access order must also be accompanied, where appropriate, by a document from the classification society which has the ship in class following an on-board visit by a surveyor from the classification society, showing that the ship conforms to the class standards stipulated by that society. The classification society shall provide evidence to the competent authority that a visit on board has taken place.
5. The refusal of access order may be lifted only after the period referred to regulation 17 of these Regulations has elapsed and following a re-inspection of the ship at an agreed port. If the agreed port is located in a Member State, the Administration of that State may, at the request of the Administration which issued the refusal of access order, authorise the ship to enter the agreed port in order to carry out the re-inspection. In such cases, no cargo



operations shall take place at the port until the refusal of access order has been lifted.

6. If the detention which led to the issue of a refusal of access order included deficiencies in the ship's structure, the Administration may require that certain spaces, including cargo spaces and tanks, are made available for examination during the re-inspection.

7. The re-inspection shall be carried out by the Administration in Gibraltar or by the Administration of the port of destination with the agreement of the Administration in Gibraltar. The Administration in Gibraltar may require up to 14 days' notice for the re-inspection. Evidence shall be provided to the satisfaction of the Administration in Gibraltar that the ship fully complies with the applicable requirements of the Conventions.

8. The re-inspection shall consist of an expanded inspection that must cover at least the relevant items of Schedule 7.

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

10. If the results of the expanded inspection satisfy the Administration in accordance with Schedule 7, the refusal of access order must be lifted and the company of the ship informed thereof in writing.

11. The Administration shall also notify its decision in writing to the flag State administration, the classification society concerned, the other Member States, the other signatories to the Paris MOU, the Commission and the Paris MOU Secretariat. The Administration must also update the inspection database with information on the removal of the access without delay.

12. Information relating to ships that have been refused access to ports within the Community must be made available in the inspection database.

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## SCHEDULE 9

Regulation 18

### INSPECTION REPORT

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 (as indicated in the Safety Management Certificate)
6. IMO identification number
7. Call sign
8. Tonnage (gt)
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 as well as any other organisation, where relevant, which has/have issued to this ship the classification certificates, if any
12. The recognised organisation or recognised organisations 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 company or the operator

14. Name and address of the charterer responsible for the selection of the ship 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 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. Port and date of the last intermediate or annual or renewal survey and the name of the organisation which carried out the survey
4. Type of inspection (inspection, more detailed inspection, expanded inspection)
5. Nature of the deficiencies
6. Measures taken.

## III. Additional information in the event of detention

1. Date of detention order
2. Date of lifting the detention order
3. Nature of the deficiencies warranting the detention order (references to Conventions, if relevant)
4. Indication, where relevant, of whether the recognised organisation 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

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5. Measures taken.

## **SCHEDULE 10**

Regulation 20(4)

### **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 points 1 and 2.

Point 3 includes examples of deficiencies that may for themselves warrant detention of the ship involved (see regulation 20(4))

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—

- (a) 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;
- (b) 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;
- (c) appropriate remedial action, to the satisfaction of the Administration, is being taken by the ship; and
- (d) the Administration 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 Administration 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:
  - (a) navigate safely throughout the forthcoming voyage;
  - (b) 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;
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.

### 3.1. *General*

The lack of valid certificates and documents as required by the relevant instruments. However, ships flying the flag of States not party to a relevant Convention 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 SOLAS 74*

1. Failure of the proper operation of propulsion and other essential machinery, as well as electrical installations.

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2. Insufficient cleanliness of engine room, excessive 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.
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 74, Regulation V/16.2 into account.
11. Absence of corrected navigational charts, and/or all other relevant nautical publications necessary for the intended voyage, taking into account that a type approved electronic chart display and information system (ECDIS) operating on official data may be used as a substitute for the charts.
12. Absence of non-sparking exhaust ventilation for cargo pump rooms.



13. Serious deficiency in the operational requirements, as described in Section 5.5 of Annex 1 to the Paris 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.

### 3.3. *Areas under the IBC Code*

1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.
2. Missing or damaged high-pressure safety devices.
3. Electrical installations not intrinsically safe or not corresponding to code requirements.
4. Sources of ignition in hazardous locations.
5. Contraventions of special requirements.
6. Exceeding of maximum allowable cargo quantity per tank.
7. Insufficient heat protection for sensitive products.

### 3.4. *Areas under the IGC Code*

1. Transport of a substance not mentioned in the Certificate of Fitness or missing cargo information.
2. Missing closing devices for accommodation or service spaces.
3. Bulkhead not gastight.
4. Defective air locks.
5. Missing or defective quick-closing valves.
6. Missing or defective safety valves.
7. Electrical installations not intrinsically safe or not corresponding to code requirements.

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8. Ventilators in cargo area not operable.
9. Pressure alarms for cargo tanks not operable.
10. Gas detection plant and/or toxic gas detection plant defective.
11. Transport of substances to be inhibited without valid inhibitor certificate.

#### 3.5. *Areas under LL 66*

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 the 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 MARPOL 73/78, Annex I*

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.

4. Unauthorised discharge bypass fitted.
5. Survey report file missing or not in conformity with Regulation 13G(3)(b) of MARPOL 73/78.

3.7. *Areas under MARPOL 73/78, Annex II*

1. Absence of the P&A Manual.
2. Cargo is not categorised.
3. No cargo record book available.
4. Transport of oil-like substances without satisfying the requirements or without an appropriately amended certificate.
5. Unauthorised discharge bypass fitted.

3.8. *Areas under MARPOL 73/78, Annex V*

1. Absence of the garbage management plan.
2. No garbage record book available.
3. Ship's personnel not familiar with disposal/discharge requirements of garbage management plan.

3.9. *Areas under the STCW 78/95 and Directive 2008/106/EC.*

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. Evidence that a certificate has been fraudulently obtained or the holder of a certificate is not the person to whom that certificate was originally issued.
3. Failure to comply with the applicable safe manning requirements of the flag state administration.

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4. Failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the flag state administration.
5. Absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution.
6. Failure to provide proof of professional proficiency for the duties assigned to seafarers for the safety of the ship and the prevention of pollution.
7. 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.

3.10. *Areas under the Maritime Labour Convention 2006 (MLC 2006)*

1. Insufficient food for voyage to next port.
2. Insufficient potable water for voyage to next port.
3. Excessively unsanitary conditions on board.
4. No heating in accommodation of a ship operating in areas where temperatures may be excessively low.
5. Insufficient ventilation in accommodation of a ship.
6. Excessive garbage, blockage by equipment or cargo or otherwise unsafe conditions in passageways/accommodations.
7. Clear evidence that watchkeeping and other duty personnel for the first watch or subsequent relieving watches are impaired by fatigue.
8. The conditions on board are clearly hazardous to the safety, health or security of seafarers.
9. The non-conformity constitutes a serious or repeated breach of the requirements of the Maritime Labour Convention 2006 (including seafarer's rights) relating to the living and working conditions of seafarers on the ship, as stipulated in the ship's

maritime labour certificate and declaration of maritime labour compliance.

3.11. *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.

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## **SCHEDULE 11**

Regulation 23(1) and (5)

### **MINIMUM CRITERIA FOR INSPECTORS**

1. Inspectors must have appropriate theoretical knowledge and practical experience of ships and their operation. They must be competent in the enforcement of the requirements of Conventions and of the relevant port State control procedures. This knowledge and competence in enforcing international and Community requirements must be acquired through documented training programmes.
2. Inspectors must, as a minimum, have either:
  - (a) appropriate qualifications from a marine or nautical institution and relevant seagoing experience as a certificated ship officer holding or having held a valid STCW II/2 or III/2 certificate of competency not limited as regards the operating area or propulsion power or tonnage; or
  - (b) passed an examination recognised by the competent Authority as a naval architect, mechanical engineer or an engineer related to the maritime fields and worked in that capacity for at least five years; or
  - (c) a relevant university degree or equivalent and have properly trained and qualified as ship safety inspectors.
3. The inspector must have:
  - (a) completed a minimum of one year's service as a flag-State inspector either dealing with surveys and certification in accordance with the Conventions or involved in the monitoring of the activities of recognised organisations to which statutory tasks have been delegated, or
  - (b) gained an equivalent level of competence by following a minimum of one year's field training participating in Port State Control inspections under the guidance of experienced Port State Control Officers.

4. The inspectors mentioned under 2(a) must have gained a maritime experience of at least 5 years, including periods served at sea as officers in the deck- or engine-department respectively, or as a flag State inspector or as an assistant port State control inspector. Such experience shall include a period of at least two years at sea as a deck or engine officer.
5. The inspectors must have the ability to communicate orally and in writing with seafarers in the language most commonly spoken at sea.
6. Inspectors not fulfilling the above criteria are also accepted if they are employed by the Administration for port state control at the date of coming into operation of these Regulations.
7. Where in a Member State inspections referred to in regulation 16 (1) and (2) are performed by port State control inspectors; those inspectors shall have appropriate qualifications, which shall include sufficient theoretical and practical experience in maritime security.

This shall normally include:

- (a) a good understanding of maritime security and how it is applied to the operations being examined;
- (b) a good working knowledge of security technologies and techniques;
- (c) a knowledge of inspection principles, procedures and techniques;
- (d) a working knowledge of the operations being examined.

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**SCHEDULE 12**

Regulation 28

**DATA PROVIDED IN THE CONTEXT OF MONITORING  
IMPLEMENTATION**

1. The Administration shall provide the Commission with the following data for the preceding year by 1 April at the latest.

1.1. Number of inspectors acting on their behalf in the framework of port State control

This information must be communicated to the Commission using the following model table: <sup>(1)(2)</sup>

Port/area	Number of full-time inspectors (A)	Number of part-time inspectors (B)	Conversion of (B) to full-time (C)	Total (A+C)
Port X/or Area X.....				
Port Y/or Area Y.....				
Total				

1.2. Total number of individual ships that entered their ports at national level. The figure shall be the number of ships covered by these Regulations that entered their ports at national level counted only once.

2. The Administration must—

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<sup>(1)</sup>were 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. Where the same inspector works in more than one port or geographical area the applicable part-time equivalent must be counted in each port.

<sup>(2)</sup>This information must be provided at national level and for each port of the Member State concerned. For the purposes of this Annex, a port is taken to mean an individual port or the geographical area covered by an inspector or team of inspectors, comprising several individual ports where appropriate.



- (a) provide the Commission every six months with a list of calls at port of individual ships, other than regular passenger and freight ferry services, that entered their ports or which have notified to a port authority or body their arrival in an anchorage, containing for each movement of the ship its IMO identification number, its date of arrival and the port. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the abovementioned information. The list shall be provided within 4 months from the end of the period to which data pertained; and
- (b) provide the Commission with separate lists of regular passenger ferry services and regular freight ferry services referred to in point (a), not later than six months following the coming into operation of these Regulations, and thereafter each time changes take place in such services. The list shall contain for each ship its IMO identification number, its name and the route covered by the ship. The list shall be provided in the form of a spreadsheet programme enabling an automatic retrieval and processing of the abovementioned information.

**SCHEDULE 13**

Regulation 15(6)

**SPECIFIC ITEMS TO BE VERIFIED DURING  
AN EXPANDED INSPECTION**

**A. All types of ships**

- (a) Structural condition
  - Condition of hull and deck
- (b) Watertight/weathertight condition
  - Watertight/weathertight doors
  - Ventilators, air pipes and casing
  - Hatchways
- (c) Emergency systems
  - Simulated blackout/start of emergency generator
  - Emergency lighting
  - Test of bilge pumping arrangements
  - Test of closing devices/watertight doors
  - Test of steering gear including emergency steering gear
- (d) Radio communication
  - Test of reserve source of energy
  - Test of main installation including facilities for reception of marine safety information
  - Test of global maritime distress safety system (GMDSS) portable very high frequency (VHF) sets

- (e) Fire safety
  - Fire drill, including a demonstration of the ability to use firemen's outfits and firefighting equipment and appliances
  - Test of emergency fire pump (with two hoses)
  - Test of remote emergency stopping ventilation and associated dampers
  - Test of remote emergency stopping fuel pumps
  - Test of remote quick closing valves
  - Fire doors
  - Fixed fire extinguishing installations and associated alarms
- (f) Alarms
  - Test of the fire alarm
- (g) Living and working conditions
  - Condition of mooring equipment, including machinery foundations
- (h) Lifesaving appliances
  - Launching arrangements for survival and rescue craft (if evidence of disuse, craft must be lowered to the water)
- (i) Pollution prevention
  - Test of oil filtering equipment

**B. Bulk carrier/OBO (if carrying solid bulk cargo)**

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

- (a) *Documentation*

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Verification that the following documents are on board, complete and endorsed by the flag State or recognised organisation:

-The enhanced survey programme (ESP) including:

- (i) Reports of structural survey
- (ii) Thickness measurement reports
- (iii) Condition evaluation reports

-Check whether the cargo carried is allowed by the DoC for dangerous goods

-Approval for loading instruments

(b) *Structural condition*

-Condition of bulkheads and coamings

-Ballast tanks

At least one of the ballast tanks within the cargo area must be examined from tank manhole/deck access or entered if the inspector establishes clear grounds based on observation and the ESP records

## **C. Gas tanker, chemical tanker**

In addition to the items listed under Section A, the following items shall be considered as part of the expanded inspection for gas and chemical tankers:

(a) *Documentation*

- Check whether the product carried is on the relevant certificate of fitness

(b) *Cargo operations*

- Cargo tank monitoring and safety devices relating to temperature, pressure and ullage

- Oxygen analysing and explosimeter devices, including their calibration. Availability of chemical detection equipments

(bellows) with an appropriate number of suitable gas detection tubes for the cargo carried

- Test of deck shower

(c) *Fire safety*

- Test of fixed fire fighting installations on deck (as required by the product carried)

(d) *Living and working condition*

- Cabin escape sets with respiratory and eye protection if required by the products listed in the relevant certificate of fitness

**D. General cargo, container ship, refrigerated cargo carrier, factory ship, heavy load carrier, offshore service ship, special purpose ship, MODU, floating production, storage and offloading (FPSO), other types of ship**

In addition to the items listed under Section A, the following items shall be considered as part of the expanded inspection for the ship types listed under this section:

(a) *Watertight/weathertight condition*

- Condition of hatch covers
- Access to cargo holds/tanks

(b) *Cargo operations*

- Loading equipment
- Lashing arrangements

**E. Oil tanker/OBO (when certificated as an oil tanker)**

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

(a) *Documentation*

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Verification that the following documents are on board, complete and endorsed by the flag State or recognised organisation

- The enhanced survey programme (ESP) including:

- (i) Reports of structural surveys
- (ii) Thickness measurement reports
- (iii) Condition evaluation reports

- Foam certificate for deck foam system

(b) *Structural condition*

- Ballast tanks

At least one of the ballast tanks within the cargo area must be examined from tank manhole/deck access or entered if the inspector establishes clear grounds based on observation and the ESP records

(c) *Fire safety*

- Fixed deck foam system

- Control of pressure of inert gas and oxygen content thereof

**F. Passenger HSC, passenger ship, ro-ro passenger ship**

In addition to the items listed under Section A, the following items shall be considered as part of the expanded inspection for passenger ships:

If deemed appropriate, parts of the inspection on ro-ro ferries and high-speed passenger craft referred to in the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2005 may be continued while the ship is on passage to or from ports of Member States with the consent of the master or the operator in order to demonstrate that the ferry or craft continues to fulfil all the necessary requirements for safe operation. Port State control officers must not obstruct the operation of the ship or induce situations that, in the master's judgement, could endanger the safety of the passengers, the crew or the ship.

(a) *Documentation*

Documented evidence of:

- Crowd-management training
- Familiarisation training
- Safety training for personnel providing direct safety assistance to passengers in passenger spaces, and in particular to elderly and disabled persons in an emergency
- Crisis management and human behaviour training

(b) *Watertight/weathertight condition*

- Bow and stern doors as applicable
- Test of remote and local controls of watertight bulkhead doors

(c) *Emergency systems*

- Crew familiarity with damage control plan

(d) *Cargo operations*

- Lashing arrangements as applicable

(e) *Fire safety*

- Test of remote and local controls for the closing of fire dampers

(f) *Alarms*

- Test of public address system
- Test of fire detection and alarm system

(g) *Lifesaving appliances*

- “Abandon ship” drill (including lowering a rescue and a lifeboat to the water)

**G. Ro-ro cargo ship**

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In addition to the items listed under Section A, the following items shall be considered as part of the expanded inspection for ro-ro cargo ships:

(a) *Watertight/weathertight condition*

- Bow and stern doors

(b) *Cargo operations*

- Lashing arrangements.



## **SCHEDULE 14**

Regulation 23(4)

### **REQUIREMENTS FOR THE IDENTITY CARD FOR PORT STATE CONTROL INSPECTORS.**

1. The identity card shall contain at least the following information:
  - (a) Name of the issuing authority;
  - (b) Full name of the holder of the identity card;
  - (c) An up-to-date picture of the holder of the identity card;
  - (d) The signature of the holder of the identity card; and
  - (e) A statement to the effect that the holder of the identity card is authorized to carry out inspections in accordance with the national legislation adopted pursuant to the Directive.
  
2. If the main language used on the identity card is not English, it must include a translation into that language.
  
3. The format of the identity card is left to the discretion of the competent authority.