

# SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4670 GIBRALTAR Thursday 5th March 2020

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LEGAL NOTICE NO.97 OF 2020

## MERCHANT SHIPPING ACT

### MERCHANT SHIPPING (PORT STATE CONTROL) (AMENDMENT) REGULATIONS 2020

In exercise of the powers conferred on him by section 223A of the Merchant Shipping Act and all other enabling powers, the Minister has, for the purpose of transposing Article 14 of Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC, made the following Regulations—

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

1. These Regulations may be cited as the Merchant Shipping (Port State Control) (Amendment) Regulations 2020 and come into operation on the day of publication.

#### **Amendments to regulation 2 of Merchant Shipping (Port State Control) Regulations 2011.**

2. The Merchant Shipping (Port State Control) Regulations 2011 (principal Regulations) are amended in regulation 2(1) –

(a) by inserting the following definition after the definition of “Gibraltar ship”-

““high-speed passenger craft” means a craft as defined in Regulation 1 of Chapter X of SOLAS 74, and carrying more than 12 passengers;

(b) by inserting the following definitions after the definition of “refusal of access order”-

“regular service” means a series of ro-ro passenger ship or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either-

(a) according to a published timetable; or

(b) with crossings so regular or frequent that they constitute a recognisable systematic series; and

“ro-ro passenger ship” means a ship with facilities to enable road or rail vehicles to roll on and roll off the vessel, and carrying more than 12 passengers;”.

**Amendment to regulation 3.**

3. Regulation 3 of the principal Regulations is amended by inserting the following sub-regulation after sub-regulation (6)-

“(7) These Regulations shall also apply to inspections of ro-ro passenger ships and high-speed passenger craft carried out outside a port or away from an anchorage during a regular service in accordance with regulation 14A.”.

**Amendment to regulation 14.**

4. Regulation 14 of the principal Regulations is amended by substituting the following sub-regulation for sub-regulation (1)-

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

**Insertion of new regulation 14A.**

5. The principal Regulations are amended by inserting the following regulation after regulation 14-

**“Inspection of ro-ro passenger ships and high-speed passenger craft in regular service.**

14A.(1) Ro-ro passenger ships and high-speed passenger craft operating on a regular service are eligible for inspections in accordance with the time frame and other requirements set out in Schedule 15.

(2) The Administration shall, when planning inspections of a ro-ro passenger ship or high-speed passenger craft, take due account of the operational and maintenance schedule of the ro-ro passenger ship or high-speed passenger craft.

(3) When a ro-ro passenger ship or high-speed passenger craft has been subject to an inspection in accordance with Schedule 15, such inspection shall be-

- (a) recorded in the inspection database;
- (b) taken into account-
  - (i) for the purposes of regulations 11, 12 and 13, and
  - (ii) for calculating the fulfilment of the inspection commitment of the Administration; and

(c) included in the total number of annual inspections carried out by Administration as required under regulation 6.

(4) Regulations 10(1), 12 (2) and (3) and 15 shall not apply to ro-ro passenger ships and high-speed passenger craft on a regular service inspected under this regulation.

(5) The Administration shall ensure that the ro-ro passenger ships or high-speed passenger craft that are subject to an additional inspection in accordance with regulation 12(4) are selected for inspection in accordance with Schedule 1, Part 2, paragraphs 3A(c) and 3B(c).

(6) Inspections carried out under sub-regulation (5) shall not affect the inspection interval provided for in paragraph 2 of Schedule 15.

(7) Where the flag of the ship to be inspected is that of a Member State, the Administration shall, upon request, invite a representative of the flag State to accompany the inspection as an observer.

(8) The inspector who carries out inspections under this regulation may agree to be accompanied, during an inspection of a ro-ro passenger ship or high-speed passenger craft, by a port State inspector of another Member State acting as an observer.”.

#### **Amendment to regulation 16.**

6. Regulation 16 of the principal Regulations is amended by deleting sub-regulations (3), (4) and (5).

#### **Amendment to regulation 17.**

7. Regulation 17 of the principal Regulations is amended by substituting the following sub-regulations for sub-regulations (1) and (2)-

“(1) The Administration shall refuse access to the port and anchorages to any ship which flies the flag of a State whose detention rate falls into-

(a) the black list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the European Commission, and has been detained more than twice in the course of the preceding 36 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU; or

(b) the grey list, adopted in accordance with the Paris MOU on the basis of information recorded in the inspection database and published annually by the Commission, and has been detained more than twice in the course of the preceding 24 months in a port or anchorage of a Member State or of a State signatory of the Paris MOU.

(1A) Sub-regulation (1) shall not apply to the situations described in regulation 22(11).

(2) The refusal of access shall be applicable as soon as the ship leaves the port or anchorage where-

- (a) it has been the subject of a third detention; and
- (b) a refusal of access order has been issued.”.

### **Insertion of new Schedule 15.**

8. The principal Regulations is amended by inserting the following Schedule after Schedule 14 –

#### **“SCHEDULE 15**

Regulation 14A

#### **Inspection of ro-ro passenger ships and high-speed passenger craft on a regular service**

1.2 Before a ro-ro passenger ship or high-speed passenger craft starts to operate on a regular service covered by these Regulations, the Administration shall carry out an inspection, in accordance with regulation 4(1) of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2020, to ensure that that ro-ro passenger ship or high-speed passenger craft fulfils the necessary requirements for the safe operation of a regular service.

1.2 When a ro-ro passenger ship or high-speed passenger craft is to be engaged on a regular service, the Administration may take into account inspections carried out within the last 8 months by another Member State in respect of that ro-ro passenger ship or high-speed passenger craft for operations on another regular service covered by these Regulations, provided that the Administration is satisfied in every case that those previous inspections are relevant to the new operational conditions and that during those inspections the necessary requirements for the safe operation of a regular service were fulfilled. The inspections provided for in point 1.1 do not need to be applied before the ro-ro passenger ship or high-speed passenger craft starts operating on the new regular service.

1.3 Where, due to unforeseen circumstances, there is an urgent need for the rapid introduction of a replacement ro-ro passenger ship or high-speed passenger craft to ensure continuity of service, and point 1.2 is not applicable, the Administration may allow the passenger ship or craft to start operating provided that the following conditions are met:

- (a) a visual inspection and document check raises no concerns that the ro-ro passenger ship or high-speed passenger craft does not fulfil the necessary requirements for safe operation; and

(b) the Administration completes the inspection provided for in regulation 4(1) of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2020 within 1 month.

2. The Administration shall, once per year, but not before 4 months and not later than 8 months following the previous inspection, carry out:

(a) an inspection, including the requirements of Schedule 2 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2020 and of Commission Regulation (EU) No 428/2010 as applicable; and

(b) an inspection during a regular service.

3. The inspection referred to in point 2 (a) above shall cover the items listed in Schedule 3 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2020 and what, in the professional judgment of the inspector, constitutes a sufficient number of the items listed in Schedule 1 and Schedule 2 of the Gibraltar Merchant Shipping (Ro-Ro Ferry and High-speed Passenger Craft on Regular Service) Regulations 2020, to ensure that the ro-ro passenger ship or high-speed passenger craft continues to fulfil all the necessary requirements for safe operation.

4. Where a ro-ro passenger ship or high-speed passenger craft has not been inspected in accordance with points 2 and 3, the ro-ro passenger ship or high-speed passenger craft shall be considered to be Priority I.

5. An inspection in accordance with point 1.1 shall be considered to be an inspection for the purposes of point 2(a) above of this Schedule.”.

Dated: 5<sup>th</sup> March 2020.

G H LICUDI QC,  
Minister with responsibility for the Port and Shipping.

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### **EXPLANATORY MEMORANDUM**

The purpose of these Regulations is to transpose into the law of Gibraltar Article 14 of Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC. These Regulations make provisions for port state control of ro-ro passenger ships and high-speed passenger crafts.