

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4090 of 18 June, 2014

LEGAL NOTICE NO. 103 OF 2014.

INTERPRETATION AND GENERAL CLAUSES ACT

MOTOR FUEL (COMPOSITION AND CONTENT) ACT 2001 (AMENDMENT) REGULATIONS 2014

In exercise of the powers conferred upon it by section 23(g)(ii) of the Interpretation and General Clauses Act and for the purpose of transposing into the law of Gibraltar Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Motor Fuel (Composition and Content) Act 2001 (Amendment) Regulations 2014 and come into operation on the day of publication.

Amendment of the Motor Fuel (Composition and Content) Act 2001.

2. The Motor Fuel (Composition and Content) Act 2001 (the principal Act) is amended in accordance with these Regulations.

Amendments to section 2.

3. Section 2 of the principal Act is amended—

- (a) in subsection (1), by inserting the following definition before the definition of “Directive”—

““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;”;

(b) in subsection (1), in the definition of “Directive” by substituting “as the same may be amended from time to time” for “as amended by Directive 2005/33/EC of the European Parliament and of the Council of 6 July 2005”;

(c) in subsection (1), by inserting the following definition after the definition of “Minister”–

“port of Gibraltar” means the “Port” defined by section 2 of the Gibraltar Port Authority Act 2005.”;

(d) in subsection (3), by inserting the following definition after the definition of “Compliance Notice”–

““emission abatement method” means any fitting, material, appliance or apparatus to be fitted in a ship or other procedure, alternative fuel, or compliance method, used as an alternative to low sulphur marine fuel meeting the requirements set out in this Act, that is verifiable, quantifiable and enforceable;”;

(e) in subsection (3), by substituting the following definitions for the definitions of “gas oil” and “heavy fuel oil”–

““gas oil” means any petroleum-derived liquid fuel–

(a) that falls within CN code 2710 19 25, 2710 19 29, 2710 19 47, 2710 19 48, 2710 20 17 or 2710 20 19; or

(b) where less than 65% by volume (including losses) distils at 250°C and at least 85% by volume (including losses) distils at 350°C by the ASTM D86 method,

but excluding marine fuels, diesel fuels (as defined by Article 2(2) of Directive 98/70/EC of the European Parliament and of the Council relating to the quality of petrol and diesel fuels, and fuels used in non-road mobile machinery and agricultural tractors;

“heavy fuel oil” means any petroleum-derived liquid fuel, excluding marine fuel and gas oil–

- (a) that falls within CN code 2710 19 51 to 2710 19 68, 2710 20 31, 2710 20 35 or 2710 20 39; or
- (b) which, by reason of its distillation limits, falls within the category of heavy oils intended for use as fuel and of which less than 65% by volume (including losses) distils at 250°C by the ASTM D86 method,

but where the distillation cannot be determined by the ASTM D86 method the petroleum product shall be categorised as heavy fuel oil;”;

- (f) in subsection (3), by substituting the following definition for the definition of “marine diesel oil”–

““marine diesel oil” means any marine fuel as defined for DMB grade in Table I of ISO 8217 with the exception of the reference to the sulphur content;”;

- (g) in subsection (3), by substituting the following definition for the definition of “marine gas oil”–

““marine gas oil means any marine fuel as defined for DMX, DMA and DMZ grades in Table I of ISO 8217 with the exception of the reference to the sulphur content;”.

Amendments to section 10.

4.(1) Section 10 of the principal Act is amended in accordance with the provisions of this regulation.

(2) For subsections (2) to (4) substitute the following–

“(2) Until 31 December 2015, and subject to appropriate monitoring of emissions by the Environmental Agency subsection (1) shall not apply to the use of heavy fuel oil–

- (a) in combustion plants which fall within the scope of Directive 2001/80/EC which are subject to Article 4(1) or (2) or Article 4(3)(a) of that Directive and which comply with the emission limits for sulphur

dioxide for such plants as set out in that Directive;
and

- (b) in combustion plants which fall within the scope of Directive 2001/80/EC, which are subject to Article 4(3)(b) and Article 4(6) of that Directive and the monthly average sulphur dioxide emissions of which do not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;
 - (c) in combustion plants which do not fall under paragraphs (a) or (b) and where the monthly average sulphur dioxide emissions do not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;
 - (d) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants which fall under paragraphs (a) and (b), gas turbines and gas engines, do not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis.
- (3) As from 1 January 2016, subject to appropriate monitoring of emissions by the Environmental Agency, subsection (1) shall not apply to heavy fuel oils used—
- (a) in combustion plants which fall within the scope of Chapter III of Directive 2010/75/EU and which comply with the emission limits for sulphur dioxide for such plants as set out in Annex V to that Directive or, where those emission limit values are not applicable according to that Directive, for which the monthly average sulphur dioxide emissions do not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;
 - (b) in combustion plants which do not fall under paragraph (a), and the monthly average sulphur dioxide emissions of which do not exceed 1,700

mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis;

- (c) for combustion in refineries, where the monthly average of emissions of sulphur dioxide averaged over all combustion plants in the refinery, irrespective of the type of fuel or fuel combination used, but excluding plants falling under paragraph (a), gas turbines and gas engines, do not exceed 1,700 mg/Nm³ at an oxygen content in the flue gas of 3% by volume on a dry basis.

(4) Where the Environmental Agency grants a permit under subsection (2) or (3), it shall carry out appropriate monitoring of emissions of sulphur dioxide to ensure that the limitations on emissions contained in that permit are not exceeded.

(4A) In this section—

“Directive 2001/80/EC” means Directive 2001/80/EC of the European Parliament and of the Council on the limitation of emissions of certain pollutants into the air from large combustion plants;

“Directive 2010/75/EU” means Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast);

“existing plant” and “new plant” have the meaning given in Article 2(10) and 2(9) respectively of Directive 2001/80/EC;

“gas engine” and “gas turbine” have the meaning given in Article 3(34) and (33) respectively of Directive 2010/75/EU;

“permit” means a permit issued under the Pollution Prevention and Control Regulations 2013.”.

Substitution of section 11.

5. The principal Act is amended by substituting the following section for section 11—

“11. No person shall use any gas oil that has a sulphur content exceeding 0.1% by mass.”.

Insertion of section 11A.

6. The principal Act is amended by inserting the following section after section 11–

“Maximum sulphur content in marine fuel.

11A.(1) No person shall use any marine fuel that has a sulphur content exceeding 3.50% by mass.

(2) Subsection (1) shall not apply to the supply of marine fuels to ships using emission abatement methods under section 12M operating in closed mode.”.

Substitution of section 12.

7. The principal Act is amended by substituting the following section for section 12–

“Sampling, analysis and reporting.

12. (1) The enforcement authority shall take all necessary measures to check, by sampling, that the sulphur content of fuels used complies with sections 10, 11, 11A and 12K.

(2) The sampling shall–

(a) commence on the date on which the relevant limit for maximum sulphur content in the fuel comes into force under this Act; and

(b) be carried out periodically with sufficient frequency and quantities in such a way that the samples are representative of the fuel examined, and in the case of marine fuel, of the fuel being used by vessels while in relevant sea areas and ports.

(3) The samples shall be analysed without undue delay.

- (4) The following means of sampling, analysis and inspection of marine fuel shall be used—
- (a) inspection of ships' log books and bunker delivery notes; and
 - (b) as appropriate, the following means of sampling and analysis—
 - (i) sampling of the marine fuel for on-board combustion while being delivered to ships, in accordance with the Guidelines for the sampling of fuel oil for determination of compliance with the revised MARPOL Annex VI adopted on 17 July 2009 by Resolution 182(59) of the Marine Environment Protection Committee (MEPC) of the IMO, and analysis of its sulphur content; or
 - (ii) sampling and analysis of the sulphur content of marine fuel for on-board combustion contained in tanks, where technically and economically feasible, and in sealed bunker samples on board ships.
- (5) The reference method adopted for determining the sulphur content shall be ISO method 8754 (2003) or PrEN ISO 14596 (2007).
- (6) In order to determine whether marine fuel delivered to and used on board ships is compliant with the sulphur limits required by Articles 3a, 4, 4a and 4b the fuel verification procedure set out in Appendix VI to Annex VI to MARPOL shall be used.
- (7) Each year by 30 June, the Minister shall ensure that, on the basis of the results of the sampling, analysis and inspections carried out in accordance with this section, a report is submitted to the European Commission on the compliance with the sulphur standards set out in the Directive for the preceding year.”

Amendment to section 12A.

8. Section 12A of the principal Act is amended in subsection (1) by substituting “sections 10(1), 11 or 11A” for “section 10(1) or section 11”.

Amendments to section 12B.

9. Section 12B of the principal Act is amended—

- (a) in paragraph (d) by substituting “;” for “.”; and
- (b) by inserting the following paragraph after paragraph (d)—
 - “(e) fuels used on board ships employing emission abatement methods in accordance with section 12M.”.

Amendment to section 12D.

10. Section 12D of the principal Act is amended by substituting the following subsection for subsection (2)—

- “(2) No person shall place marine gas oil on the market if the sulphur content of those marine gas oils exceeds 0.1% by mass.”.

Amendments to section 12I.

11. In section 12I(1) of the principal Act for the words “shall not use marine fuel whose sulphur content exceeds 1.5% by mass in a sulphur oxide emission control area” substitute “shall not use marine fuel whose sulphur content exceeds 1% by mass, and as from 1 January 2015, 0.1% by mass.”.

Amendments to section 12K.

12. Section 12K of the principal Act is amended—

- (a) by substituting the following subsection for subsection (1)—
 - “12K.(1) Subject to subsection (2), no ship at berth in the port of Gibraltar shall use marine fuel which has a sulphur content that exceeds 0.1% by mass.”;

(b) in subsection (2)(d) by substituting “.” for “; and”

(c) by deleting subsection (2)(d); and

(d) after subsection (2) insert the following subsection—

“(3) The time of any fuel change-over operation, referred to in subsection (2)(a) shall be recorded in the ship’s logbook.”.

Substitution of section 12L.

13. The principal Act is amended by substituting the following section for section 12L—

“Trial of new emission abatement methods.

12L.(1) The Minister shall consider an application by the owner of a ship for a permit to use emission abatement methods for trial purposes whether in BGTW only or in BGTW and in the sea area within the jurisdiction of a Member State (hereinafter “the port State”—

(a) if the ship is registered in Gibraltar under the Gibraltar Merchant Shipping (Registration) Act, 1993; or

(b) flies the flag of the port State.

(2) A permit granted by the Minister pursuant to an application under subsection (1)—

(a) shall be in writing;

(b) subject to subsection (5), may include such conditions as the Minister considers to be appropriate to the trial in question; and

(c) may be varied or revoked by the Minister.

(3) The Minister shall—

- (a) at least 6 months before an intended trial begins, ensure that a written notification of that trial is made to—
 - (i) the European Commission; and
 - (ii) the relevant authorities in the port State, and
 - (b) within 6 months of completion of the trial, ensure that the European Commission is provided with a copy of the full results referred to in subsection (4)(f).
- (4) A permit issued under subsection (2) shall include the following conditions—
- (a) a limit on the period of the trial, such period not to exceed 18 months;
 - (b) the installation of tamper-proof equipment for the continuous monitoring of funnel gas emissions and use it throughout the trial period;
 - (c) that emission reductions must be achieved which are at least equivalent to those which would be achieved through the sulphur limits for fuels specified in the Directive;
 - (d) that throughout the trial period proper waste management systems are in place in respect of any waste generated by the emission abatement methods;
 - (e) that throughout the trial, the ship owner carries out an assessment of the impacts on the marine environment, particularly ecosystems in enclosed ports, harbours and estuaries; and
 - (f) that on completion of the trial the full results of the assessment referred to in paragraph (e) are—
 - (a) made available to the Minister in sufficient time to enable their communication to the European Commission within 6 months of the completion of the trial; and

- (b) made publicly available within 6 months of the completion of the trial.”.

Substitution of section 12M and new section 12MA.

14. The principal Act is amended by substituting the following sections for section 12M–

- “12M.(1) Subject to subsections (2) and (3) every ship may use emission abatement methods in BGTW and in the port of Gibraltar as an alternative to using marine fuels that meet the requirements of Articles 4a and 4b of the Directive.
- (2) Ships using the emission abatement methods referred to in subsection (1) shall continuously achieve reductions of sulphur dioxide emissions that are at least equivalent to the reductions that would be achieved by using marine fuels that meet the requirements of Articles 4a and 4b of the Directive.
- (3) Equivalent emission values shall be determined in accordance with Schedule 3.
- (4) The Minister shall encourage the use by docked vessels of onshore power supply system as an alternative solution for reducing emissions.
- (5) The emission abatement methods referred to in subsection (1) shall comply with the criteria specified in the instruments referred to in Schedule 4.
- (6) Emission abatement methods falling within the scope of Council Directive 96/98/EC shall be approved in accordance with that Directive.
- (7) Emission abatement methods not covered by subsection (6) shall be approved in accordance with the procedure referred to in Article 3(2) of Regulation (EC) No 2099/2002 of the European Parliament and of the Council of 5 November 2002 establishing a Committee on Safe Seas and the Prevention of Pollution from Ships (COSS), taking into account–
- (a) guidelines developed by the IMO;

- (b) the results of any trials conducted under section 12L;
- (c) effects on the environment, including achievable emission reductions, and impacts on ecosystems in enclosed ports, harbours and estuaries; and
- (d) the feasibility of monitoring and verification.

Financial measures.

12MA The Government, subject to any applicable rules regarding state aid, may adopt financial measures in favour of operators affected by the Directive.”.

Amendment to section 12N.

15. In section 12N(2) of the principal Act insert “12,” before “12C”.

Amendment to Schedule 2.

16. Paragraphs 1 and 2(c) of Schedule 2 to the principal Act are amended by substituting “section 10(2) or (3)” for “section 10(3) or (4)” on each occasion those words appear.

Substitution of Schedule3 and new Schedule 4.

17. The principal Act is amended by substituting the following Schedules for Schedule 3–

“SCHEDULE 3

Section 12M(3)

EQUIVALENT EMISSION VALUES FOR EMISSION ABATEMENT METHODS AS REFERRED TO IN SECTION 12M(3)

Marine fuel sulphur limits referred to in Articles 4a and 4b of the Directive and regulations 14.1 and 14.4 of Annex VI to MARPOL and corresponding emission values referred to in section 12M(3)–

Marine fuel Sulphur Content (% m/m)	Ratio Emission SO ₂ (ppm)/CO ₂ (% v/v)
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3,50	151,7
1,50	65,0
1,00	43,3
0,50	21,7
0,10	4,3

Note:

1. The use of the Ratio Emissions limits is only applicable when using petroleum based Distillate or Residual Fuel Oils.
2. In justified cases where the CO₂ concentration is reduced by the exhaust gas cleaning (EGC) unit, the CO₂ concentration may be measured at the EGC unit inlet, provided that the correctness of such a methodology can be clearly demonstrated.

SCHEDULE 4

Section 12M(5)

CRITERIA FOR THE USE OF EMISSION ABATEMENT METHODS REFERRED TO IN SECTION 12M(5)

The emission abatement methods referred to in section 12M shall comply at least with the criteria specified in the following instruments, as applicable-

Emission abatement method	Criteria for use
Mixture of marine fuel and boil-off gas	Commission Decision 2010/769/EU of 13 December 2010 on the establishment of criteria for the use by liquefied natural gas carriers of technological methods as an alternative to using low sulphur marine fuels meeting the requirements of Article 4b of the Directive.
Exhaust gas cleaning systems	Resolution MEPC.184(59) adopted on 17 July 2009: "Wash water resulting from exhaust gas cleaning systems which make use of chemicals, additives, preparations and relevant chemical created in situ", referred to in point 10.1.6.1 of Resolution

	MEPC.184(59), shall not be discharged into the sea, including enclosed ports, harbours and estuaries, unless it is demonstrated by the ship operator that such wash water discharge has no significant negative impacts on and do not pose risks to human health and the environment. If the chemical used is caustic soda it is sufficient that the washwater meets the criteria set out in Resolution MEPC.184(59) and its pH does not exceed 8,0.
Biofuels	Use of biofuels as defined in Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources that comply with the relevant CEN and ISO standards. The mixtures of biofuels and marine fuels shall comply with the sulphur standards set out in Article 3a, Article 4a(1), (1a) and (4) and Article 4b of the Directive.

Dated 18th June, 2014.

DR J CORTES,
Minister with responsibility for the Environment,
For the Government.

EXPLANATORY MEMORANDUM

These Regulations transpose into the law of Gibraltar Directive 2012/33/EU of the European Parliament and of the Council of 21 November 2012 amending Council Directive 1999/32/EC as regards the sulphur content of marine fuels.

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