

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

**Principal Act**

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

**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.

**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—

- (a) that area of water and the foreshore adjacent thereto as is commonly known and recognised as the Port, roadstead and

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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 excludes 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;

“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,

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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).

### **Registration as port worker and issue of port operator's licence.**

3.(1) The Authority may issue a licence for any class of port operations to any person if—

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- (a) that person applies to the Authority in writing in the prescribed form;
  - (b) the prescribed fee for registration is paid; and
  - (c) the Authority is satisfied that the applicant complies with the requirements of the Act.
- (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) a port operator’s licence in the case of a port operator in respect of each licensable activity in which the operator is engaged; and
  - (b) a Certificate of Registration in the case of a port worker,
- in the prescribed form and subject to any conditions which the Authority may impose.
- (4) The Authority may issue a port operator with more than one class of operator licence, and a separate application needs to be made in respect of each activity for which a licence is required.
- (5) A port operator may only carry out activities within the Port for the class or classes of activities for which he is licensed.
- (6) The Authority may, before issuing a 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.
- (7) The Authority may refuse to issue a licence if it considers that–

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- (a) the operational circumstances, the viability of a particular sector, the need to maintain levels of investment or the safety of the Port or the safety of the sector of port operations for which the application is made; or
- (b) the wider economic interests of Gibraltar,

may be adversely affected if such a licence were issued.

(8) Any person wishing to make representations to the Authority in the context of an application under subsection (1) shall do so in writing in the first instance.

#### **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 a licence or for the registration of a port worker.

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

#### **Renewal of licences and registration.**

5.(1) A port operator who wishes to renew a licence or 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) 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
- (c) there has been a material change in the circumstances of the applicant since the licence was granted.

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(4) If no application is made under subsection (1) for the renewal of a licence, the licence of that port operator or the licence for the particular class of port operations may be automatically struck off the register by the Authority after thirty days have elapsed.

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

## **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.

## **Presumption for renewal of licences.**

7. On application for the renewal of a 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.

## **Amendment of registration or licences.**

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

(2) Where the Authority wishes to amend any licence under this section, it shall follow the procedure prescribed by Regulations.

**Exemptions from registration.**

9. In exceptional circumstances and on the recommendation of the Captain of the Port, the Authority may grant an exemption from registration to any entity who would otherwise need to be registered as a port operator for a defined short period of time and for a specific purpose.

**Removal from register, etc.**

10.(1) The Authority shall remove from the relevant register—

- (a) the name of any licensee at his own request;
- (b) the name of any person whom it does not re-license under the provisions of section 5;
- (c) in the case of a port operator who holds more than one operator licence, one or more of which is renewed, the details of any licence which the Authority does not renew;
- (d) the name of any person who ceases to meet the requirements of the Act relating to licensees; or
- (e) the name of any person whose licence was granted on the basis of information supplied by the applicant which was false or misleading in a material particular,

and in doing so, the Authority shall, if it thinks necessary, revoke the relevant licence or licences and notify the person of such removal or revocation.

(2) The Authority may remove from the relevant register and 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.



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(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) malpractice on the part of any port operator or failure to meet all conditions under which a licence was granted or renewed; and
- (b) malpractice on the part of any port worker.

(4) The Dock Controller 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 his decision at the earliest opportunity.

(5) 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 Dock Controller shall make an immediate adjudication in respect of the dispute or grievance.

(6) A licensee shall accept and abide by the adjudication made by the Dock Controller under subsection (5) and failure to do so shall be deemed to be a breach of the condition of the licence.

(7) A licensee who is dissatisfied with an adjudication made under subsection (5) may appeal to the Minister within 7 days for a ruling on whether the adjudication was appropriate in the circumstances.

(8) A licensee shall bring to the notice of the Authority as soon as possible any—

- (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.

(9) The Authority may suspend the registration of any port worker or any licence issued under section 3 of this Act for such a period of time as it may consider appropriate.

(10) Where a person ceases to meet the conditions under which he was registered or 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 registration or 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 registration or licence shall be revoked.

(11) The Authority shall not remove from the register or revoke or suspend a licence under this section until either the time for appealing has expired and no appeal has been lodged with the Port Tribunal established under section 14(2) or, if an appeal has been lodged, such appeal has been withdrawn by the appellant or dismissed.

#### **Inspection of register.**

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

#### **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) No person shall engage in any class of port operations unless he has been licensed under section 3.

#### **Offences, etc.**

13.(1) A person who fails to comply with the provisions of sections 6, 10(4) 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.

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(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.

(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, remove that port operator's name from the Register of port operators 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 name of the port operator shall not be removed from the register 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 register or license him or register a port worker employed by him under section 3 or re-license or re-register him or a port worker employed by him under section 5(2) or (3);
- (b) aggrieved by his removal from the register or having his licence revoked under section 10(1);

- (c) aggrieved by the removal from the register of a port worker employed by him under section 10(2);
- (d) aggrieved by the registration or licensing of an applicant notwithstanding his representations under section 3(8) against the grant of such registration or licensing,

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—

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- (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.**

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. The Minister 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 Register of port operators and the Register 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;

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- (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;
- (g) the attaching of conditions to the registration or licensing of any person;
- (h) procedures for the renewal, suspension and revocation of registration and licences; and
- (i) such other matters as are incidental and supplementary to or may be necessary or expedient for the purposes of this 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 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—

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- (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.

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**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