

Subsidiary Legislation made under s.16(1)(b)

Sanctions Regulations 2019

LN.2019/131

Commencement

3.7.2019

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title.
2. Commencement.
3. Purpose.
4. Interpretation.

Shipping sanctions

5. Notice.
6. Shipping sanctions.
7. Specified Ships.
8. Restriction on the provision of services.
9. Enforcement.
10. Continued detention of Specified Ship.
11. Forfeiture.
12. Sale.
13. Payments.
14. Extension of restriction on liability.
15. Effect on law enforcement powers.

In exercise of the powers conferred on him by section 16(1)(b) of the Sanctions Act 2019 and acting with the consent of the Governor, by section 23(g)(i) of the Interpretation and General Clauses Act and all other enabling powers and for the purposes of implementing in the laws of Gibraltar Council Regulation (EU) No 36/2012 of 18 January 2012, the Chief Minister has made these Regulations-

Title.

1. These Regulations may be cited as the Sanctions Regulations 2019.

Commencement.

2. These Regulations come into operation on the day of publication.

Purpose.

3. These Regulations are made for the purpose of implementing the EU Regulation.

Interpretation.

4. In these Regulations-

“the EU Regulation” means Council Regulation (EU) No 36/2012 of 18 January 2012 as amended from time to time;

“Specified Ship” means a ship designated by the Chief Minister by Notice under regulation 5.

Shipping sanctions

Notice.

5.(1) The Chief Minister may by Notice published in the Gazette designate a ship as a Specified Ship.

(2) The Chief Minister may by further notice amend or revoke a notice issued under subregulation (1).

(3) The Chief Minister may issue a Notice pursuant to subregulation (1) only where he-

- (a) has reasonable grounds to suspect that the ship he has designated in the Notice as a Specified Ship is, has been, or is likely to be, involved in a breach of the EU Regulation; and

- (b) considers that it is appropriate for that ship to be specified, having regard to the purpose of these Regulations.

Shipping sanctions.

6.(1) A Specified Ship-

- (a) must be detained if it is in BGTW;
- (b) may not leave BGTW unless it is permitted to do so by an order of the court or where the notice designating the ship as a Specified Ship has been revoked.

(2) The Chief Minister may issue the directions provided for in section 25(3) of the Sanctions Act 2019 and any directions issued thereunder must be complied with even if compliance with the directions would be inconsistent with the requirements under any other enactment.

Specified Ships.

7.(1) A Specified Ship is a specified ship for the purposes of sections 25, 30 and Schedule 1 to the Sanctions Act 2019.

(2) A ship is properly designated as a Specified Ship if it is has been specified solely by reference to its International Maritime Organisation number.

Restriction on the provision of services.

8.(1) No person may provide services to a Specified Ship except where it is permitted by a licence issued by the Chief Minister or by an order under regulation 10(6).

(2) Any licence issued under this regulation must not authorise anything which is not permitted by the EU Regulation.

Enforcement.

9. A breach of the provisions of these Regulations, a breach of any direction issued by the Chief Minister, a breach of a condition in any licence issued by the Chief Minister and a breach of the EU Regulation may be prosecuted under section 51 of the Sanctions Act 2019 as though such a breach constituted an offence under that Act.

Continued detention of Specified Ship.

10.(1) A Specified Ship that has been detained pursuant to these Regulations shall not be detained for more than 72 hours unless its continued detention is authorised by an order made by a judge, and no such order shall be made unless the judge is satisfied that there are reasonable grounds for suspecting that the detention of the Specified Ship is required for the purposes of compliance with the EU Regulation.

(2) Any order under subregulation (1) shall authorise the continued detention of the Specified Ship to which it relates for such period, not exceeding 14 days beginning with the date of the order, as may be specified in the order, and the Supreme Court, if satisfied as to the matters mentioned in that subregulation, may thereafter from time to time by order authorise the further detention of the Specified Ship but-

- (a) no period of detention specified in such an order shall exceed 30 days beginning with the date of the order; and
- (b) the total period of detention shall not exceed 90 days beginning with the date of the order under subregulation (1).

(3) Any application for an order under this regulation must be made by the Attorney General.

(4) At any time while a Specified Ship is detained by virtue of an order made under this regulation the Supreme Court may direct its release if satisfied on an application made by a person with an interest in the Specified Ship or the cargo carried by the Specified Ship, that there are no, or are no longer, any such grounds for its detention as are mentioned in subregulation (1).

(5) If at a time when a Specified Ship is being detained by virtue of the preceding provisions of this regulation-

- (a) an application for its forfeiture is made under regulation 11;
- (b) an application for its sale is made under regulation 12; or
- (c) proceedings are instituted (whether in Gibraltar or elsewhere) against any person for an offence with which the Specified Ship or the cargo carried by the Specified Ship is connected,

then, notwithstanding the provisions of subregulation (2)(b), the Specified Ship must not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence, have been concluded.

(6) On an application made by the master of the Specified Ship or by or on behalf of a member of the crew, the Supreme Court may make such order as it considers appropriate to

enable the supply of victuals or payment of reasonable living and legal expenses but any such order must not allow anything which is not permitted under the EU Regulation.

Forfeiture.

11.(1) The Supreme Court may order the forfeiture of-

- (a) the Specified Ship;
- (b) the cargo carried by the Specified Ship; or
- (b) both the Specified Ship and the cargo carried thereon,

which has been detained under these Regulations if satisfied, on an application made while the Specified Ship is detained under these Regulations, that the presence in Gibraltar of the Specified Ship or the cargo carried by the Specified Ship constitutes a breach of the EU Regulation and its forfeiture would be in the interests of justice, international peace and security or pursuant to any other law.

(2) Any application for an order under this regulation must be made by the Attorney General.

(3) In an application for an order under this regulation any person with an interest in the Specified Ship or in the cargo carried by the Specified Ship may be heard as to the reasons why an order for forfeiture should not be made in respect of that part of the Specified Ship or cargo in which they have an interest.

(4) The standard of proof in proceedings on an application under this regulation is that applicable to civil proceedings.

(5) Nothing in subregulation (4) changes the standard of proof applicable in criminal proceedings brought against any person for an offence in connection with a Specified Ship.

(6) An order may be made under this regulation whether or not proceedings are brought against any person for an offence in connection with a Specified Ship.

Sale.

12.(1) The Supreme Court may order the sale of-

- a) the Specified Ship;
- (b) the cargo carried by the Specified Ship; or

(b) both the Specified Ship and the cargo carried thereon,

which has been detained under these Regulations if satisfied, on an application made while the Specified Ship is detained under these Regulations, that the continued presence in Gibraltar of the Specified Ship or the cargo carried by the Specified Ship constitutes a danger to the security or safety of the crew, ship or cargo, or to the navigation of other vessels, or to the protection of the environment, or to safety and security of Gibraltar or otherwise to the effective and proper discharge and administration of the duties of the Captain of the Port.

(2) Any application for an order under this regulation must be made by the Attorney General.

(3) In an application for an order under this regulation any person with an interest in the Specified Ship or in the cargo carried by the Specified Ship may be heard as to the reasons why an order for the sale should not be made in respect of that part of the Specified Ship or cargo in which they have an interest.

(4) The standard of proof in proceedings on an application under this regulation is that applicable to civil proceedings.

(5) Nothing in subregulation (4) changes the standard of proof applicable in criminal proceedings brought against any person for an offence in connection with a Specified Ship.

(6) An order may be made under this regulation whether or not proceedings are brought against any person for an offence in connection with a Specified Ship.

Payments.

13.(1) Where the Court makes an order under regulation 11 the Registrar must sell the property forfeited and after paying any sums that the Court has directed be paid to any party, the Registrar must pay the balance into the Consolidated Fund.

(2) Where the Court makes an order under regulation 12 the Registrar must sell the property and after paying any sums that the Court has directed be paid to any party, the Registrar must pay the balance into court in accordance with the Supreme Court Fund Rules.

(3) The sums referred to in subregulation (2) shall be retained by the Supreme Court until such time as it has determined all claims in respect thereof.

Extension of restriction on liability.

14. The restriction on liability for action taken to implement the EU Regulation applies to any act or omission done or authorised by or under these Regulations.

Effect on law enforcement powers.

15. Nothing in these Regulations affects the exercise of powers by law enforcement agencies in connection with offences under section 9 of the Sanctions Act 2019.