

**PORT OPERATIONS (REGISTRATION AND
LICENSING) ACT 2005****Principal Act**

Act. No. 2005-12	<i>Commencement (LN. 2006/065)</i>	1.6.2006
	<i>Assent</i>	9.2.2005

Amending enactments	Relevant current provisions	Commencement date
Act. 2009-48	s. 14(1)(c) & (d)	3.12.2009
2011-30	ss. 2, 2A-2N, 3(1), (3)(a), (4)-(8), 4, 5(1), (3)-(5), 7, 8(1) & (2), 9, 10(1), (2), (3)(a), (4)-(8), (9), (10) & (11), 11, 12(3), 13(1), (6) & (7), 14(1)(a) & (b), 16(1)(a)-(l), (2) & 19	6.10.2011

English sources:

None cited

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SCHEDULE

Eastern Anchorage

AN ACT TO MAKE PROVISIONS FOR REGULATING PORT OPERATIONS AND EMPLOYMENT WITHIN THE PORT; AND FOR CONNECTED PURPOSES.

PART 1
General

Title and commencement.

1. This Act may be cited as the Port Operations (Registration and Licensing) Act 2005 and shall come into operation on a day to be appointed by the Minister with responsibility for the Port and Shipping by notice in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires—

“Authority” means the Gibraltar Port Authority established under section 3 of the Gibraltar Port Authority Act 2005;

“bunkering” means the supply of fuel to ships;

“cargo” means goods or merchandise or whatever is carried or to be carried in a vessel arriving at or sailing from Gibraltar or, between Gibraltar and another fixed point, either as a single piece or consignment that exceeds three tons and includes ship’s stores and equipment or spare parts for the use of a ship;

“court” means the Supreme Court of Gibraltar;

“dock work” means the carrying out within the confines of the Port, the transfer and stowage of cargo in transit and storage sheds, the stuffing and unstuffing of freight containers and the handling of cargo after it has been delivered to the Port in the case of exports or before it is collected by the consignees in the case of imports and excludes the loading or unloading of ships’;

“Employment Act” means the Employment Act and Regulations made thereunder;

“Minister” means the Minister with responsibility for the Port and shipping;

“Port” means—

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- (a) that area of water and the foreshore adjacent thereto as is commonly known and recognised as the Port, roadstead and anchorage ground of Gibraltar including Admiralty and Port Waters as defined from time to time in any relevant Order in Council;
- (b) all that area of land defined as being part of the Port in the Port Act; and
- (c) the area within Gibraltar territorial waters commonly known as the Eastern Anchorage, within the co-ordinates specified in the schedule;

“port operations” includes engaging, within the port, in any of the following classes of acts or business activities-

- (a) bunkering;
- (b) stevedoring;
- (c) ship repairing;
- (d) ship agency;
- (e) ship chandlery;
- (f) dock work;
- (g) any other industrial or commercial operation or business activity undertaken in relation to ships based, laid up or calling at Gibraltar,

all of which needs to be registered by the Authority, and includes any activity carried out as an agent of a registered port operator;

“port operator” means anybody engaged in any activity of port operations;

“port worker” means any person employed by a port operator in the activity of port operations within the confines of the port and registered in the register of port workers kept and maintained by the Authority;

“register” means the register maintained by the Authority pursuant to section 2A;

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“ship” means anything made or used for the conveyance by water of persons or property;

“ship agency” means a business activity that is carried out, on behalf of the owners, charterers, managers or master of a ship or otherwise, to deal with the ships’ business at the port, including but not limited to—

- (a) arrange for the receipt, delivery and clearance of goods;
- (b) arrange for embarkation and disembarkation of passengers;
- (c) prepare contracts and other documents relating to the carriage of goods by sea;
- (d) assist with reception, enrolment and repatriation of crews;
- (e) attend to any other requirements affecting ships, their crews, passengers and goods; and
- (f) be responsible in accordance with the directions of the Authority for the grant of pratique to ships;

“ship chandlery” means the supply of goods for use by a ship or by the passengers or crew of a ship;

“ship repairing” means any operation conducted in respect of the repair or maintenance of a ship’s engines, boilers, machinery or equipment, whether mechanical, electrical or electronic, or of its hull, superstructure, holds or interior compartments and includes underwater hull cleaning but does not include any such activity when carried out by any operator from time to time of the ship repairing yard situated at the southern end of the harbour nor maintenance work on its own vessels by a port operator;

“stevedoring” means dock work and, in addition, the operation of loading and unloading cargo to or from ships and warships (except where the operation of loading and unloading is carried out by persons in the direct employment of the Ministry of Defence) and the loading of goods, provisions and merchandise for use or consumption by the crew or passengers of a ship but does not include operations conducted in respect of cargo from ships exclusively employed in carrying fuel, lubricants or water or the supply of bunkers to ships;

“Tribunal” means a tribunal established in accordance with section 14(2).

Establishment of register.

2A.(1) The Authority shall establish and maintain a register in which details are kept of—

- (a) port operator licences issued under this Act;
- (b) persons who are issued with a certificate of registration pursuant to section 3; and
- (c) such other matters as the Authority considers ought to be entered in the register.

(2) Any changes to a port operator licence, including any temporary restriction, condition or other amendment, shall be entered in the register.

(3) Any changes to a certificate of registration, including any temporary restriction or other amendment shall be entered in the register.

Inspection of register.

2B. Any person may inspect a register maintained under this Act on payment of the prescribed fee.

PART 2 Port operators

Restriction on engaging in port operations.

2C.(1) No person shall, within the Port, engage in port operations unless that person is licensed in respect of each individual activity or class of activity which he intends to undertake or engage in.

(2) Subsection (1) shall not apply if the person referred to in that subsection is otherwise exempted under this Act.

Exemption from licence requirement.

2D.(1) In exceptional circumstances the Minister, and on the recommendation of the Captain of the Port, the Authority, may grant an exemption to a person who would otherwise need to be licensed as a port operator for a defined short period of time and for a specific purpose.

(2) An exemption under subsection (1) shall be in writing and shall set out the nature and extent of the exemption.

Application for port operator licence.

2E.(1) An application for a port operator licence shall be made to the Authority—

- (a) in such manner and in such form as may be prescribed by regulations; and
- (b) shall be accompanied by the prescribed fee.

(2) A separate application shall be made for each activity or class of activity which individually or taken together comprise port operations.

Supply of additional information.

2F. The Authority may, before issuing a port operator licence, require a person to supply to the Authority such additional information relating to that person's business and such other matters as the Authority considers relevant for the purposes of this Act.

Representations to Authority.

2G. A person who wishes to make representations to the Authority in the context of an application under this Part may do so in such manner and in such form as may be prescribed by regulations.

Issue of port operator licence.

2H.(1) Upon the consideration of an application under this Part, including any information provided to it, the Authority may, in its absolute discretion, issue a port operator licence.

- (2) In the Authority's absolute discretion, a port operator licence issued under this section may be—
 - (a) restricted to any named activity or class of activities; and
 - (b) issued subject to such terms, conditions or restrictions as the Authority deems appropriate.

(3) Without limiting the Authority's absolute discretion set out in subsections (1) and (2) the Authority may take into account in considering an application for a port operator licence any one of the following matters—

- (a) if, having required further information from the applicant it has not received that information;

- (b) if it considers that—
 - (i) the operational circumstances, the viability of a particular sector, the need to maintain levels of investment or the safety of the Port, port users and members of the public or the safety of the sector of port operations for which the application is made; or
 - (ii) the public interest of Gibraltar including (but not limited to) the wider economic interests of Gibraltar,
 - may be adversely affected if such a licence were issued;
- (c) if it would be proper to do so on the basis of the information available to it at the relevant time;
- (d) compliance with such criteria as may be prescribed;
- (e) the protection of human health;
- (f) public safety;
- (g) the protection of the natural environment;
- (h) any breach of a provision of this Act or any regulations made hereunder;
- (i) the public interest;
- (j) having regard to all the circumstances of the case it would be just to do so.

(4) The Authority shall regulate its own procedure for determining an application for a port operator licence.

2I. *Not used.*

2J. *Not used.*

Renewal of port operator licences.

2K.(1) A port operator who wishes to renew a port operator licence shall apply to the Authority and such application shall be made not less than thirty days before the 1st May or such other date as the Minister may specify by notice in the Gazette.

(2) The Authority shall renew a licence held by a port operator on application unless it is satisfied that—

- (a) he has not been regularly engaged in the relevant class of port operations during the preceding six months;
- (b) he has not complied with the provisions of this Act or any other matter prescribed by regulations;
- (c) he has not complied with a condition contained in the licence;
- (d) there has been a material change in the circumstances since the licence was granted; or
- (e) it would not be in the public interest to renew the licence.

(3) The Authority shall not renew a licence held by a port operator if the Government has directed it not to do so on any ground or grounds upon which the Government can under section 2M (4) amend, suspend or revoke a port operator's licence.

(4) An applicant whose request for renewal of a port operator licence has been refused may apply for the grant of a fresh licence.

Renewal of port operators licences: supplementary.

2L.(1) On application for the renewal of a port operator licence, the Authority shall presume that all evidence that the applicant needs to furnish on first application for a licence has been provided to the satisfaction of the Authority unless the contrary is shown to be the case.

(2) The applicant shall notify the Authority of any change of circumstances which may be material to the renewal.

(3) Notwithstanding sub-sections (1) and (2) the Authority may require the applicant to provide additional or up-dated information relevant to its consideration of an application for renewal and the applicant shall provide such information within such timescale as the Authority may require.

Amendment, suspension and revocation of port operator licence.

2M.(1) The Authority may, on the application of the licensee or of its own motion—

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- (a) amend a port operator licence including but without limitation by imposing or removing any condition or restriction or in any other way varying the extent or duration of the licence;
- (b) suspend the operation of such a licence; or
- (c) revoke such a licence.

(2) Where the Authority proposes to suspend or revoke a port operator licence of its own motion in accordance with subsection (1)(b) or (c), it shall only do so if it is satisfied that—

- (a) it would be reasonable to do so on the basis of the information available to it at the relevant time; and
- (b) that it would be proportionate to do so,

and in so satisfying itself the Authority may have regard to any of the following factors—

- (i) the protection of human health,
- (ii) public safety,
- (iii) the protection of the natural environment,
- (iv) any breach of a provision of the licence,
- (v) any breach of a provision of this Act or any regulations made hereunder,
- (vi) any material change of circumstances since the licence was granted, and
- (vii) the public interest.

(3) Where the Authority proposes to suspend or cancel a port operator licence under subsection (1)(b) or (c) in circumstances where section 6 of the Constitution is engaged, it may only do so with the consent of the Government.

(4) The Government may, where it considers that it would be in the public interest to do so, amend, suspend or revoke a port operator licence, and where the Government exercises such a power the Authority shall take such steps as are necessary to give effect to that amendment, suspension or revocation.

(5) In subsections (2) and (4) above, the public interest includes (but shall not be limited to)–

- (a) the wider economic interests of the Port or of Gibraltar;
- (b) the environment of Gibraltar;
- (c) the health and safety of the general public, any sector of it or of other users of the Port;
- (d) the international reputation of Gibraltar;
- (e) compliance with international regulations, norms or good safety or best practice.

(6) The Authority or the Government, as the case may be, shall notify the licensee in writing of the exercise of its powers under this section as soon as it is reasonably practicable.

(7) Where the Government, pursuant to this section, exercises a power in a manner which engages section 6 of the Constitution such exercise shall be without prejudice to such right to compensation as a licensee may have.

Port operators: supplementary.

2N.(1) The Authority may require a licensee to remedy forthwith any breach of any term or condition of his licence or of any provision of this Act or regulations made under it and shall provide written notification of the reasons for its decision at the earliest opportunity.

(2) In the event of any dispute or grievance between licensees or any category of them in relation to the application of this Act or any regulations made under it, the Authority shall make an immediate adjudication in respect of the dispute or grievance.

(3) A licensee shall accept and abide by the adjudication made by the Authority under subsection (2) and failure to do so shall be deemed to be a breach of the condition of the licence.

(4) A licensee who is dissatisfied with an adjudication made under subsection (2) may appeal to the Minister within 7 days for a ruling on whether the adjudication was appropriate in the circumstances.

(5) A licensee shall bring to the notice of the Authority as soon as possible any–

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- (a) relevant conviction against himself or any port worker employed by him; or
- (b) material change in a licensee or company or a person employed by a licensee which could impact on an operator's good standing, financial standing or any other relevant matter.

(6) Where malpractice has been established or where a port operator fails to comply with a notice issued under subsection (1), the Authority may suspend any licence issued under this Act for such a period of time as it may consider appropriate.

(7) Where a person ceases to meet the conditions under which he was licensed, the Authority shall give him written notice of the defect and specify a time scale for the defect to be remedied, and the Authority may suspend the licence until such time as the defect is remedied and if it is not remedied within that time scale and the Authority is unwilling to extend time for remedying the defect, the licence shall be revoked by the Authority.

PART 3

Port workers

Registration as port worker.

3.(1) *Repealed.*

(2) The Authority may register any person as a full-time or part-time port worker for one or more specific activities if—

- (a) his employer is registered as a port operator;
- (b) his employer requests the registration on his behalf from the Authority in writing in the prescribed form;
- (c) the prescribed fee is paid; and
- (d) the Authority is satisfied that the applicant is a fit and proper person for registration as a port worker.

(3) The Authority shall issue an applicant on registration with—

- (a) *Repealed.*
- (b) a Certificate of Registration in the case of a port worker,

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in the prescribed form and subject to any conditions which the Authority may impose.

(4)-(8) *Repealed.*

Discretionary and other powers of the Authority.

4.(1) Notwithstanding any other provision in this Act, the Authority shall have an absolute discretion regarding whether to grant or refuse an application for the registration of a port worker.

(2) The Authority shall regulate its own procedure for determining an application for registration as a port worker.

Renewal of registration.

5.(1) A port operator who wishes to renew the registration of a port worker employed by him issued under section 3 shall apply to the Authority and such application shall be made not less than thirty days before the 1st May or such other date as the Minister may specify by notice in the Gazette.

(2) The registration of every port worker shall be renewed at the discretion of the Authority, subject to section 6(1), on the 1st May each year or such other date as the Minister may specify by notice in the Gazette.

(3)-(5) *Repealed.*

Particulars of port workers to be supplied.

6.(1) Every port operator shall, within seven days of being notified that he has been licensed or re-licensed by the Authority, send to the Authority such particulars as may be prescribed in respect of all appropriate port workers employed by him with an application that they be registered or re-registered as port workers.

(2) Every port operator shall within seven days of—

- (a) commencing the employment of any port worker, send to the Authority the particulars prescribed in respect of such worker; and
- (b) ceasing the employment of any person as a port worker send to the Authority notice thereof,

together with evidence that he has forwarded such particulars to the Director of employment as required by the Employment Act.

7. *Repealed.*

Amendment of registration.

8.(1) During the currency of any registration the Authority may, of its own motion or on the application of the registered person, amend the registration by altering or revoking any of the terms or conditions of the registration or by adding such new terms or conditions as the Authority deems necessary.

(2) *Repealed.*

9. *Repealed.*

Port workers: supplementary.

10.(1) *Repealed.*

(2) The Authority may cancel the Certificate of Registration of—

- (a) any port worker at the request of a port operator or at his own request;
- (b) any port worker who ceases to be employed by a port operator;
- (c) any person whose registration was granted on the basis of information supplied by the applicant which was false or misleading in a material particular; or
- (d) any port worker convicted of any offence relevant to his employment.

(3) The Dock Controller in the Gibraltar Port Authority shall, as an initial point of contact, refer to the Authority at the first opportunity any evidence of—

- (a) *Repealed.*
- (b) malpractice on the part of any port worker.

(4)-(8) *Repealed.*

(9) The Authority may suspend the registration of any port worker for such a period of time as it may consider appropriate in a case where malpractice has been established.

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(10) Where a person ceases to meet the conditions under which he was registered, the Authority shall give him written notice of the defect and specify a time scale for the defect to be remedied, and the Authority may suspend the registration until such time as the defect is remedied and if it is not remedied within that time scale and the Authority is unwilling to extend time for remedying the defect, the registration shall be revoked.

(11) *Repealed.*

11. *Repealed.*

Restriction of employment.

12.(1) A port operator shall not employ, except with the prior consent of the Authority, any person other than a registered port worker on port operations.

(2) No person other than a port operator shall employ any person on port operations.

(3) *Repealed.*

PART 4 Miscellaneous

Offences, etc.

13.(1) A person who fails to comply with the provisions of sections 2C, 6 or 12 of this Act is guilty of an offence and is liable, on summary conviction, to a fine at level 4 on the standard scale.

(2) A person who carries out any activity that is regulated by this Act other than—

- (a) within the confines of the port, the ship repair yard or the Naval Base; or
- (b) elsewhere with the express written approval of the Authority,

is guilty of an offence and is liable, on summary conviction, to a fine at level 4 on the standard scale.

(3) A person who is guilty of an offence committed under any of the provisions of the Regulations made under this Act shall be liable, on summary conviction, to a fine at level 2 on the standard scale.

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(4) A person who is guilty of a second or subsequent offence referred to in subsection (1), (2) or (3) above, shall be liable to a fine at level 5 on the standard scale and, in both cases, to a fine not exceeding an amount at level 1 on the standard scale for each day during which the offence continues after such conviction.

(5) Where any offence against this Act is committed by a body corporate, any person who, at the time of the commission of the offence, was a director, general manager or secretary or other similar officer of that body corporate or who was, at that time, acting or purporting to act in such capacity, is guilty of such offence unless he proves—

- (a) that the offence was committed without his knowledge or consent; and
- (b) that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his functions in such capacity.

(6) Where a port operator has been convicted of a second or subsequent offence, the Authority may, with the approval of the Minister, suspend any licence issued to that port operator for such period as it thinks fit.

(7) Notwithstanding the provisions of subsection (6) if a port operator has given notice of his intention to appeal to the Tribunal or serves a notice on the Clerk to require the Tribunal to state a case for the opinion of the Supreme Court, the suspension shall not take effect pending the determination or withdrawal of the appeal or the case so stated, as the case may be.

Appeals.

14.(1) Any person who is—

- (a) aggrieved by the refusal of the Authority to issue a licence to a port operator or register a port worker under sections 2I, 2K, 3 or 5, as the case may be;
- (b) aggrieved by having his licence amended, suspended or revoked under section 2M(1) (other than under section 2M(4)), or not renewed under section 2K (other than under section 2K(3)); or
- (c) aggrieved by the removal from the register of a port worker employed by him under section 10(2),

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may appeal to the Port Tribunal established under subsection (2).

(2) There shall be established a Tribunal to be known as the Port Tribunal and it shall consist of such Member or Members as may be appointed by the Chief Minister by notice in the Gazette for the purpose of hearing appeals under this Act and the Regulations made thereunder.

(3) A Member of the Tribunal shall be a fit and proper person and shall hold office for a period of one year or for such other period of time as is specified in the notice of appointment.

(4) There shall be a Clerk to the Tribunal who shall be appointed by the Chief Minister by notice in the Gazette.

(5) A Member of the Tribunal shall not continue in office after he attains the age of seventy-five years.

(6) The validity of any proceedings of the Tribunal shall not be affected by a defect in the appointment of any of the Members or by a failure to observe the requirement of subsection (5).

(7) The Tribunal may set time limits on any submissions to be made at the hearing of an appeal.

(8) The Tribunal shall dispose of any appeals brought before it as expeditiously as possible.

(9) Any decision of the Tribunal shall be made by the votes of the majority of the Members comprising that Tribunal and in the event of an equality of votes, the Member presiding at the hearing shall be entitled to a second or casting vote.

(10) On determination of an appeal under this section, the Tribunal may confirm, vary or reverse the decision appealed against and may give such directions as it considers just for the payment of the costs of the appeal.

(11) Every decision of the Tribunal shall—

- (a) be in writing; and
- (b) be signed and dated

in a document by the presiding Member of the Tribunal.

Reference to the Supreme Court.

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15.(1) Within twenty one days after the disposal of any appeal, any party to the appeal, if dissatisfied with the determination or decision as being erroneous on a point of law, may by notice served on the Clerk to the Tribunal and on payment of the prescribed fee, require the Port Tribunal to state and sign a case for the opinion of the Supreme Court.

(2) In stating a case to the Supreme Court under this section, the provisions of rules 25 to 32 of the Supreme Court Rules 2000 shall be applicable and be followed with such modifications as may be necessary.

(3) The Supreme Court shall hear and determine any question of law arising on a case stated and referred to it under this section and shall reverse, affirm or amend the determination in respect of which the case has been stated, or shall remit the matter to the Port Tribunal with the opinion of the court thereupon, or make such other order in relation to the matter as the court may see fit.

Regulations.

16.(1) The Government may make Regulations for the purposes of carrying this Act into effect, and in particular, and without prejudice to the generality of the foregoing prescribing—

- (a) the obligations of port operators;
- (b) the form to be used for the licensing of port operators and the registration of port workers and the particulars which shall be recorded;
- (c) the particulars to be supplied by port operators of port workers employed by them;
- (d) fees to be paid under this Act;
- (e) the time within which appeals are to be made and the procedure governing such appeals;
- (f) procedures relating to the making and consideration of applications for registration and licensing including the establishing of criteria by which applications are to be considered, obligations to give publicity to applications made and the monitoring of compliance with the criteria so established;

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- (g) the attaching of conditions to the registration or licensing of any person and amending (whether by way of removal, replacement, variation or otherwise) any condition so attached;
- (h) procedures for the renewal, suspension and revocation of registration and licences; and
- (i) criteria that an applicant or a holder of a port operator licence, as the case may be, is required to meet, including but not limited to any qualifications, experience, solvency, good character or any other attribute;
- (j) criteria for the amendment, suspension or revocation of a port operator licence;
- (k) conditions to be attached to port operator licences including but without prejudice to the generality conditions regarding the type and level of insurance cover to be carried by licensees;
- (l) such other matters as are incidental and supplementary to or may be necessary or expedient for the purposes of this Act.

(2) Regulations made under this section may amend, add to or substitute any matter provided for in the Act.

Repeals.

17. The following Acts are repealed—

- (a) the Dock Work (Regulation) Act; and
- (b) the Ship Agents (Registration) Act, 1987.

Transitional provisions.

18.(1) Any person actively engaged in an activity for which a port operator licence is required on the day on which this Act comes into operation shall be deemed to have been granted a licence under this Act and met all the conditions for the grant of a licence unless the contrary is shown.

(2) Licences granted and registrations made under the Dock Work (Regulation) Act shall continue to be valid (until their expiry under the provisions of that Act) unless previously revoked under the provisions of this Act; and for the purposes of re-licensing under section 5 of this Act, a licence granted or registration made under the

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Dock Work (Regulation) Act shall be treated as if granted or made under this Act.

(3) Notwithstanding subsection (2), no licence of an existing port operator issued prior to the day of coming into operation of this Act shall be renewed on or after such day, unless he proves to the Authority that on that day he is actively engaged in the activity for which the renewal of the licence is sought.

(4) Notwithstanding the repeal of the Ship Agents Registration Act 1987—

- (a) registrations made under the Ship Agents Registration Act shall continue to be valid until 30th April 2005;
- (b) the certificate of registration issued to ship agents under the Ship Agents Registration Act shall automatically be renewed on 1st May 2005 under the terms and conditions of the Act;
- (c) bonds entered into by ship agents shall continue to be valid until 30th April 2005, and

as from 1st May 2005, a ship agent shall furnish a bank guarantee in the sum and in the manner prescribed by the Minister.

Validity of regulations and the exercise of powers.

19.(1) This section applies to regulations made by the Minister under section 16 prior to the commencement of the Port Operations (Registration and Licensing) (Amendment) Act 2011.

(2) Regulations made by the Minister to which this section applies and the exercise by the Minister of powers conferred upon him by those regulations are hereby ratified validated and declared to be lawfully done by him as to legal vires only

SCHEDULE

Section 2

EASTERN ANCHORAGE

Position	36° 09'.0 N	–	005° 19'.7 W
“	36° 09'.0 N	–	005° 17'.5 W
“	36° 07'.2 N	–	005° 17'.5 W
“	36° 06'.5 N	–	005° 19'.7 W