

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4127 of 20 November, 2014

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LEGAL NOTICE NO. 214 OF 2014.

## MERCHANT SHIPPING ACT

### MERCHANT SHIPPING (PORT STATE CONTROL) (AMENDMENT) REGULATIONS 2014

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 into the law of Gibraltar Directive 2013/38/EU of the Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port state control, the Minister has made the following Regulations—

#### **Title and commencement.**

1. These Regulations may be cited as the Merchant Shipping (Port State Control) (Amendment) Regulations 2014 and come into operation on 21 November 2014.

#### **Amendments of the Merchant Shipping (Port State Control) Regulations 2011.**

2. The Merchant Shipping (Port State Control) Regulations 2011 (the principal Regulations) are amended in accordance with regulations 3 to 12.

#### **Amendments to regulation 2.**

3. Regulation 2 of the principal Regulations is amended –

- (a) in subregulation (1), by deleting paragraph (g) in the definition of “convention”;
- (b) in subregulation (1), by deleting “and” at the end of paragraph (h) in the definition of “convention”;
- (c) in subregulation (1), by substituting the following paragraphs for paragraph (i) in the definition of “convention”–
  - “(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),”;
- (d) in subregulation (1), by inserting the following definition after the definition of “convention”–  
““Declaration of maritime labour compliance” means the declaration referred to in Regulation 5.1.3 of the Maritime Labour Convention, 2006;”;
- (e) in subregulation (1), by inserting the following definitions after the definition of “Maritime Administrator”-  
““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;”;
- (f) by inserting the following subregulation after subregulation (2)–  
“(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.”.

**Amendments to regulation 3.**

4. Regulation 3 of the principal Regulations is amended by substituting the following subregulations for subregulation (4)–

- “(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.”.

**Amendments to regulation 18.**

5. Regulation 18 of the principal Regulations is amended by inserting the following subregulations after subregulation (2)–

- “(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.”.

**Insertion of new regulation 18A.**

6. The principal Regulations are amended by inserting the following regulation after regulation 18–

**“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.”

**Amendment to regulation 19.**

7. Regulation 19 of the principal Regulations is amended by substituting the following subregulation for subregulation (6)–

“(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.”.

**Amendments to regulation 20.**

8. Regulation 20 of the principal Regulations is amended–

- (a) by inserting the following subregulations after subregulation (3)–
  - (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.”;
- (b) by substituting the following subregulations for subregulation (8)–

- (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."

**Amendments to Schedule 1.**

9. Schedule 1 of the principal Regulations is amended in Point 2B of Part 2–

- (a) by substituting the following indent for the fifth indent–

“— 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.”; and

- (b) by inserting the following indent after the tenth indent—

“— 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.”

**Amendments to Schedule 4.**

10. Schedule 4 of the principal Regulations is amended—

- (a) by substituting the following points for points 14, 15 and 16—

“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).”; and

- (b) by inserting the following points after point 44—

“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.”.

**Amendments to Schedule 5.**

11. Schedule 5 of the principal Regulations is amended by inserting the following points after point 15—



- “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.”.

**Amendments to Schedule 10.**

12. Schedule 10 of the principal Regulations is amended—

- (a) by substituting the following title for the title of point 3.10 -

*“Areas under the Maritime Labour Convention 2006 (MLC 2006)”*; and

- (b) by inserting the following paragraphs after paragraph 7 of point 3.10—

“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.”.

Dated 20th November, 2014.

N F COSTA,  
Minister for the port and shipping.

**EXPLANATORY MEMORANDUM**

These Regulations transpose into the law of Gibraltar Directive 2013/38/EU of the Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port state control.

LEGAL NOTICE NO. 215 OF 2014.

**GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT 1993**

**GIBRALTAR MERCHANT SHIPPING (MARINE EQUIPMENT)  
(AMENDMENT) REGULATIONS 2014**

In exercise of the powers conferred on it by sections 59 and 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993 and all other enabling powers, and for the purpose of transposing into the law of Gibraltar Commission Directive 2013/52/EU of 30 October 2013 amending Council Directive 96/98/EC on marine equipment, the Government has made the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Marine Equipment) (Amendment) Regulations 2014 and come into operation on 4 December 2014.

**Amendments to the Gibraltar Merchant Shipping (Marine Equipment) Regulations 2002.**

2. The Gibraltar Merchant Shipping (Marine Equipment) Regulations 2002 are amended by inserting the following subregulation after regulation 5(5)-

“(6) Where any equipment listed in column 1 of Annex A.1 as having been transferred from Annex A.2 which was manufactured before 4 December 2014 in conformity with procedures for type-approval already in force before that date, may continue to be placed on the market and on board a Community ship until 4 December 2016.”.

Dated 20th November, 2014.

N F COSTA,  
For the Government.

**EXPLANATORY MEMORANDUM**

These Regulations transpose into the law of Gibraltar Commission Directive 2013/52/EU of 30 October 2013 amending Council Directive 96/98/EC on marine equipment.

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