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PORT ACT

Principal Act

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|-------------------------|---|----------------------|
| Act. No. 1960-16 | <i>Commencement</i> | 15.8.1960 |
| | <i>Assent</i> | 14.7.1960 |
| | | |
| Amending enactment | Relevant current provisions | Commencement date |
| Act. 1974-37 | s.7(2), (2A) | |
| 1977-28 | Sch. | |
| 1982-15 | ss. 7(7), 8(2), 12(1A), (2)-(3), 12, 13(2), 14-15, 18A, 19 | |
| 1991-24 | ss. 7(7), 8(2), 9(2)-(3), 12(3), 14- 15, 18(10), 19(j) | 18.7.1991 |
| LN. 1991/164 | Sch. | 15.8.1991 |
| 1992/064 | Sch. | 7.5.1992 |
| Act. 1992-09 | ss. 11(2), 12(3) | 9.7.1992 |
| 1997-17 | s. 12(3) | 5.6.1997 |
| 2005-13 | ss. 15A | 24.2.2005 |
| 2007-17 | ss. 2(1), 3-4, 7(1), 10(1)-(2), 13(1), 18A(1), 19 | 14.6.2007 |
| 2013-09 | s. 19(j) | 30.5.2013 |

Power to Depute

The power to depute conferred by s.41 of the Interpretation and General Clauses Act has been extended to the Captain of the Port in relation to the Port Act LN. 1971/092

English sources

None cited

ARRANGEMENT OF SECTIONS.

Section

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2. Interpretation.
3. Power to vary limits of port.
4. Port staff and powers.
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SCHEDULE.

Description of Port of Gibraltar.

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AN ACT TO CONSOLIDATE THE LAW GOVERNING THE USE OF THE PORT OF GIBRALTAR AND MATTERS CONNECTED THEREWITH.

Short title.

1. This Act may be cited as the Port Act.

Interpretation.

2. (1) In this Act, unless the context otherwise requires, –

“Admiralty Waters” means the waters defined as Admiralty waters by the Admiralty Waters (Gibraltar) Order, 1972;

“bay of Gibraltar” means those waters commonly known as the Bay of Gibraltar and limited on the South by an imaginary straight line joining Europa Point and Carnero Point;

“Captain of the Port” means the person appointed to be the Captain of the Port under section 4 and includes any person appointed by the Government to act in the place of the Captain of the Port;

“charges” includes all sums which may under the provisions of this Act be levied for or in respect of any ship or for any port facility provided or any other service rendered by the Captain of the Port;

“foreshore” means the seashore between high water mark and low water mark;

“goods” includes live stock, minerals and merchandise of all descriptions;

“hulk” includes any dismantled vessel or other craft of such or the like nature afloat, or being within the port;

“master”, when used in relation to any vessel, means any person whether the owner, master or other person lawfully or wrongfully having or taking the command, charge or management of the vessel for the time being;

“owner” includes legal owner, charterer, agent or manager for an owner or charterer, master or any other person for the time being having the management or control of a vessel;

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“passengers” includes any person carried in a vessel other than the master and the crew and the owner, his family and servants;

“pilot” means a person appointed and licensed to be a pilot in accordance with the provisions of the Merchant Shipping Act;

“port of Gibraltar” and “port” mean the port within the limits described in the Schedule;

“Port Waters” means those waters, forming part of Admiralty Waters, defined as Port Waters in the Admiralty Waters (Gibraltar) Order, 1972;

“seaplane” includes a flying boat and any other aircraft designed to manoeuvre in the water;

“ship” includes every description of vessel used in navigation not propelled by oars;

“vessel” includes every ship or boat and any other description of vessel used in navigation.

(2) The provisions of this Act shall not apply to any ship being the property of or under charter to Her Majesty or the Government.

Power to vary limits of port.

3. The Government may from time to time by order vary the limits of the port set out in the Schedule:

Provided that no part of Admiralty Waters, other than Port Waters, shall be included within the limits of the Port without the consent of Her Majesty signified by Order in Council.

Port staff and powers.

4. The Government shall appoint a fit and proper person to be Captain of the Port and such other officials of the Port Department as may be deemed necessary and the Captain of the Port for the time being shall have the management and control of the port.

Control of vessels.

5.(1) All vessels in the port shall, subject to the provisions of subsection (2), be under the control of the Captain of the Port.

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(2) All vessels in Port Waters shall be under the control of the Captain of the Port, but the Captain of the Port shall, in relation to vessels in Port Waters be subject to and comply with the directions of the Senior Naval Officer, who may, in relation to vessels in Port Waters, exercise such powers and perform such duties as he may exercise and perform by or under the Admiralty Waters Order in respect of vessels in Admiralty Waters other than Port Waters.

Powers to enter premises.

6. The Captain of the Port and any member of the Port Department thereunto authorized by the Captain of the Port may enter any land or premises in the port.

Compulsory pilotage.

7.(1) The Government may by notice declare that any area of the port shall be an area within which pilotage shall be compulsory and any such area shall be known as and is hereinafter referred to as a compulsory pilotage area.

(2) Subject to the provisions of subsection (2A) ships, other the excepted ships, navigating for the purpose of anchoring, entering, leaving, moving, mooring or berthing within a compulsory pilotage area shall be under the pilotage of a pilot.

(2A) Notwithstanding anything contained in subsection (2) any notice declaring a compulsory pilotage area may provide that in such area ships shall only be required to be under the pilotage of a pilot if they are navigating for certain of the purposes specified in subsection (3).

(3) For the purposes of this section the following ships shall be excepted ships:-

- (a) pleasure yachts or fishing vessels;
- (b) tugs, dredgers, barges or similar vessels whose ordinary course of navigation does not extend beyond the limits of the port;
- (c) any ship exempted by the Captain of the Port in accordance with the provisions of this section.

(4) The Captain of the Port may exempt any ship from compulsory pilotage, either generally or specially.

(5) The Government shall not be responsible for the loss or damage caused through any act, omission, neglect or default of any pilot.

(6) The owner or master of a ship navigating under circumstances in which pilotage is compulsory shall be liable for any loss or damage caused by the ship or by any fault in the navigation of the ship in the same manner as he would if pilotage were not compulsory.

(7) If, after a pilot has offered his services, a ship is navigated in circumstances in which pilotage is compulsory and such ship is not under the pilotage of a pilot the master of the ship is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

Passengers. etc., to be embarked etc., only at authorized places.

8.(1) No ship shall embark or disembark passengers or goods at any place other than a landing place authorized by the Captain of the Port for the purpose.

(2) A person who contravenes the provisions of this section is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

Master to supply information.

9.(1) The master of any ship arriving in the port shall produce to the Captain of the Port—

- (a) the ship's register and the ship's papers;
- (b) a list of the passengers, if any, showing particulars of their sex and occupation;
- (c) a list showing the deaths, if any, which have occurred during the voyage;
- (d) a list showing the stowaways, if any, on board the ship, and shall also supply such other information in relation to the ship, passengers and cargo thereof as the Captain of the Port may require.

(2) Where the Captain of the Port is of the opinion that it is appropriate to do so, he may retain such of the ship's papers as he considers necessary for the purpose of ensuring that the provisions of this and any other Act relating to that ship or the safety of shipping generally are met.

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(3) A master who contravenes any of the provisions of this section or who produces any document or gives any information which is to his knowledge false in any material particular is guilty of an offence and is liable on summary conviction to a fine at level 4 on the standard scale.

Port charges may be levied.

10.(1) There shall be levied upon every vessel and seaplane arriving at, touching at, or having communication with, Gibraltar or the port thereof such port charges as the Government may prescribe and different charges may be fixed for different vessels and different classes of vessel.

(2) The Government may at his discretion exempt any vessel or any class of vessel or any seaplane from all or any port charges or for the remission thereof or any part thereof.

(3) Such charges shall be paid in respect of such services or facilities in the port as may be prescribed.

Power to arrest vessel for port charges.

11.(1) Where any port charges are owing in respect of any vessel or seaplane the Captain of the Port may arrest the vessel or seaplane and the tackle, apparel and furniture thereof and may detain it until the amount of such charges is paid.

(2) Where, after such arrest, any such port charges remain unpaid for a period of seven days, the Captain of the Port may cause the vessel or seaplane as the case may be and the tackle, apparel and furniture thereof arrested to be sold and out of the proceeds of such sale he may retain the amount of any port charges which are owing and the expenses of the detention and sale thereof, and shall pay the balance, if any, to the Master of the vessel or sea plane, if he submits claim within six months of the sale.

Removal of wrecks, etc.

12.(1) The Captain of the Port may—

- (a) remove by destruction or otherwise wreck in, or other obstruction to, the port or the approaches thereto or any timber, raft or other thing floating in the port which endangers or obstructs the free navigation of the port or the use of any wharf therein;

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- (b) in case of urgent necessity take any action in the port which in his opinion may be necessary to prevent any danger to life or shipping;
- (c) remove and lay on some part of the strand or seashore or in some other place where the same may without injury to any person be placed any vessel lying within the port which is laid by or neglected as unfit for sea service.

(1A) Where –

- (a) any vessel, vehicle, trailer, container, machinery or other article or thing (hereinafter in this section each included in the term “thing”) is –
 - (i) left or parked on a road, quay, wharf or any other area (other than in the sea) within the port; or
 - (ii) obstructing a road, quay, wharf or any other such area -

in contravention of this Act or of any rules made under this Act; and

- (b) where the Captain of the Port is able to ascertain the owner or the person in charge of the thing, he has required that person to remove the thing in such a manner that it ceases to be in contravention of this Act or of any such rules and that person has failed to comply with that requirement within twenty-four hours after the requirement is made of him; or, where the Captain of the Port is unable to ascertain the owner or person in charge of the thing, it has remained in contravention of this Act or of any such rules for a period of not less than forty-eight hours –

the Captain of the Port may remove that thing.

(2) The owner of any wreck, or other thing removed by the Captain of the Port under the provisions of paragraph (a) or (c) of subsection (1) or of any thing removed under sub-section (1A) shall without prejudice to any other action which may be taken against him, be liable to pay the reasonable expenses of such removal, and such wreck or other thing may be detained by the Captain of the Port until such expenses are paid.

(3) Where any wreck or other thing is removed under the provisions of paragraph (a) or (c) of sub-section (1) or any thing is removed under sub-section (1A) and the expenses of removal have not been paid within seven days of such removal, the Captain of the Port may sell such wreck or other

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thing or any portion thereof. If any such wreck or other thing is disposed of by sale, the Captain of the Port shall, out of the proceeds of the sale retain the expenses of such removal, detention and sale and shall pay the balance, if any, to the person appearing to him to be entitled thereto and by whom a claim has been made within six months of the sale and any deficiency may be recovered from the owner summarily by the Captain of the Port as a civil debt;

provided that where the Captain of the Port is unable, because of the nature or physical deterioration of the wreck or other thing, to sell or destroy or remove by destruction or otherwise such wreck or other thing he may dispose of it.

Conditions for use of passenger carrying ships.

13.(1) No person shall use any ship for carrying passengers for hire or reward in the port of Gibraltar save in accordance with such conditions as the Government may prescribe.

(2) A person who uses a ship in contravention of the provisions of this section is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

Refusing to give name or address.

14. A person who commits or is suspected of having committed any offence against this Act or any rules made thereunder and when required to do so by a police officer or any member of the Port Department refuses to give his name and address or the name and address of the owner of the vessel or gives any such false name or address is guilty of an offence and is liable on summary conviction to a fine at level 2 on the standard scale.

Duty to give information.

15. It shall be the duty of the owner of any vessel, if so required by a police officer or any member of the Port Department, to give any information which it is within his power to give which may lead to the identification and apprehension of any master, engineer, or any person in charge of a vessel and if the owner fails to do so he is guilty of an offence and is liable on summary conviction to a fine at level 3 on the standard scale.

Information to be supplied by arriving vessels to director of private dock or pier.

15A.(1) In respect of the arrival of any vessel within a private commercial dock or private commercial pier, the director shall—

- (a) ensure that the entry into Gibraltar of the occupants of the vessel is in compliance with the provisions of the Immigration Control Act;
- (b) for the purpose of paragraph (a), request the occupants to produce for inspection—
 - (i) a valid passport and where necessary a valid visa; and
 - (ii) in the case of Community nationals, valid passport or identity card;
- (c) require the master of the vessel to produce for inspection—
 - (i) other than in the case of a pleasure yacht, a copy of the manifest or report of the cargo in the vessel signed by him;
 - (ii) a manufacturer's certificate in respect of the size, make and model of the vessel for yachts built after 2000, or the equivalent information in the case of an older yacht;
 - (iii) a manufacturer's certificate in respect of the make, model and maximum power of the engine powering the vessel, for yachts built after 2000, or the equivalent information in the case of an older yacht; and
 - (iv) such other documents as the Minister with responsibility for the port may, from time to time require;
- (d) require the master of the vessel to complete the Crew, Passenger and Stores Declaration in the form prescribed by Rules; and
- (e) make accurate copies of all documents mentioned in paragraphs (a), (b), (c) and (d), within the time limits prescribed in subsection (4), for onward transmission to the Principal Immigration Officer and the Collector of Customs.

(2) The director of any private dock or pier shall, if requested by the Captain of the Port, transmit copies of the documents referred to in subsection 1(e) to the Captain of the Port.

(3) Where a person who has any responsibility under subsection (1) or (2) fails to do it, that person shall be

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guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(4) The time limits for submission of copies of the documents required by subsection (1)(e) shall be as follows—

- (a) in respect of a yacht arrival which occurs between 9 a.m. and 7 p.m., within 2 hours of arrival;
- (b) in respect of a yacht arrival which occurs between 7 p.m. and 9 a.m., and where a yacht is unable to enter the private commercial dock or private commercial pier until the morning, within 2 hours of its entry into that dock or pier; and
- (b) in respect of a yacht arrival which occurs between 7 p.m. and 9 a.m. and where the yacht is permitted to enter the private commercial dock or private commercial pier, within 2 hours of its being permitted to enter that dock or pier.

(5) Where a private commercial dock or private commercial pier is closed at night, and there is an arrivals berth at that dock or pier, the arrivals berth shall be so designed to ensure that no person on board a yacht tied alongside the berth is able to disembark and enter that dock or pier until the yacht has completed all reporting formalities.

(6) In the case of a yacht that enters Gibraltar waters and chooses not to enter a private commercial dock or private commercial pier, the Captain of the Port may require that yacht to berth at a particular berth appointed by the Captain of the Port for the purposes of completing a Crew, Passenger and Stores Declaration in the form prescribed by Rules or for any other purposes in connection with reporting its arrival in Gibraltar or for examination by the Port, customs or immigration authorities.

(7) Notwithstanding that an incoming yacht wishes or intends to enter a private commercial dock or private commercial pier, the Captain of the Port may direct that yacht to proceed to a specified berth within the port for the purposes of examination by the Port, customs or immigration authorities.

(8) For the purposes of this section—

“director” means a person who has the day to day management and control of a private commercial dock or private commercial pier;

“private commercial dock” means a commercial dock the day to day management and control of which is not in the hands of the Captain

of the Port and “private commercial pier” or “pier” shall be construed accordingly.

Detention of vessel causing damage.

16. Where, in the opinion of the Captain of the Port, any damage or injury to any quay, wharf, seawall, harbour works, plant, machinery or any article or thing in the port the property of the Government is caused by or arises out of the use of a vessel, such vessel may be detained by the Captain of the Port until sufficient security for such damage or injury has been given by the owner or master of the vessel to the satisfaction of the Captain of the Port.

Detention of vessel for non-payment of fine.

17. If any person being the owner of a vessel is found guilty of any offence against this Act or any rules made thereunder, in connection with such vessel, the vessel with the tackle, apparel and furniture, and the cargo laden on board, may be seized and detained by the order of the magistrates' court as a security for the payment of any fine to which that person may become liable, and the magistrates' court may order such vessel together with the tackle, apparel and furniture, and the cargo laden on board, to be sold for the purpose of satisfying such fine in default of payment thereof, in like manner as if the same had been subject to be distrained and had been distrained for the payment of such fine.

No liability for things done in good faith.

18. No member of the Port Department shall be liable for any suit, claim or demand by reason of anything in good faith done or refused pursuant to this Act in his official capacity.

Punishment without prosecution of certain offences.

18A.(1) This section shall apply to any offence created by this Act or by any rules made under this Act and punishable on summary conviction, being an offence committed in respect of any vessel, vehicle, trailer, container, machinery, or other article or thing –

- (a) by its being left or parked, on a road, quay, wharf or any other area (other than in the sea) within the port;
- (b) by its obstructing a road, quay, wharf or any other such area, or by its waiting or being left or parked or being loaded or unloaded on a road, quay, wharf or any other such area:

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Provided that the Government may by order exclude the application of this section to any offence.

(2) In this section, ‘authorized person’ means the Captain of the Port, any police officer, or any member of the Port Department authorized in writing by the Captain of the Port for the purposes of this section.

(3) Where any authorized person finds a person on any occasion and has reason to believe that on that occasion he is committing or has committed an offence to which this section applies, he may give that person a notice in writing, in the prescribed form, offering the opportunity of the discharge of any liability to conviction of that offence by payment of a fixed penalty under this section; and no person shall then be liable to be convicted of that offence if the fixed penalty is paid in accordance with this section before the expiration of the seven days following the date of the notice.

(4) Where a person is given a notice under this section in respect of an offence, proceedings shall not be taken against any person for that offence until the end of the seven days following the date of service of the notice or following the day after posting such notice.

(5) In subsections (3) and (4), “proceedings” means any criminal proceedings in respect of the act or omission constituting the offence specified in the notice under subsection (3), and “convicted” shall be construed in like manner.

(6) Payment of a fixed penalty under this section shall be made to the clerk of the magistrates' court and sums paid by way of fixed penalty for any offence shall be treated as if they were fines imposed on summary conviction for that offence; and in any proceedings a certificate that payment of a fixed penalty was or was not made to the clerk of the magistrates' court by a date specified in the certificate shall, if the certificate purports to be signed by the clerk of the magistrates' court, be sufficient evidence of the facts stated, unless the contrary is proved.

(7) A notice under subsection (3) shall specify the offence alleged and give such particulars of the offence as are necessary for giving reasonable information of the allegation, and state also the period during which, by virtue of subsection (4), proceedings will not be taken for the offence, the amount of the fixed penalty and the name and address of the person to whom the fixed penalty may be paid.

(8) Where the Captain of the Port or any authorized person finds any vessel, vehicle, trailer, container, machinery, or other article or thing on any occasion, and has reason to believe that on that occasion there is being or has been committed in respect of it an offence to which this section applies,

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he may proceed under this section as if he had found a person reasonably believed by him to be committing the offence, and for that purpose a notice affixed to such vessel, vehicle, trailer, container, machinery, or other article or thing shall be deemed to be given to the person liable for that offence.

(9) A notice affixed to any vessel, vehicle, trailer, container, machinery, or other article or thing under subsection (8) shall not be removed or interfered with except by or under the authority of the owner or person in charge of such vessel, vehicle, trailer, container, machinery or other article or thing, or the person liable for the offence in question.

(10) A person who contravenes subsection (9) is guilty of an offence and is liable on summary conviction to a fine at level 1 on the standard scale.

Rules.

19. The Government may make rules for prescribing anything which may be prescribed under this Act and generally for carrying this Act into effect and in particular but without prejudice to the generality of the foregoing may make rules with respect to any of the following matters:—

- (a) the management of the port and the maintenance of order therein;
- (b) the regulation and control of all vessels entering or leaving the port and their movements in the port;
- (c) the use of the port by seaplanes;
- (d) the construction, equipment, survey and use of ships used for carrying passengers in the bay of Gibraltar; the issue and revocation of certificates to such ships and the fees to be paid therefor;
- (e) the registration, inspection and control of vessels other than ships carrying or intended to carry passengers and the fees to be paid in respect of such registration, licensing and inspection;
- (f) the defining of dangerous or offensive goods; the conditions under which these may be carried or stored; the loading or unloading of such goods including the necessary supervision of such loading or unloading and the fees to be charged for such supervision; the mooring in the bay of Gibraltar of vessels carrying or in which may be stored such good;

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- (g) the protection of vessels and cargoes, and the removal, destruction, sale or abandonment of stranded vessels and their cargoes and appurtenances which obstruct or are likely to obstruct the fairway to any berth in the port, the payment of expenses in connection therewith and the levy and recovery of a rent for the right of a hulk, or wreck or wreckage to lie in the bay of Gibraltar;
- (h) the mooring in the bay of Gibraltar of ships or vessels carrying petroleum, or lighters or hulks in which petroleum may be stored; the loading or unloading of such vessels including the necessary supervision of such loading or unloading and the fees to be charged for such supervision;
- (ha) charges payable for vessels and seaplanes arriving at, touching at, having communication with or berthing or mooring at or along side Gibraltar or the port of Gibraltar;
- (i) the health, safety and welfare of persons working in the port;
- (ia) prescribing the form of notice for the purposes of section 18A and otherwise providing, in a manner not inconsistent with that section, for procedure under that section;
- (j) providing that any contravention of a rule made under this section may be either a summary or indictable offence, or both, and that section 23(b) of the Interpretation and General Clauses Act shall not apply to any such offence;
- (ja) providing for such other matters as are reasonably necessary for or incidental to the due administration of this Act.

SCHEDULE

Section 2.

DESCRIPTION OF THE PORT OF GIBRALTAR.

The Port of Gibraltar shall include—

- (a) that area of water and the foreshore adjacent thereto as is commonly known and recognized as the port, roadstead, and anchorage ground of Gibraltar;
- (b) Port Waters;
- (c) the area known as North Mole commencing adjacent to the entrance to the Electricity Generating Station and extending to the Western Arm together with the Passenger Wharf and the Yacht Reporting Berth.