

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

Subsidiary Legislation made under s.118.

Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013

LN.2013/120

Commencement **20.8.2013**

Amending enactments	Relevant current provisions	Commencement date
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Transposing:

Directive 1999/63/EC

Directive 2009/13/EC

Directive 2013/54/EU

Directive (EU) 2018/131

EU Legislation/International Agreements involved:

European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006

¹ Notice of Commencement (LN.2022/348)

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In exercise of its powers under section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993, and section 23(g) of the Interpretation and General Clauses Act, and for the purpose of transposing into the law of Gibraltar Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST); and Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, and all other enabling powers, the Government has made the following Regulations—

**PART 1
PRELIMINARY AND GENERAL APPLICATION**

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2013 and come into operation on 20 August 2013.

Interpretation.

2.(1) In these Regulations—

“armed robbery against a ship” means any illegal act of violence or detention or any act or threat of depredation, other than an act of piracy, committed for private ends, or any act of inciting or intentionally facilitating this act, which is-

- (a) directed against a Gibraltar ship or an MLC ship; or
- (b) against persons or property on board a Gibraltar ship or an MLC ship,

within British Gibraltar Territorial Waters or an MLC State's internal waters, archipelagic waters or territorial sea;

“British Gibraltar Territorial Waters” means the area of sea, the sea bed and subsoil within the seaward limits of the territorial sea adjacent to Gibraltar under British sovereignty and which, in accordance with the United Nations Convention on the Law of the Sea 1982, currently extends to three nautical miles and to the median line in the Bay of Gibraltar;

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

“certifying authority” means the Maritime Administrator and, if authorised by the Maritime Administrator, Lloyd’s Register of Shipping, Bureau Veritas, Det Norske Veritas, Germanischer Lloyd, American Bureau of Shipping, Registro Italiano Navale, and Class NK;

“collective agreement” means any agreement or arrangement made by or on behalf of one or more trade unions and one or more employers or employers’ associations and relating to one or more of the following matters–

- (a) terms and conditions of employment, or the physical conditions in which any workers are required to work;
- (b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more workers;
- (c) allocation of work or the duties of employment between workers or group of workers;
- (d) matters of discipline;
- (e) a worker’s membership or non-membership of a trade union;
- (f) facilities for official trade unions;
- (g) machinery for negotiation or consultation, and other procedures, relating to any of the above matters, including the recognition by employers or employers’ associations of the right of a trade union to represent workers in such negotiation or consultation or in the carrying out of such procedures;

“constructed” in relation to a ship means–

- (a) the date on which its keel is laid; or
- (b) the stage at which construction identifiable with a specific ship begins and assembly has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less;

“contractual claims” for the purpose of Part VA, means any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as may be set out in the seafarers' employment agreement or any collective agreement.

“crew accommodation” means accommodation, including the construction, machinery, fittings and equipment of that accommodation intended for or used by seafarers;

“Gibraltar ship” means a ship registered under the provisions of the Gibraltar Merchant Shipping (Registration) Act 1993;

“gross tonnage” means–

- (a) the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; or
- (b) in the case of a ship covered by the tonnage measurement interim scheme adopted by the International Maritime Organisation, the gross tonnage included in the REMARKS column of the International Tonnage Certificate (1969);

“hours of work” means time during which a seafarer is required to do work on account of the ship and “hours of rest” means time outside hours of work, excluding short breaks;

“internal waters” has the same meaning as in the United Nations Convention on the Law of the Sea 1982;

“Maritime Administrator” means the person appointed under section 3 of the Merchant Shipping (Safety, etc.) Act, 1993, or a suitably qualified member of the maritime administrator’s staff;

“Maritime Labour Notice” means a notice issued under section 3A of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993;

“Member State” means any State within the European Economic Area;

“Member State ship” means a ship, other than a Gibraltar ship, which is registered in and flying the flag of a Member State;

“MLC” means the Maritime Labour Convention, 2006 adopted on 23 February 2006 by the General Conference of the International Labour Organisation as amended from time to time;

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“MLC State” means a State which is a Party to the MLC and in which the MLC has come into force, other than the United Kingdom extending the MLC to Gibraltar;

“MLC ship” means a ship, other than a Gibraltar ship, which—

- (a) is registered in an MLC State;
- (b) is flying the flag of that State; and
- (c) carries a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached or an interim Maritime Labour Certificate;

“piracy” has the same meaning as in Article 101 of the United Nations Convention on the Law of the Sea 1982;

“port” and “port of Gibraltar” have the meanings given to them by the Port Act;

“seafarer” means—

- (a) any person, including a master, who is employed or engaged or works in any capacity on board a ship; and
- (b) in relation to a ship which is not a Gibraltar ship or an MLC flag ship, includes any person on board that ship who is in a category of persons considered by the competent authority of the flag State of that ship to be a seafarer;

“seafarer recruitment service” means—

- (a) a business—
 - (i) whose primary purpose is the recruitment and placement of seafarers, or
 - (ii) which recruits and places a significant number of seafarers; or
- (b) a public service which recruits and places seafarers and which is operated in an orderly manner that protects and promotes seafarers’ employment rights as provided in the MLC;

“seafarers’ employment agreement” means a clear, written, legally enforceable document, including either a contract of employment or articles of agreement, which—

- (a) is signed by the seafarer after that seafarer has been given—

- (i) an opportunity to examine and seek advice on the agreement, and
 - (ii) such other facilities as are necessary to ensure that that seafarer has freely entered into the agreement with a sufficient understanding of that seafarers' rights and responsibilities;
- (b) is signed by the shipowner or by a representative of the shipowner;
- (c) contains, as a minimum, the following particulars—
- (i) the seafarer's full name, date of birth or age, and birthplace,
 - (ii) the shipowner's name and address,
 - (iii) the place where and date when the seafarers' employment agreement is entered into,
 - (iv) the capacity in which the seafarer is to be employed,
 - (v) the amount of the seafarer's wages or, where applicable, the formula used for calculating that amount,
 - (vi) the amount of paid annual leave or, where applicable, the formula used for calculating it,
 - (vii) provisions for termination of the agreement and the conditions thereof, including—
 - (aa) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which must not be less for the shipowner than for the seafarer,
 - (bb) if the agreement has been made for a definite period, the date fixed for its expiry, and
 - (cc) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged,
 - (viii) the health and social security protection benefits to be provided to the seafarer by the shipowner, and

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- (ix) the seafarer's entitlement to repatriation;
- (d) incorporates by reference any collective agreement or workforce agreement applicable to the agreement; and
- (e) in relation to—
 - (i) an MLC ship, contains any other provisions required by the MLC State whose flag that ship flies, and
 - (ii) any other ship, contains any other provisions as determined by the Maritime Administrator;

“seafarers’ employment record” means a document which—

- (a) contains a record of the seafarer's employment on board the ship;
- (b) does not contain any statements as to the quality of the seafarer's work or as to the seafarer's wages;
- (c) if the ship is an MLC ship, is in the form determined by the MLC State whose flag that ship flies and contains the particulars determined by that MLC State entered in the manner determined by that MLC State;
- (d) if the ship is any other ship, is in the form determined by the Maritime Administrator and contains the particulars determined by the Maritime Administrator entered in the manner determined by the Maritime Administrator;

“ship” means any ship ordinarily engaged in commercial activities, other than—

- (a) a ship which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;
- (b) a ship engaged in fishing or in similar pursuits;
- (c) a ship of traditional build such as a dhow or junk;
- (d) a warship;
- (e) a naval auxiliary;

“shipowner” means–

- (a) in relation to a ship which has a valid Maritime Labour Certificate or valid interim Maritime Labour Certificate, the person identified as the shipowner on that Certificate;
- (b) in relation to any other ship, the owner of the ship or, if different, any other organisation or person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner, and in this definition “responsibility for the operation of the ship” includes the duties and responsibilities imposed on shipowners in accordance with the Agreements forming the Annexes to Directive 1999/63/EC and Directive 2009/13/EC;

“STCW” means the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended;

“territorial sea” has the same meaning as in the United Nations Convention on the Law of the Sea 1982;

“wages” means the pay, however composed, for the seafarer’s normal hours of work including overtime, allowances, paid leave and other remuneration (but excluding bonuses).

“workforce agreement” means an agreement between an employer and his employees or their representatives in respect of which the conditions set out in Schedule 2 to these Regulations are satisfied.

(2) A determination, exemption, exception or approval made or authorisation or permission given by the Maritime Administrator in accordance with these Regulations–

- (a) is valid only if given in writing;
- (b) may be given subject to such conditions and limitations as the Maritime Administrator may specify; and
- (c) may be altered or cancelled by the Maritime Administrator giving written notice.

Application.

3.(1) These Regulations apply–

- (a) to a Gibraltar ship wherever it is;

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- (b) to any other ship which is in Gibraltar waters and which is–
 - (i) in the Port of Gibraltar,
 - (ii) at an offshore installation, or
 - (iii) anchored off the port or such an installation;
 - (c) as respects a seafarer on a ship referred to in paragraph (a) or (b);
 - (d) to a seafarer recruitment organisation operating in Gibraltar.
- (2) In the event of doubt, the Maritime Administrator–
- (a) having taken account of the Resolution of the 94th (Maritime) Session of the General Conference of the International Labour Organisation concerning information on occupational groups; and
 - (b) having consulted relevant shipowners’ and seafarers’ organisations;
- may determine whether or not any categories of persons on board a Gibraltar ship or other ship which is not an MLC ship are to be regarded as seafarers to which these Regulations apply.
- (3) In the event of doubt, the Maritime Administrator, having consulted relevant shipowners’ and seafarers’ organisations, may determine whether or not any Gibraltar ship or other ship which is not an MLC ship, or a particular category of ships which are Gibraltar ships or not MLC ships, is a ship or category of ships to which these Regulations apply.
- (4) Where the Maritime Administrator is satisfied, having consulted relevant shipowners’ and seafarers’ organisations, that with respect to a Gibraltar ship, or particular categories of Gibraltar ship, of less than 200 gross tonnage not engaged in international voyages it would not be reasonable or practicable to apply requirements of these Regulations which relate to Part A of the Code of the MLC, he may determine the different provisions which apply to that ship or those ships.
- (5) A determination made by the Maritime Administrator under subregulation (4) must be communicated to the Director-General of the International Labour Office, who must notify the Members of the International Maritime Organisation.
- (6) As respects a particular Gibraltar ship, or Gibraltar ships of a particular description, the Maritime Administrator may, in the circumstances set out in Article VI of the MLC, approve

requirements which, when taken together with the conditions and limitations to which the approval is subject, the Maritime Administrator considers are substantially equivalent to requirements of these Regulations.

PART II
MINIMUM REQUIREMENTS FOR SEAFARERS
TO WORK ON A SHIP

Minimum age for seafarers on Gibraltar, etc. ships.

4.(1) The shipowner, the master and the employer of a seafarer on a ship other than an MLC flag ship must ensure that—

- (a) no person below the age of 16 is employed, engaged or works on board a ship;
 - (b) no person below the age of 18 is employed, engaged or works at night on board a ship;
 - (c) no person below the age of 18 is employed, engaged or works on board a ship on work which is likely to jeopardise their health or safety.
- (2) In subregulation (1) “night” means a period which—
- (a) has a duration of not less than 9 consecutive hours; and
 - (b) includes the period between midnight and 5 a.m.
- (3) The Maritime Administrator may as respects any seafarer or description of seafarers, make an exception to the prohibition on night work on a ship where, in his opinion—
- (a) the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or
 - (b) the specific nature of the duty or a recognised training programme requires that seafarers under the age of 18 perform duties at night and the Maritime Administrator determines, after consultation with relevant shipowners’ and seafarers’ organisations, that the work will not be detrimental to their health or well-being.
- (4) An exception under subregulation (3) may be altered or cancelled by the Maritime Administrator only after giving written notice to the shipowner and the seafarer.

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(5) The Maritime Administrator, in accordance with relevant international standards and having consulted shipowners' and seafarers' organisations, may determine whether a type of work is or is not likely to jeopardize the health and safety of seafarers below the age of 18.

(6) The Maritime Administrator may alter or cancel a determination under subregulation (5) only after having consulted shipowners' and seafarers' organisations.

Minimum age for seafarers on MLC ships.

5. The shipowner, the master and the employer of a seafarer on—

- (a) an MLC ship which is a Member State ship must ensure that the requirements of Clauses 3 to 9 and 11 of the Agreement forming the Annex to Directive 1999/63/EC, as transposed into the law of that Member State, are complied with as respects that seafarer;
- (b) an MLC ship other than a Member State ship must ensure that the requirements of Regulation 1.1 and Standard A1.1 of the MLC as applied to that ship by its flag State are complied with as respects that seafarer.

Medical Certificates for seafarers.

6.(1) Subject to subregulations (3) and (4), no person may begin or continue work as a seafarer on a ship unless that person holds a valid medical certificate for the duties the seafarer is to carry out at sea.

(2) Subject to subregulations (3) and (4), the shipowner, the master and the employer of a seafarer on a ship must ensure that a seafarer holds a valid medical certificate for the duties the seafarer is to carry out at sea.

(3) In urgent cases, if a person on a ship—

- (a) does not hold a valid medical certificate; but
- (b) has held a medical certificate for a period of not less than 24 months (or in the case of a person under 18 years at the date of issue of the certificate, 12 months) and that certificate has expired no earlier than one month before the date on which that person joined that ship,

the Maritime Administrator may grant permission for that person to work as a seafarer on that ship until the first port of call at which it is possible for an application for a medical certificate as respects that person to be made and for that person to be examined by a medical practitioner

(or, in the case of a medical certificate solely concerning eyesight, by a person recognized by the competent authority of an MLC State as qualified to issue such a certificate), provided that the period of working without a medical certificate does not exceed three months.

(4) A permission under subregulation (3) may not be altered or cancelled.

(5) A seafarer whose medical certificate has expired during the course of a voyage may continue to work on board that ship as though that certificate continued in force until—

- (a) the first port of call at which it is possible for the seafarer to make an application for a medical certificate and be examined by a duly qualified medical practitioner (or, in the case of a medical certificate solely concerning eyesight, by a person recognized by the competent authority of an MLC flag State as qualified to issue such a certificate); or
- (b) the expiry of three months starting on the date of expiry of the certificate;

whichever is the sooner.

(6) In this regulation—

“medical certificate” means—

- (a) a medical certificate issued in accordance with—
 - (i) Schedule 1 to these Regulations, or
 - (ii) Administrative Instruction No. STCW 11 made under section 3(5) of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993 on 29th July 2004 or any revision or replacement of that Administrative Instruction from time to time in force;
- (b) a medical certificate issued—
 - (i) as respects a seafarer on a Gibraltar ship or Member State ship, in accordance with the requirements of Clause 13 of the Agreement forming the Annex to Council Directive 1999/63/EC,
 - (ii) as respects a seafarer on any other ship, in accordance with Regulation 1.2 and Standard A1.2 of the MLC as transposed into the law of a State Party to the MLC, a medical certificate issued in accordance with the requirements of STCW; or

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- (c) in the case of a seafarer not covered by STCW, a medical certificate meeting the substance of the requirements of STCW;

“valid” in relation to a medical certificate means that–

- (a) the medical certificate has been issued to the seafarer in accordance with the provisions applicable to its being issued;
- (b) the medical certificate is within its period of validity and has not been cancelled, suspended or otherwise withdrawn by the competent authority which issued the certificate; and
- (c) the work being performed by the seafarer is within any restriction, condition or limitation of that person’s medical certificate.

Health Assessments for seafarers.

7.(1) The shipowner and the employer of a seafarer on a Gibraltar ship or Member State ship must ensure that the seafarer has regular health assessments which are free to the seafarer and which comply with medical confidentiality.

(2) If–

- (a) a medical practitioner has certified that a seafarer engaged on watchkeeping duties on a Gibraltar ship or Member State ship is suffering from health problems which the practitioner considers to be due to the fact that the seafarer performs work during the night;
- (b) the certification has been provided, by the seafarer or with his permission, to the shipowner, the master or the seafarer’s employer; and
- (c) it is possible for the seafarer to be transferred to work–
 - (i) to which the seafarer is suited, and
 - (ii) which is to be undertaken during periods such that the seafarer will cease to perform work during the night,

the shipowner, the master and the employer must ensure that the seafarer is transferred to that work.

Training and qualifications.

8.(1) No person may work as a seafarer on board a ship unless that person—

- (a) is trained, certified as competent or otherwise qualified to perform their duties on the ship; and
- (b) has successfully completed training for personal safety on board ship.

(2) The shipowner, the master and the employer of a seafarer on a ship must ensure that a seafarer—

- (a) is trained, certified as competent or otherwise qualified to perform their duties on the ship; and
- (b) has successfully completed training for personal safety on board ship.

(3) Training and certification which must be considered as meeting the requirements of this provision is—

- (a) training and certification which is in accordance with mandatory instruments on training and certification of seafarers adopted by the IMO;
- (b) if—
 - (i) the IMO has not adopted mandatory instruments on training and certification of seafarers, and
 - (ii) the period of 5 years starting on the date on which the MLC enters into force has not elapsed,

training and certification which meets the obligations of the certification of Able Seamen Convention, 1946.

Recruitment and placement.

9.(1) A person who is finding a seafarer to employ on a Gibraltar ship must use—

- (a) a seafarer recruitment service operating in the territory of an MLC State;

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- (b) a seafarer recruitment service which is not operating in the territory of an MLC State but which the shipowner or employer has ensured complies with the requirements of Regulation 1.4 and Standard A1.4 of the MLC;
 - (c) if the organisation is being used to supply seafarers who are Gibraltar nationals to the shipowner of a Gibraltar ship, a seafarers' organisation operating in Gibraltar; or
 - (d) an efficient, adequate and accountable system, other than a seafarer recruitment service or seafarers' organisation, to which all seafarers have access without charge.
- (2) The Maritime Administrator must—
- (a) ensure that any public service which is a seafarer recruitment and placement service operating in Gibraltar is operated in an orderly manner that protects and promotes seafarers' employment rights as provided in the MLC;
 - (b) closely supervise and control any other seafarer recruitment service operating in Gibraltar;
 - (c) ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of seafarer recruitment and placement services which operate in Gibraltar or are used by the shipowner of a Gibraltar ship, involving representatives of shipowners and seafarers in an investigation as appropriate;
 - (d) as far as practicable, unless he is satisfied that standards equivalent to those of the MLC apply and within any applicable principles relating to the free movement of workers, advise Gibraltar nationals on the possible problems of signing on a ship which is not a Gibraltar ship or MLC ship.

Regulation of seafarer recruitment services.

10.(1) A person who operates a seafarer recruitment service in Gibraltar other than a public service must—

- (a) have a valid seafarers' recruitment services certificate for that service, issued by the Maritime Administrator; and
- (b) operate the service in accordance with that certificate.

(2) The Maritime Administrator may, having consulted relevant shipowners' and seafarers' organisations, issue a seafarers' recruitment services certificate to a seafarers' recruitment service in Gibraltar which—

- (a) does not use means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified;
- (b) does not impose fees or other charges borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel document, not including however the cost of visas, which must be borne by the shipowner;
- (c) maintains an up-to-date register of all seafarers recruited or placed through the service and keeps the register available for inspection by the Maritime Administrator;
- (d) ensures that seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;
- (e) verifies that seafarers recruited or placed by the service are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;
- (f) ensures, as far as practicable, that the shipowner has the means to protect seafarers on the ship from being stranded in a foreign port;
- (g) examines and responds to any complaint concerning the service's activities and advises the Maritime Administrator of any unresolved complaint; and
- (h) establishes a system of protection, by way of insurance or an equivalent appropriate measure, to compensate a seafarer for monetary loss that the seafarer may incur as a result of—
 - (i) a failure of the recruitment and placement service to meet its obligations to the seafarer, or
 - (ii) a failure of the shipowner under the seafarers' employment agreement,

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to meet its obligations to the seafarer.

(3) The Maritime Administrator must ensure that any certificate for the operation of a private seafarer recruitment service is granted or renewed—

- (a) only after verification that the service concerned meets the requirements of the standardised system of certification and of any other relevant requirements of Gibraltar law;
- (b) for a period of no more than 5 years.

(4) The Maritime Administrator may—

- (a) suspend or cancel a certificate for the operation of a private seafarer recruitment service;
- (b) charge a fee to any person seeking the issue or renewal of a certificate for the operation of a private seafarer recruitment service.

(5) In this regulation “private seafarer recruitment service” means a business whose primary purpose is the recruitment and placement of seafarers or which recruits and places a significant number of seafarers.

PART III
CONDITIONS OF SEAFARERS’ EMPLOYMENT

Seafarers’ employment agreements.

11.(1) No person may work as a seafarer on board a ship unless—

- (a) that person has a seafarers’ employment agreement; or
- (b) if the seafarer is not an employee, that seafarer has evidence of contractual or similar arrangements which provide the seafarer with decent working and living conditions on board the ship as required—
 - (i) by the MLC, and
 - (ii) if the ship is a Gibraltar ship or Member State ship, by Directive 2009/13/EC.

(2) The shipowner, the master and the employer of a seafarer on a ship must ensure that—

- (a) if the seafarer is an employee, the seafarer has a seafarers' employment agreement;
- (b) if the seafarer is not an employee, the seafarer has evidence of contractual or similar arrangements which provide that seafarer with decent working and living conditions on board the ship as required by the MLC; and
- (c) the seafarer has a seafarers' employment record.

Early termination of seafarers' employment agreements.

12.(1) A seafarer on a Gibraltar ship, the shipowner or master of a ship other than an MLC ship, or the employer of a seafarer on a ship other than an MLC ship, may not terminate a seafarer's employment agreement before the earliest date of termination in that agreement unless—

- (a) the seafarer is terminating the agreement for compassionate or other urgent reasons;
- (b) the termination of the agreement is in accordance with circumstances determined by the Maritime Administrator as justifying termination of the employment agreement at shorter notice or without notice; or
- (c) the person terminating the agreement gives a minimum of seven days' notice.

(2) A seafarer on an MLC ship, the shipowner or master of an MLC ship, or the employer of a seafarer on an MLC ship, may not terminate a seafarer's employment agreement before the earliest date of termination in that agreement unless—

- (a) the seafarer is terminating the agreement for compassionate or other urgent reasons;
- (b) the termination of the agreement is in accordance with circumstances determined by the Maritime Administrator as justifying termination of the employment agreement at shorter notice or without notice; or
- (c) the person terminating the agreement gives a minimum notice period of seven days or, if longer, the minimum notice period determined by the ship's flag State.

(3) A shipowner, master or employer must not impose any penalty on a seafarer who terminates his seafarers' employment agreement for compassionate or other urgent reasons.

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Seafarers' employment agreements: captive seafarers.

12A.(1) Sub-regulation (2) applies to a seafarers' employment agreement which would, but for the operation of that sub-regulation, terminate while the seafarer is held captive as a result of piracy or armed robbery against the ship.

(2) Where this sub-regulation applies, the seafarers' employment agreement continues to have effect until the date on which the shipowner's and employer's duty to repatriate the seafarer under regulation 19 ends in accordance with regulation 19B.

(3) The reference in sub-regulation (1) to the termination of a seafarers' employment agreement includes-

- (a) the operation of any provision in the seafarers' employment agreement which would, but for this regulation, cause the seafarer's employment agreement to be terminated; and
- (b) the expiry of the notice period to terminate the seafarers' employment agreement given for any reason, regardless of when the notice was given.

(4) For any period during which the seafarer is held captive as a result of piracy or armed robbery against the ship, the shipowner and the employer of the seafarer on board the ship must ensure-

- (a) the seafarer's wages and other entitlements, whether arising under a seafarers' employment agreement, collective agreement, collective bargaining agreement, or workforce agreement, or under any enactment, in respect of that seafarer's employment on board the ship, must continue to be paid;
- (b) any part of the seafarer's wages allotted to a person in accordance with regulation 14(3) must continue to be paid to that person; and
- (c) a term of any agreement is void to the extent that it purports to reduce, vary or terminate any payments which are owed to a seafarer by the shipowner or employer.

Documentation relating to seafarers' employment agreements.

13.(1) The shipowner, the master and the employer of a seafarer on a ship must ensure that-

- (a) the seafarer has a signed original of their seafarers' employment agreement and a copy of their seafarers' employment record;

- (b) the seafarer can easily obtain on board the ship clear information as to the conditions of their employment on the ship;
 - (c) a copy of any collective agreement or workforce agreement forming all or part of the seafarers' employment agreement of any seafarer on the ship is available on board the ship;
 - (d) the following documents are available for review by the Maritime Administrator—
 - (i) a copy of the standard form of the seafarers' employment agreement of every seafarer on board the ship,
 - (ii) the information referred to in paragraph (b),
 - (iii) a copy in English of the standard form of the seafarers' employment agreement of every seafarer on board the ship, and
 - (iv) a copy in English of any portions of a collective agreement or workforce agreement referred to in paragraph (c) which are subject to Port State inspection.
- (2) The shipowner must have a signed original of the seafarers' employment agreement for each seafarer on a ship of which he is the shipowner.

Seafarers' wages.

14.(1) The shipowner and the employer of a seafarer on board a ship must ensure that every seafarer on board the ship is paid—

- (a) regularly;
 - (b) at intervals no greater than a month; and
 - (c) in full in accordance with the seafarer's employment agreement and any collective agreement or workforce agreement applicable to that seafarer's employment on board the ship.
- (2) The shipowner and the employer of a seafarer on board a ship must ensure that every seafarer on board the ship is given a monthly account of the payments due and the amounts paid, including—

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- (a) wages;
- (b) additional payments;
- (c) if payment has been made in a currency other than one referred to in the seafarers' employment agreement, the rate of exchange used to calculate the payment;
- (d) if payment has been made at a different rate of exchange from that agreed to, the rate of exchange at which payment has been made.

(3) The shipowner and the employer of a seafarer on board a ship must ensure that the seafarer is provided with a means to transmit all or part of the seafarer's wages and additional payments to the seafarer's family or dependants or legal beneficiaries, and that those means of transmission include—

- (a) a system for enabling a seafarer, at the time of the seafarer's starting work on board the ship or during it, to allot, if the seafarer so desires, a proportion of the seafarer's wages for remittance at regular intervals to the seafarer's family by bank transfers or similar means; and
- (b) a requirement that allotments should be remitted in due time and directly to the person or persons nominated by the seafarer.

(4) The shipowner and the employer of a seafarer on board a ship must ensure that—

- (a) any charge for a service provided to the seafarer as set out in subregulation (3) is reasonable in amount; and
- (b) the rate of currency exchange is—
 - (i) at the prevailing market rate or official published rate according to the national laws of the State whose flag the ship flies, and
 - (ii) not unfavourable to the seafarer.

(5) The Maritime Administrator may determine additional provisions regarding the calculation and payment of the wages of seafarers on Gibraltar ships and ships which are not MLC ships, any such determination to give due consideration to the guidance provided in Guideline B.2.2 of the MLC.

Hours of work and rest on Gibraltar ships.

15.(1) The shipowner, master and employer of a seafarer on board a Gibraltar ship must ensure that the normal working hours' standard for the seafarer is, in principle, based on an eight-hour day with one day of rest each week and rest on public holidays.

(2) The shipowner, master and employer of a seafarer on board a Gibraltar ship must ensure that the minimum hours of rest are-

- (a) 10 hours in any 24-hour period; and
- (b) 77 hours in any 7-day period.

(3) The 10 hours of rest mentioned in sub-regulation (2)(a) may be divided into no more than 2 periods, one of which is to be at least 6 hours in length, and the interval between consecutive periods of rest must not exceed 14 hours.

(4) Sub-regulations (2) and (3) are subject to regulation 15A.

(5) The shipowner, master and employer of a seafarer on board a Gibraltar ship must ensure that-

- (a) musters, fire-fighting and lifeboat drills are conducted in a manner that minimises the disturbance of rest periods and does not induce fatigue; and
- (b) if the seafarer's normal period of rest is disturbed by call-outs to work, the seafarer has an adequate compensatory rest period.

(6) If-

- (a) no collective agreement, workforce agreement or arbitration award relates to the application of sub-regulation (5) to a seafarer; or
- (b) the Maritime Administrator considers that the provisions of such an agreement or award as referred to in paragraph (a) are inadequate to ensure that the seafarer has sufficient rest,

the Maritime Administrator may, as he considers necessary, determine the requirements with which the shipowner, master and employer of the seafarer must comply as respects sub-regulation (5) in order to ensure that the seafarer has sufficient rest.

(7) The master of a Gibraltar ship-

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- (a) may require a seafarer to perform any hours of work necessary for the immediate safety of the ship, of persons on board the ship or of cargo on board the ship, or for the purpose of giving assistance to other ships or persons in distress at sea;
- (b) in accordance with paragraph (a), may suspend the schedule of hours of rest until the normal situation has been restored; and
- (c) must, as soon as possible after a normal situation has been restored, ensure that any seafarer who has performed work in a scheduled rest period is provided with an adequate period of rest.

Authorised exceptions to minimum hours of rest.

15A.(1) The Maritime Administrator may authorise a collective agreement or workforce agreement which-

- (a) provide exceptions to the minimum hours of rest mentioned in regulation 15(2)(b); and
- (b) provide for exceptions to regulation 15(3).

(2) A collective agreement or workforce agreement under sub-regulation (1)(a) must require that-

- (a) there are at least 70 hours total rest in any period of 7 days;
- (b) the exceptions provided for in the agreement do not apply in relation to a period of more than two consecutive weeks; and
- (c) where the exceptions apply in relation to two periods separated by an interval, the interval is at least twice the duration of the longer of the two periods.

(3) A collective agreement or workforce agreement under sub-regulation (1)(b) must require that the 10 minimum hours of rest mentioned in regulation 15(2)(a) are divided into three periods-

- (a) one of the three periods is at least 6 hours long and neither of the two other periods are less than one hour long;
- (b) intervals between consecutive periods do not exceed 14 hours each; and

- (c) the exceptions provided for in the collective agreement or workforce agreement do not apply in relation to more than two 24 hours periods in any 7 days period.

Exception for emergencies.

15B.(1) The master of a ship to which this regulation applies may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to another ship or to a person in distress at sea.

(2) As soon as practicable after the normal situation has been restored the master must ensure that any seafarer who has performed work in hours of rest scheduled in the table posted under regulation 17(1)(c) is provided with an adequate rest period.

Hours of work and rest on MLC and other ships.

16. The shipowner, master and employer of a seafarer on board a ship other than a Gibraltar ship must ensure that the seafarer's hours of work and hours of rest—

- (a) if the ship is a Member State ship, comply with the requirements of Directive 1999/63/EC as applied by that Member State;
- (b) if the ship is an MLC ship which is not a Member State ship, comply with the requirements of Regulation 2.3 and Standard A2.3 of the MLC as applied by the competent authority of the ship's flag State;
- (c) if the ship is not an MLC ship, comply with the requirements of Regulation 2.3 and Standard A2.3 of the MLC.

Documentation of seafarers' hours of work.

17.(1) The shipowner, master and employer of a seafarer on board a ship must ensure that—

- (a) a record of each seafarer's daily hours of work or daily hours of rest is maintained, in the working language or languages of the ship and in English, in accordance with the requirements of the flag State in which the ship is registered;
- (b) the seafarer receives a copy of the record pertaining to him which has been endorsed by the master of the ship or a person authorised by the master and by the seafarer;
- (c) a table is posted in an easily accessible place on board the ship which contains for every seafaring position on board the ship at least—

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- (i) the schedule of service at sea and service in port; and
 - (ii) the maximum hours of work or the minimum hours of rest required by the laws, regulations, collective agreements or workforce agreements in force in relation to the ship and the seafarers on board the ship;
- (d) on a Gibraltar ship or Member State ship, a copy of the relevant provisions of the national legislation pertaining to the Annex to Directive 1999/63/EC and of any relevant collective agreements or workplace agreements is kept on board the ship and easily accessible to the seafarers on board the ship;
- (e) on a Gibraltar ship, the Maritime Administrator is at his request provided with information on watchkeepers and other night workers on the ship;
- (f) on a Member State ship, the competent authority of the ship's flag State is at its request provided with information on watchkeepers and other night workers on the ship.
- (2) The table posted in accordance with subregulation (1)(c) must be in a standardised format in the working language or languages of the ship and in English.
- (3) As respects a Gibraltar ship the Maritime Administrator must determine—
- (a) the procedures for keeping records of seafarers' hours of work or rest on board the ship, including the intervals at which the information must be recorded; and
 - (b) taking into account any available international guidelines, the format of those records.
- (4) The master of a Gibraltar ship must examine and endorse, at appropriate intervals, the records of seafarers' hours of work or hours of rest.

Seafarers' entitlement to leave.

18.(1) The shipowner, master and employer of a seafarer on board a Gibraltar ship must ensure that—

- (a) the seafarer takes paid annual leave at a minimum of 2.5 calendar days per month of employment and *pro rata* for incomplete months; and

- (b) within the operational requirements of the seafarer's position, the seafarer is granted shore leave to benefit their health and well-being.
- (2) If an employment relationship terminates when a seafarer has not taken all paid annual leave due under subregulation (1), the shipowner or employer may replace the seafarer's minimum paid annual leave allowance required by subregulation (1) with a payment in lieu.
- (3) For the purposes of subregulations (1) and (2), a justified absence from work must not be treated as annual leave.
- (4) If—
- (a) a collective agreement or workforce agreement provides for an appropriate alternative method of calculation of paid annual leave for a seafarer on a Gibraltar ship; and
 - (b) that alternative method of calculation takes account of the special needs of the seafarer in that respect,

the Maritime Administrator may determine alternative minimum standards for the annual leave and method of calculation of the seafarer as set out in that collective agreement or workforce agreement.

Seafarers' right to repatriation.

19.(1) The shipowner and employer of a seafarer on board a Gibraltar ship must ensure that the seafarer is repatriated at no cost to the seafarer if the seafarer has been on board for a period not exceeding 12 months and—

- (a) the seafarers' employment agreement expires while the seafarer is abroad;
- (b) the seafarers' employment agreement is terminated by the shipowner;
- (c) the seafarers' employment agreement is terminated by the seafarer for justified reasons;
- (d) the seafarer is no longer able to carry out the duties specified in the seafarers' employment agreement; or
- (e) in the specific circumstances, the seafarer cannot be expected to carry out the duties specified in the seafarers' employment agreement.

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- (2) The shipowner and employer of a seafarer on board a ship must not—
- (a) take advance payment from the seafarer towards the cost of repatriation;
 - (b) recover from the seafarer's wages or other entitlements the cost of repatriation, unless the seafarer has been found, in accordance with—
 - (i) in the case of a seafarer on a ship other than an MLC ship, a determination by the Maritime Administrator, or
 - (ii) in the case of a seafarer on an MLC ship, the relevant national laws, regulations or other measures, or applicable collective bargaining agreements,
- to be in serious default of the seafarer's employment obligations.
- (3) The shipowner of a Gibraltar ship must ensure that there is in force a contract of insurance or other financial security in respect of the liabilities arising from the shipowner's duty to make provision for the repatriation of seafarers in accordance with these Regulations.
- (4) The Maritime Administrator must, where appropriate, determine—
- (a) the circumstances in which a seafarer is entitled to repatriation in accordance with subregulation (1)(b) to (e);
 - (b) a period shorter than 12 months on board a ship after which the shipowner and employer of a seafarer must ensure that the seafarer is repatriated at no cost to the seafarer as otherwise set out in subregulation (1);
 - (a) the criteria by which the destination of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners and employers in accordance with subregulation (1) are to be decided;
 - (b) any requirements with which a shipowner must comply in order to meet the duty to provide financial security in subregulation (3).
- (5) Subregulation (6) applies where—
- (a) the shipowner and employer of a seafarer on board a Gibraltar ship fails to make arrangements for and meet the cost of the repatriation of a seafarer entitled to be repatriated whether the seafarer is or is not entitled to receive financial assistance under the abandonment financial security required by Part VB of these Regulations;

- (b) the shipowner and employer of a seafarer on board a ship other than a Gibraltar ship, and the competent authority of the flag State of that ship, fail to make arrangements for and meet the cost of the repatriation of a seafarer entitled to be repatriated from Gibraltar in accordance with—
 - (i) the requirements of the MLC as implemented by the flag State of that ship, or
 - (ii) the minimum requirements of the MLC,
 - (c) the shipowner and employer of a seafarer who is a Gibraltar national, and the competent authority of the flag State of the ship on which the seafarer has been employed or engaged in work, fail to make arrangements for and meet the cost of the repatriation of the seafarer in accordance with—
 - (i) the requirements of the MLC as implemented by the flag State of that ship, or
 - (ii) the minimum requirements of the MLC.
- (6) Where this subregulation applies, the Maritime Administrator—
- (a) must arrange for the repatriation of the seafarer;
 - (b) may recover the cost from the seafarer where the seafarer has been found in accordance with a determination by the Maritime Administrator to be in serious default of the seafarer’s employment obligations;
 - (c) except where paragraph (b) applies, may recover the costs of repatriation from—
 - (i) the shipowner of the ship on which the seafarer has been employed or engaged in work,
 - (ii) the employer of the seafarer, or
 - (ii) the flag State of the ship on which the seafarer has been employed or engaged in work.
- (7) The Maritime Administrator may detain, or request the detention of, any ship in relation to which subregulation (6) applies until the costs of repatriation have been fully reimbursed.

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(8) The Maritime Administrator must facilitate—

- (a) the repatriation, in accordance with the requirements of the MLC, of a seafarer serving on a ship; and
- (b) the replacement of that seafarer on board ship.

(9) The shipowner, master and employer of a seafarer on a Gibraltar ship must ensure that there is carried on board the ship and made available to the seafarer a copy, in the working language or languages of the ship and in English, of this regulation and of any determinations made by the Maritime Administrator in accordance with this regulation as respects Gibraltar ships.

Place for return.

19A.(1) Despite sub-regulation (4)(c) of regulation 19, where there is a duty on a shipowner and the employer to provide for the repatriation of a seafarer under regulation 19, a seafarer is entitled to repatriation to the destination provided for in the seafarer employment agreement, or such other place as may subsequently be agreed with the shipowner.

(2) If the seafarer employment agreement does not identify a destination, and there has been no agreement between the seafarer and the shipowner as to the destination, the seafarer is entitled to repatriation to the seafarer's choice of the following destinations—

- (a) the place at which the seafarer entered into the seafarer's employment agreement; or
- (b) the seafarer's country of residence.

Scope of duty to repatriate.

19B. Where there is a duty on a shipowner and an employer to provide for the repatriation of a seafarer under regulation 19, that duty ends when—

- (a) the seafarer is repatriated in accordance with regulation 19A;
- (b) the shipowner makes reasonable arrangements for repatriation which are unsuccessful because of the seafarer's unreasonable conduct;
- (c) the shipowner has used reasonable endeavours to contact the seafarer for a period of three months or more, but has been unable to make such contact, except where the seafarer is held captive as a result of piracy or armed robbery against the ship;

- (d) the seafarer confirms in writing to the shipowner that repatriation is not required;
or
- (e) the seafarer is dead.

Lapse of right to be repatriated.

19C.(1) The entitlement to repatriation of a seafarer may lapse if the seafarer does not claim it within a reasonable period of time as may be determined by the Maritime Administrator, except where that seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against the ship.

(2) *Omitted.*

Seafarer compensation for a ship's loss or foundering.

20.(1) The shipowner must pay to a seafarer on a ship which is lost or founders—

- (a) if the seafarer is unemployed as a result of that loss or foundering, the amount of wages which would have been due to the seafarer under the seafarers' employment agreement;
- (b) if the loss or foundering of the ship causes the seafarer to suffer personal injury or loss, compensation.

(2) Payment under subregulation (1)—

- (a) if it is paid in accordance with subregulation (1)(a), is limited to the amount of two months' wages calculated from the date of the loss or foundering of the ship or, if shorter, to the amount of wages due for the period in which the seafarer—
 - (i) would otherwise have been employed on the ship, and
 - (ii) was unemployed,
- (b) if it is paid in accordance with subregulation (1)(b) in relation to loss other than personal injury or death, is limited to the amount (if any) specified in the seafarers' employment agreement;
- (c) is without prejudice to any other rights the seafarer may have for losses or injuries arising from the ship's loss or foundering;

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(d) may be recovered as a civil debt.

Manning levels.

21.(1) The Maritime Administrator must ensure that a safe manning document issued by the Administration to a Gibraltar ship under the Gibraltar Merchant Shipping (Manning, Training and Certification for Seafarers) Regulations 2006 is issued in compliance with the requirements of Regulation 2.7 of the MLC and Clauses 10 and 12 of the Annex to Council Directive 1999/63/EC.

(2) The shipowner of a ship other than a Gibraltar ship must ensure that the manning levels on the ship—

- (a) if the ship is a Member State ship, comply with the requirements of Directive 1999/63/EC as applied by that Member State; and
- (b) if the ship is not a Member State ship, comply with the requirements of Regulation 2.7 and Standard A2.7 of the MLC as applied by the competent authority of the ship's flag State.

Career and skill development and opportunities for seafarers' employment.

22.(1) The Maritime Administrator may—

- (a) promote employment in the maritime sector in Gibraltar;
- (b) encourage career and skill development and greater employment opportunities for seafarers;
- (c) help seafarers strengthen their competencies, qualifications and employment opportunities;

(2) The Maritime Administrator must, having consulted shipowners' and seafarers' organisations, establish clear objectives for the vocational guidance, education and training of seafarers whose duties on board ship primarily relate to the safe operation and navigation of the ship, including ongoing training.

**PART IV
ACCOMMODATION, FOOD AND CATERING**

Crew accommodation on Gibraltar etc. ships.

23.(1) The shipowner of a ship other than an MLC ship must ensure that crew accommodation on the ship—

- (a) is decent accommodation, consistent with promoting the seafarers' safety, health and well-being;
 - (b) if the ship was constructed on or after the date on which these Regulations come into force, is constructed, equipped, provided and maintained to the minimum standards for on-board accommodation and recreational facilities, amenities and services set out in Regulation 3.1.1 and Standard A3.1 of the MLC;
 - (c) if the ship was constructed before the date on which these Regulations come into force—
 - (i) is constructed and equipped in accordance with the requirements (if any) relating to ship construction and equipment set out in the Accommodation of Crews Convention (Revised), 1949 (No. 92) and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) which applied to that ship immediately before that date, and
 - (ii) is provided and maintained to the minimum standards for on-board accommodation and recreational facilities, amenities and services set out in Regulation 3.1.1 and Standard A3.1 of the MLC.
- (2) The master of a ship other than an MLC ship or a person authorised by the master must—
- (a) ensure that crew accommodation on a ship is cleaned and maintained to conform with the requirements of subregulation (1);
 - (b) carry out frequent inspections to ensure that the crew accommodation is clean, decently habitable and maintained in a good state of repair; and
 - (c) record the findings of those inspections and keep them available for review.
- (3) The Maritime Administrator—
- (a) must determine the appropriate devices to be fitted to a Gibraltar ship regularly trading to mosquito-infested ports;
 - (b) may, having consulted shipowners' and seafarer's organisations, permit fairly applied variations to take account on Gibraltar ships, without discrimination, of

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the interests of seafarers having differing and distinctive religious and social practices, provided that such variations do not result in overall facilities less favourable than those which would result from the application of Standard A3.1 of the MLC.

Crew accommodation: exemptions and equivalences.

24. The Maritime Administrator may exempt a Gibraltar ship of less than 200 gross tonnage, from some or all of the requirements of regulation 23 if the exemption—

- (a) is reasonable taking account of the size of the ship and the number of persons on board;
- (b) does not result in overall facilities less favourable than those which would result if no exemption had been given and relates to Standard A3.1.7(b), 11(d) and 13 of the MLC or, as respects floor area only, Standard A3.1.9(f) and (h) to (l) of the MLC; or
- (c) is otherwise expressly permitted in Standard A3.1 of the MLC.

Crew accommodation on MLC ships.

25.(1) The shipowner of an MLC ship must ensure that crew accommodation on the ship is constructed, equipped, provided and maintained to the standards for on-board accommodation and recreational facilities set out in Regulation 3.1.1 and Standard A3.1 of the MLC as implemented by the ship's flag State.

(2) The master of an MLC ship or a person authorised by the master must ensure that crew accommodation is inspected in accordance with the requirements of Standard A3.1 of the MLC as implemented by the flag State of that ship.

Food and catering on Gibraltar etc. ships.

26.(1) The shipowner and the master of a ship other than an MLC ship must ensure that food and drinking water are provided on the ship which—

- (a) are suitable in respect of quantity, nutritional value, quality and variety, taking account of—
 - (i) the number of seafarers on board,
 - (ii) the character, nature and duration of the voyage, and

- (iii) the different religious requirements and cultural practices in relation to food of the seafarers on board,
 - (b) do not contain anything which is likely to cause sickness or injury to health or which renders any food or drinking water unpalatable;
 - (c) are otherwise fit for consumption.
- (2) The shipowner and the master of a ship other than an MLC ship must ensure that—
- (a) food and drinking water provided in accordance with subregulation (1) are provided free of charge to all seafarers while they are on board;
 - (b) the catering department on the ship is organised and equipped so as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions;
 - (c) seafarers whose normal duties include the preparation and storage of food, the service of meals to seafarers on board the ship or other work in the galley or in areas where food is stored or handled are properly trained or instructed for their positions;
 - (d) any person processing food in the galley has been trained or instructed in areas including food and personal hygiene and the handling and storage of food on board ship.
- (3) The master of a ship other than an MLC ship, or a person authorised by the master, must carry out frequent inspections of—
- (a) supplies of food and drinking water on board the ship;
 - (b) all spaces and equipment used for the storage and handling of food and drinking waters; and
 - (c) galley and other equipment for the preparation and service of meals;
- and must record the findings of those inspections and keep them available for review.
- (4) Subject to subregulation (5), the shipowner and the master of a ship other than an MLC ship, which ordinarily operates with 10 or more seafarers on board must ensure that the ship does not proceed to sea unless a qualified ships' cook is on board.

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(5) The Maritime Administrator may grant a Gibraltar ship an exemption from subregulation (4)–

- (a) until the ship’s next port of call; or
- (b) for a period not exceeding one month;

but only if there is a person on board the ship who is trained or instructed in areas including food and personal hygiene and handling and storage of food on board ship.

(6) In this regulation “qualified ships’ cook” means–

- (a) a person who–
 - (i) is over the age of 18,
 - (ii) has completed a minimum amount of sea-service as determined by the Maritime Administrator,
 - (iii) holds a valid Certificate of Medical Fitness,
 - (iv) has completed a training course, approved or recognised by the Maritime Administrator or by the competent authority of an MLC State, which covers practical cookery, food and personal hygiene, food storage, stock control and environmental protection and catering health and safety,
 - (v) has completed such other training as may be determined by the Maritime Administrator,

and has been issued by the Maritime Administrator with a Certificate of Qualification as a Ships’ Cook; or

- (b) a person who–
 - (i) meets the minimum requirements for a ship’s cook set out in Standard A3.2 of the MLC, and
 - (ii) holds a valid certificate of qualification as a ships’ cook issued by an MLC State, by a State which has ratified the Certification of Ships’ Cooks Convention, 1946 (No.69) or by any other body approved by the Maritime Administrator.

Food and catering on MLC ships.

27.(1) The shipowner and the master of an MLC ship must ensure that—

- (a) food and catering on the ship is provided and maintained to the standards for food and catering set out in Regulation 3.2 and Standard A3.2 of the MLC as implemented by the flag State of that ship; and
- (b) that a seafarer is engaged as a ship's cook as required by Regulation 3.2 and Standard A3.2 as implemented by the flag State of that ship.

(2) The master of an MLC ship or a person authorised by the master must ensure that frequent documented inspections are carried out in accordance with the requirements of Standard A3.2 of the MLC as implemented by the flag State of that ship.

PART V

**HEALTH PROTECTION, MEDICAL CARE, WELFARE AND SOCIAL SECURITY
PROTECTION**

Medical care on board ship and ashore.

28.(1) The shipowner, master and employer of a seafarer on a ship other than an MLC ship must ensure that—

- (a) seafarers are given health protection and medical care, including essential dental care, which is as comparable as possible to that generally available to workers in Gibraltar, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;
- (b) seafarers are given the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;
- (c) seafarers are provided with measures of a preventive character such as health promotion and health education programmes,
- (d) seafarers' medical information is kept confidential and only used to facilitate the treatment of the seafarer;
- (e) a medicine chest, medical equipment and a medical guide are carried on board in accordance with requirements determined by the Maritime Administrator in relation to that ship, or in relation to ships of that description;

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- (f) if the ship—
- (i) carries 100 or more persons and is ordinarily engaged on international voyages of more than three days' duration, or
 - (ii) is of a description of ships which the Maritime Administrator has determined must carry a qualified medical doctor,

a qualified medical doctor is on board the ship and is responsible for providing medical care to persons on board the ship,

- (g) if the ship is not required to carry a qualified medical doctor on board—
- (i) at least one seafarer on board has satisfactorily completed training in medical care that meets the requirements of STCW to the level determined in relation to the ship by the Maritime Administrator and is in charge of medical care and administering medicine as part of their regular duties; or
 - (ii) at least one seafarer on board has satisfactorily completed training in medical first aid that meets the requirements of STCW to the level determined in relation to the ship by the Maritime Administrator and is competent to provide medical first aid.

(2) The shipowner and the employer of a seafarer on a ship other than an MLC ship must ensure that medical and dental care provided to a seafarer on board a ship in accordance with subregulation (1) are provided free of charge to all seafarers while they are on board or landed in a foreign port.

- (3) The Maritime Administrator must—
- (a) adopt a standard medical report form for use by ships' masters and relevant onshore and on-board medical personnel;
 - (b) determine the requirements for the medicine chest, medical equipment and medical guide to be carried on board a ship or ships of a particular description;
 - (c) determine the ships or descriptions of ships which must carry a qualified medical doctor on board;

- (d) determine, in relation to particular ships or descriptions of ship, the level of training in medical care or medical first aid to be satisfactorily completed in order to meet the requirements of subregulation (1)(g);
 - (e) ensure that medical advice by radio or satellite communication is available to a Gibraltar ship by a prearranged system 24 hours a day when the ship is at sea.
- (4) The shipowner, the master and the employer of a seafarer on an MLC ship must ensure that—
- (a) medical and dental care, medicine chests, medical equipment and a medical guide is provided to the standards for medical care set out in Regulation 4.1 and Standard A4.1 of the MLC as implemented by the flag State of that ship; and
 - (b) that the ship carries a qualified medical practitioner, a seafarer in charge of medical care or a seafarer designated to provide first aid as required by Regulation 4.1 and Standard A4.1 of the MLC as implemented by the flag State of that ship.

Shipowners' liability.

29.(1) The shipowner of a Gibraltar ship must—

- (a) provide medical care for a seafarer on the ship and ashore, including medical treatment and the supply of necessary medicines and therapeutic appliances, in respect of sickness or injury occurring between the date of the seafarer's commencing duty and the date upon which the seafarer is deemed duly repatriated, or arising from the seafarer's employment or engagement on work between those dates;
- (b) provide board and lodging away from home until a seafarer who is sick or injured while employed or engaged in work on the ship or arising from that employment or engagement has recovered, or until the sickness or incapacity has been declared of a permanent character;
- (c) where the sickness or injury of a seafarer results in that seafarer's incapacity for work—
 - (i) make full payment of wages while the seafarer is on board the ship or, if the seafarer is entitled to be repatriated, until the seafarer has been repatriated,

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- (ii) make payment of wages in full or in part from the date on which the seafarer leaves the ship or is repatriated and the date on which the seafarer has recovered or is entitled to cash payments from the Government of Gibraltar,
 - (d) in accordance with the laws of Gibraltar, the seafarers' employment agreement or a collective agreement, pay compensation in the event of death or long term disability of a seafarer due to an occupational injury, illness or hazard while the seafarer is employed or engaged in work on the ship or arising from that employment or engagement;
 - (e) meet the cost of burial expenses in the case of death of a seafarer occurring on board or ashore during the seafarer's period of engagement;
 - (f) safeguard property left on board the ship by a sick, injured or deceased seafarer and return it to the seafarer or the seafarer's next of kin.
- (2) A shipowner is not liable under this regulation—
- (a) to defray the expense of medical care and board and lodging for a period of more than 16 weeks from the day of the injury or the commencement of the sickness;
 - (b) to pay wages in whole or in part in respect of a seafarer no longer on board ship for a period of more than 16 weeks from the day of the injury or the commencement of the sickness;
 - (c) where—
 - (i) injury occurred otherwise than in the service of the ship,
 - (ii) injury or sickness was due to the wilful misconduct of the sick, injured or deceased seafarer,
 - (iii) the sickness or infirmity was intentionally concealed when the employment or engagement of the seafarer was entered into.
- (3) The shipowner of a ship which is going to put to sea or is at sea must have in force a contract of insurance or other security adequate to ensure that the shipowner will be able to meet any liabilities the shipowner may have in accordance with this regulation.
- (4) The Maritime Administrator may determine the requirements with which a shipowner must comply in order to meet the duty in subregulation (3).

Shipowners' liability for wages following sickness or injury sustained by seafarer.

29A.(1) Subject to sub-regulation (11) and regulation 29(1)(c), this regulation applies in relation to a seafarer who suffers sickness or injury which-

- (a) first occurs during a period-
 - (i) which starts on the date on which the seafarer's seafarer employment agreement commences and ends on the next date on which the shipowner's duty to make provision for the repatriation of that seafarer under regulation 19 ends under regulation 19A; or
 - (ii) which starts after a period referred to in sub paragraph (i) but is caused by circumstances or events arising during that period;
- (b) does not first occur during a period of leave, other than shore leave; and
- (c) results in the seafarer's incapacity for work.

(2) If a seafarer falling within sub-regulation (1)(a)(i) does not receive the wages payable under the seafarer employment agreement in respect of the period specified in sub-regulation (3), the shipowner must pay to the seafarer a sum equal to the difference between-

- (a) any sums received by the seafarer in respect of wages for that period under that agreement; and
- (b) the wages which would have been payable to the seafarer under that agreement if the seafarer had remained fit for work throughout that period, and (where the agreement would otherwise have terminated during that period) if the agreement had continued on the same terms throughout that period.

(3) The period referred to in sub-regulation (2) is a period-

- (a) starting on the date of the injury or the first day of the sickness; and
- (b) ending on the date on which the duty to repatriate the seafarer under regulation 19 ends under regulation 19A (or, if such a duty does not arise, the date on which the seafarer leaves the ship).

(4) Subject to sub-regulations (5) to (7), if a seafarer falling within sub-regulation (1) is incapable of work after the date on which the duty to repatriate the seafarer under regulation

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19 ends under regulation 19A (or if such a duty does not arise, the date on which the seafarer leaves the ship), and the seafarer does not receive the basic wages payable under the seafarer employment agreement for the period starting on that date and ending on the date on which the seafarer is again fit for work, the shipowner must pay to the seafarer a sum equal to the difference between-

- (a) any sums received by the seafarer in respect of basic wages for that period under that agreement; and
- (b) the basic wages which would have been payable to the seafarer under that agreement if the seafarer had remained fit for work throughout that period, and (where the agreement would otherwise have terminated during that period) if the agreement had continued on the same terms throughout that period.

(5) The duty in sub-regulation (4) ends on the expiry of the period of 16 weeks commencing on the day following the date of the injury or the first day of the sickness referred to in sub-regulation (1).

(6) The duty in sub-regulation (4) is conditional upon the seafarer applying for all relevant social security benefits payable in consequence of-

- (a) the seafarer's incapacity for work; and
- (b) the sickness or injury which resulted in the incapacity for work, under the laws of Gibraltar or the laws or arrangements in the country to which the seafarer is repatriated.

(7) If the seafarer receives social security benefits of the kind described in sub-regulation (6) in respect of the period referred to in sub-regulation (5) or any part of that period-

- (a) the amount which the shipowner must pay to the seafarer under sub-regulation (4) is to be reduced by that amount; and
- (b) the shipowner may recover as a civil debt any payments already made to the seafarer to the extent that they exceed such reduced amounts.

(8) The seafarer must on request provide information to the shipowner as to the amounts received by the seafarer in social security benefits during the period referred to in sub-regulation (5).

(9) The sums payable to the seafarer under sub-regulations (2) and (4) must be paid in the same manner and at the same frequency as wages are (or, as the case may be, were) payable under the seafarer employment agreement.

(10) The seafarer may recover any sum due from the shipowner under sub-regulation (2) or (4) as a civil debt.

(11) This regulation does not apply to a seafarer where-

- (a) the injury referred to in sub-regulation (1) was sustained while the seafarer was not at work;
- (b) the injury or sickness referred to in sub-regulation (1) was sustained or arose due to the seafarer's wilful misconduct; or
- (c) the sickness or incapacity for work existed at the time when the seafarer entered the seafarer employment agreement, and the seafarer deliberately concealed the sickness or incapacity from the shipowner.

Health and safety protection and accident prevention.

30.(1) The shipowner, the master and the employer of a seafarer on a Gibraltar ship must ensure that seafarers on the ship are provided with-

- (a) occupational health protection;
- (b) a safe and hygienic environment in which to live, work and train;
- (d) safety and health protection appropriate to the nature of the seafarer's work;
- (e) equivalent protection and prevention services or facilities with regard to the safety and health of seafarers working by day or by night.

(2) The shipowner and employer of a seafarer on a Gibraltar ship must comply with the requirements of those international and national instruments on the acceptable levels of exposure to workforce hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes which the Maritime Administrator determines are applicable to Gibraltar ships or to Gibraltar ships of that description.

(3) The Maritime Administrator must-

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- (a) determine the international and national instruments on the acceptable levels of exposure to workforce hazards on board ships and on the development and implementation of ships' occupational safety and health policies and programmes which are applicable to Gibraltar ships;
 - (b) having consulted shipowners' and seafarers' organisations and taking into account applicable codes, guidelines and standards recommended by international organisations, national administrations and maritime industry organisations, issue guidance for the management of occupational health and safety on board Gibraltar ships.
- (4) The Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 apply to ships to which these Regulations apply.

Access to shore-based welfare facilities.

31. The Captain of the Port must—

- (a) ensure that shore-based facilities for seafarers in the Port of Gibraltar are easily accessible by seafarers irrespective of nationality, race, colour, sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged in work;
- (b) promote the development of welfare facilities for seafarers in the Port of Gibraltar;
- (c) encourage the establishment of welfare boards which regularly review welfare facilities and services for seafarers in the Port of Gibraltar to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.

Social Security.

32.(1) This regulation applies to—

- (a) a person who is domiciled or ordinarily resident in Gibraltar and is employed on board a ship;
- (b) a person who is employed on or working on board a Gibraltar ship and is an EU national, other than an EU national who is resident in a Member State in which the shipowner of the ship (or, if he is employed by a person other than the shipowner, his employer) has a registered office or place of business;

(c) a person who—

- (i) is employed on or working on board a Gibraltar ship,
- (ii) is not domiciled in Gibraltar, ordinarily resident in Gibraltar or an EU national, and
- (iii) does not otherwise have access to social security provision, or to medical care when in Gibraltar, which satisfies the requirements of the MLC.

(2) Subject to subregulation (5), a person who is employed on board a Gibraltar ship must be treated as being in Insurable Employment for the purposes of the Social Security (Employment Injuries Insurance) Act.

(3) Subject to subregulation (5), a person who is employed on board a Gibraltar ship, and the shipowner or employer of that person, are liable to pay contributions under the Social Security (Employment Injuries Insurance) Act as though that person were in employment in Gibraltar.

(4) Subject to subregulation (5), a person to whom this regulation applies must be treated as a person resident in Gibraltar for the purposes of Part 2 of Schedule 1 to the Gibraltar Medical (Group Practice Scheme) Regulations.

(5) Where the Maritime Administrator is satisfied that the requirements of the MLC or the collective agreement; are met otherwise than through the application of subregulations (2) to (4) of this regulation, the Maritime Administrator may—

- (a) make a determination as to how this regulation or the provisions relating to treatment of contractual compensations under a collective agreement is to apply to a seafarer or particular description of seafarers;
- (b) exempt a seafarer or particular description of seafarers from the application of this regulation or of part of this regulation.

(6) The Minister may, in order to progressively achieve comprehensive social security protection for seafarers who are domiciled or resident in Gibraltar, and for seafarers on Gibraltar ships make a determination extending the application of Gibraltar legislation on medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, assistance in the event of abandonment family benefit, maternity benefit, invalidity benefit and survivors' benefit to such persons.

PART VA

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SECURITY AGAINST SHIPOWNER'S LIABILITY FOR DEATH OR LONG TERM DISABILITY OF SEAFARERS.

Interpretation for Part VA

32A. In this Part-

“shipowner’s security document” has the meaning given in regulation 32G(6);

“shipowner’s security” has the meaning given in regulation 32C.

Shipowner’s security requirement applicable to all ships.

32B.(1) No shipowner shall operate a ship to which these Regulations apply unless-

- (a) a shipowner’s security is in force in relation to the ship; or
- (b) financial security to assure compensation in the event of death or long term disability of seafarers due to occupational illness, injury or hazard is provided in relation to the ship in accordance with paragraph 1 of Standard A4.2.1 and A4.2.2 of the MLC.

(2) Where the shipowner contravenes sub-regulation (1) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) A shipowner’s security or a financial security system under this regulation must-

- (a) not cease to operate before the end of the period of its validity unless its provider has given prior notice of at least 30 days to the Minister;
- (b) provide for the payment of all contractual claims covered by it which arise during the period for which the certificate or other documentary evidence of such financial security is valid; and
- (c) provide direct access, sufficient coverage and expedited financial assistance to abandoned seafarers on a Gibraltar ship.

Meaning of “shipowner’s security”.

32C. In this Part, “shipowner’s security” means a contract of insurance or other form of security relating to a ship that-

- (a) provides financial assurance of an amount which the shipowner reasonably considers adequate to ensure that the shipowner will be able to meet any liabilities that the shipowner may have, including liabilities under seafarer employment agreements, to provide compensation in the event of death or long term disability arising from occupational injury, illness or hazard to seafarers whose normal place of work is on board the ship; and
- (b) provides that-
 - (i) any such seafarer who suffers an occupational injury, illness or hazard-
 - (aa) occurring during the period of validity of the shipowner's security; and
 - (bb) causing long term disability; or
 - (ii) where the occupational injury, illness or hazard causes the death of the seafarer, the seafarer's personal representatives,

may submit a claim for compensation directly to the shipowner's security provider in respect of the disability or, as the case may be, death of the seafarer.

Payment of contractual compensation.

32D.(1) This regulation applies where a claim for contractual compensation is submitted to a shipowner's security provider.

(2) A shipowner's security provider must pay the contractual compensation to the seafarer or the seafarer's personal representative within 7 days beginning with the date on which it is established that the shipowner is liable for the contractual compensation either-

- (a) by agreement between-
 - (i) the shipowner's security provider; and
 - (ii) the seafarer or the seafarer's personal representative; or
- (b) if earlier, by order of a court or tribunal which is not subject to appeal.

(3) If sub-regulation (2) is not complied with, the shipowner's security provider must pay to the seafarer, or the seafarer's personal representative, interest on the unpaid amount at the rate of 20% per year beginning with the date that the shipowner's security provider became satisfied that the shipowner is so liable.

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(3A) For the purposes of payment of contractual claims or compensation, the financial security must meet the following minimum requirements-

- (a) the contractual claim or the compensation, where set out in the seafarer's employment agreement and without prejudice of this sub-regulation, must be paid in full and without delay;
- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments must be made to the seafarer so as to avoid undue hardship;
- (d) the seafarer must receive payment without prejudice to other legal rights, but such payment may be offset by the Shipowner against any damages resulting from any other claim made by the seafarer against the Shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

(4) In this regulation, “claim for contractual compensation” means a claim for compensation in the event of death or long term disability of a seafarer arising from occupational injury, illness or hazard where the compensation payable in respect of the claim is set out in the seafarer’s seafarer employment agreement, and “contractual compensation” is to be construed accordingly.

Interim payments.

32E.(1) A seafarer is entitled to a payment (an “interim payment”) from a shipowner’s security provider if the following conditions are satisfied-

- (a) the shipowner is liable to pay compensation to the seafarer due to the seafarer having sustained a long-term disability as a result of an occupational injury, illness or hazard;
- (b) the occupational injury, illness or hazard-
 - (i) has occurred during the period of validity of the Shipowner’s security, and

- (ii) the nature of it has made the assessment of full compensation difficult;
 - (c) the shipowner's security provides financial assurance in respect of the compensation mentioned in paragraph (a);
 - (d) the full amount of compensation payable has not yet been determined; and
 - (e) the seafarer is suffering hardship.
- (2) A seafarer entitled under sub-regulation (1) may make a request for an interim payment to the shipowner's security provider.
- (3) A request under sub-regulation (2) must be supported by evidence that the seafarer satisfies the conditions specified in sub-regulation (1).
- (4) A shipowner's security provider must within 14 days of receipt of the request from the seafarer determine whether the conditions in sub-regulation (1) are satisfied.
- (5) If, in contravention of sub-regulation (4), a shipowner's security provider does not determine whether the conditions in sub-regulation (1) are satisfied, it must make an interim payment within 21 days of the receipt of the request from the seafarer.
- (6) Where a shipowner's security provider determines that the conditions in sub-regulation (1) are satisfied, it must make the interim payment within 21 days of the receipt of the request from the seafarer.
- (7) The minimum amount of an interim payment is-
- (a) where an amount in respect of any part of the claim has been determined and payment of that amount would be sufficient to alleviate the seafarer's hardship, the amount so determined; or
 - (b) where no amount in respect of any part of the claim has been determined, or the amount which has been determined is not sufficient to alleviate the seafarer's hardship, the lower of-
 - (i) such amount as would alleviate the seafarer's hardship; and
 - (ii) 75% of the likely total amount of compensation payable in respect of the claim as estimated by the shipowner's security provider.

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(8) Where, in contravention of sub-regulation (5) or (6), a shipowner's security provider does not make an interim payment, the shipowner's security provider must pay interest on the unpaid amount at a rate of 20% per year from the date of receipt of the request from the seafarer.

(9) A shipowner's security provider who makes an interim payment may deduct the amount of the interim payment from the full amount of compensation payable in respect of the shipowner's liability.

(10) A shipowner's security provider who-

- (a) has made an interim payment under sub-regulation (5); and
- (b) subsequently determines that the conditions in sub-regulation (1) were not satisfied,

may recover as a civil debt the amount of the interim payment less any interest payable under sub-regulation (8).

(11) A shipowner's security provider may recover as a civil debt any proportion of an interim payment which exceeds the full amount of compensation payable in respect of a claim.

(12) Notwithstanding that a seafarer shall receive payment under this regulation and regulation 32D without prejudice to other legal rights, such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident.

Offence of undue pressure.

32F. A person is guilty of an offence if that person induces another to accept less than the full amount of compensation payable, as set out in a seafarer's seafarer employment agreement, in respect of the death or long term disability of a seafarer due to occupational injury, illness or hazard.

Duty to carry and display shipowner's security document.

32G.(1) The shipowner must ensure that for each shipowner's security in force in relation to the ship, a shipowner's security document containing the information specified in sub-regulation (7) is carried on board.

(2) The shipowner must ensure that each shipowner's security document that relates to the ship and is not in English, has with it an English translation.

(3) Where the shipowner contravenes sub-regulation (1) or (2) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) The shipowner and master of the ship must ensure that each shipowner's security document that relates to the ship, together with any English translation, is displayed in a conspicuous place on board ship.

(5) A breach of sub-regulation (4) is an offence by the shipowner and the master of the ship.

(6) In this regulation, "shipowner's security document" means a certificate or other documentary evidence of shipowner's security issued by the shipowner's security provider.

(7) The following information must be included in a shipowner's security document-

- (a) the name of the ship to which the shipowner's security relates;
- (b) port of registry of the ship;
- (c) the call sign of the ship;
- (d) the International Maritime Organisation number of the ship;
- (e) the name and address of the shipowner's security provider;
- (f) the contact details of the person or entity at the shipowner's security provider responsible for handling claims made by seafarers;
- (g) the name of the shipowner;
- (h) the period of validity of the shipowner's security; and
- (i) a declaration from the shipowner's security provider that the shipowner's security meets the requirements of standard A4.2.1 of the MLC.

Termination of shipowner's security on notice to the Minister.

32H.(1) The termination of a shipowner's security before the end of its period of validity is effective only if at least 30 days' notice is given to the Minister by the shipowner's security provider the security.

(2) A notice given under sub-regulation (1) must-

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- (a) be in writing; and
- (b) include a copy of the shipowner's security document.

Duty on shipowner's security provider to notify the Minister where a shipowner's security has been terminated.

32I.(1) If a shipowner's security is terminated, the shipowner's security provider must give notice in writing to that effect to the Minister.

(2) A notice under sub-regulation (1) must include with it a copy of the shipowner's security document.

(3) Failure to give notice under sub-regulation (1) within the period of 30 days beginning with the date on which the shipowner's security was terminated is an offence by the shipowner's security provider.

Duty on shipowner to notify seafarers if shipowner's security is to be terminated.

32J.(1) Where the shipowner becomes aware that any shipowner's security that relates to a ship is to be, or has been, terminated before the end of its period of validity, the shipowner must give notice in writing to that effect to all seafarers who work on the ship during the notification period.

- (2) A notice under sub-regulation (1) must-
 - (a) state the date on which the shipowner's security is to be or was terminated; and
 - (b) be given as soon as reasonably practicable after the shipowner becomes aware that the shipowner's security is to be or was terminated.
- (3) A breach of sub-regulation (1) is an offence by the shipowner.
- (4) In this regulation, the "notification period" means-
 - (a) the period beginning with the date on which the shipowner becomes aware that the shipowner's security is to be, or has been, terminated before the end of its period of validity; and
 - (b) ending with on the date that the shipowner becomes aware that the shipowner's security has been replaced or reinstated.

PART VB
SECURITY AGAINST THE ABANDONMENT OF SEAFARERS

Interpretation for Part VB.

32K. In this Part-

“abandonment period” has the meaning given by regulation 32L(3);

“abandonment security” has the meaning given by regulation 32N(1).

Abandonment.

32L.(1) A seafarer is “abandoned” in relation to a ship if at any time the shipowner-

- (a) fails to ensure the seafarers’ right to repatriation required under regulation 19;
- (b) having regard to the seafarer’s personal circumstances and requirements, leaves the seafarer without necessary maintenance and support, including leaving the seafarer without-
 - (i) adequate food;
 - (ii) drinking water supplies;
 - (iii) accommodation;
 - (iv) essential fuel for survival on board the ship; or
 - (v) necessary medical care; or
- (c) otherwise unilaterally severs ties with the seafarer, including failing to pay any amount in respect of wages payable to the seafarer under his or her seafarer employment agreement for a period of at least two months.

(1A) A seafarer shall be deemed to have been abandoned if, in breach of any of the requirements of the collective agreement or the seafarer’s employment agreement, the shipowner-

- (a) fails to cover the cost of the seafarer’s repatriation;

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- (b) has left the seafarer without necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including the failure to pay contractual wages for period of at least 2 months.

(1B) For the purposes of sub-regulation (1A), necessary maintenance and support of the seafarers must include-

- (a) adequate food;
- (b) accommodation;
- (c) drinking water supplies;
- (d) essential fuel for survival on board the ship; and
- (e) necessary medical care.

(2) An abandoned seafarer ceases to be abandoned in relation to a ship if, after the end of the abandonment period, the seafarer continues, resumes or takes up new employment on board the ship or is engaged on board the ship.

(3) The “abandonment period” begins when the seafarer is abandoned and ends with the earliest of the following events-

- (a) the seafarer’s arrival in or at-
 - (i) the seafarer’s country of residence;
 - (ii) the destination provided in the seafarer’s seafarer employment agreement as being that to which the seafarer should be returned in the event that the seafarer is repatriated, or
 - (iii) such place as the seafarer has agreed in advance with-
 - (aa) the abandonment security provider, or
 - (bb) any person who has made provision for the seafarer’s repatriation;
- (b) the seafarer refusing unreasonably to be repatriated, or to co-operate with arrangements made for the seafarer’s repatriation;

- (c) the expiry of a period of 3 months during which the abandonment security provider has used reasonable endeavours to contact the seafarer but has been unable to make such contact;
- (d) the abandonment security provider receives written confirmation from the seafarer that financial assistance is no longer required; or
- (e) the death of the seafarer.

Abandonment security requirement applicable to all ships.

32M.(1) A ship to which these Regulations apply must not be operated unless-

- (a) an abandonment security is in force in relation to the ship; or
- (b) financial security is in place for the ship in accordance with paragraph 3 of standard A2.5.2 of the MLC (financial security for abandoned seafarers).

(2) Where the shipowner contravenes sub-regulation (1) that shipowner commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Abandonment security.

32N.(1) In this Part, “abandonment security” means a contract of insurance or other form of security relating to a ship that-

- (a) provides financial assurance of an amount which the shipowner reasonably considers adequate to cover the items specified in sub-regulation (2)(a) to (d) for any seafarer who is abandoned in relation to the ship; and
- (b) provides that any seafarer who is abandoned in relation to the ship is entitled to-
 - (i) make an abandonment claim; and
 - (ii) receive financial assistance in respect of the items specified in sub-regulation (2)(a) to (d).

(1A) Any financial assistance provided by the financial security system must be granted promptly upon request made by the seafarer or the seafarer’s nominated representative and supported by the necessary justification of entitlement under this Part.

(2) The items referred to in sub-regulation (1)(a) are-

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- (a) up to four months' unpaid wages relating to periods occurring before the end of the abandonment period;
- (b) the cost during the abandonment period of-
 - (i) adequate food;
 - (ii) drinking water supplies;
 - (iii) clothing, where necessary;
 - (iv) accommodation;
 - (v) essential fuel for survival on board the ship;
 - (vi) necessary medical care;
- (c) the cost of repatriation, including-
 - (i) the cost of appropriate travel arrangements and any related costs of passage, but this may be limited to travel or passage that is completed before the seafarer ceases to be abandoned; and
 - (iii) the cost of transport of the seafarer's personal effects; and
- (d) all other expenses reasonably incurred by the seafarer before the end of the abandonment period as a result of being abandoned.

(2A) The cost of repatriation under this Part must cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

(3) In this regulation-

“abandonment claim” is a claim for financial assistance that-

- (a) is submitted directly to the abandonment security provider by-
 - (i) an abandoned seafarer; or

(ii) a person authorised by the seafarer to act on the seafarer's behalf; and

(b) is supported by evidence showing that the seafarer is abandoned;

“abandonment period” has the meaning given in regulation 32L(3).

Consideration and payment of abandonment claims.

32O.(1) This regulation applies where an abandonment claim is made.

(2) The abandonment security provider to whom the abandonment claim is made must within 7 days of receipt of the claim determine whether the seafarer is entitled to receive financial assistance.

(3) An abandonment security provider who determines that a seafarer is entitled to receive financial assistance, whether in relation to the whole or any part of an abandonment claim, must within 14 days of receipt of the claim provide such assistance, whether or not there are further parts of the claim yet to be determined.

(4) An abandonment security provider who in contravention of sub-regulation (2) fails to determine whether a seafarer is entitled to receive financial assistance in relation to the whole or part of an abandonment claim must within 14 days of receipt of the claim provide financial assistance in the amount claimed by the seafarer.

(5) Where, in contravention of sub-regulation (3) or (4) financial assistance is not provided, the abandonment security provider must pay interest on the unpaid amount at the rate of 20% per year from the date of receipt of the claim.

(6) An abandonment security provider who-

(a) has provided financial assistance to a seafarer under sub-regulation (3); and

(b) subsequently determines that the seafarer was not entitled to receive the financial assistance,

may recover as a civil debt the amount of the financial assistance less any interest payable under sub-regulation (5).

(7) In this regulation “abandonment claim” has the meaning given in regulation 32N(3).

Subrogation.

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32P.(1) Sub-regulation (2) applies where an abandonment security provider provides financial assistance (“the sum provided”) to a seafarer under an abandonment security.

(2) Any rights which a seafarer has, or but for the payment of that sum would have had, against the shipowner as a result of being abandoned are, with respect to the sum provided, transferred to and vested in the abandonment security provider.

Duty to carry and display an abandonment security document.

32Q.(1) The shipowner must ensure that an abandonment security document containing the information specified in sub-regulation (7) for each abandonment security in force in relation to the ship is carried on board.

(1A) Where more than one financial security provider provides cover under this Part, the abandonment security document provided by each provider shall be carried on board.

(2) The shipowner must ensure that-

- (a) each abandonment security document that relates to the ship and is not in English, has with it an English translation; and
- (b) a copy of the abandonment security document referred to in sub-regulation (1) is posted in a conspicuous place on board where it is available to the seafarers.

(3) Where the shipowner contravenes sub-regulation (1) or that shipowner commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(4) The shipowner and the master of a ship must ensure that each abandonment security document that relates to the ship, together with any English translation, is displayed in a conspicuous place on board ship.

(5) Where the shipowner and the master of the ship contravene sub-regulation (1) that shipowner and the master of the ship both commit an offence and are liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(6) In this Part “abandonment security document” means a certificate or other documentary evidence of abandonment security issued by the abandonment security provider.

(7) The following information must be included in an abandonment security document-

- (a) the name of the ship to which the abandonment security relates;
- (b) the port of registry of the ship;
- (c) the call sign of the ship;
- (d) the International Maritime Organisation number of the ship;
- (e) the name and address of the abandonment security provider;
- (f) the contact details of the person or entity at the abandonment security provider responsible for handling seafarers' abandonment claims;
- (g) the name of the shipowner;
- (h) the period of validity of the abandonment security; and
- (i) a declaration from the abandonment security provider that the abandonment security meets the requirements of standard A2.5.2 of the MLC.”.

Termination of abandonment security effective only where notice given.

32R.(1) The termination of an abandonment security before the end of its period of validity is effective only if the abandonment security provider gives at least 30 days' notice is given to the Minister.

(2) A notice given under sub-regulation (1) must-

- (a) be in writing; and
- (b) include a copy of the abandonment security document.

(3) “Abandonment security document” has the meaning given in regulation 32Q(6).

Duty on shipowner to notify seafarers if abandonment security is to be terminated.

32S.(1) Where the shipowner becomes aware that any abandonment security that relates to a ship is to be, or has been, terminated before the end of its period of validity, the shipowner must give notice in writing to that effect to all seafarers who work on the ship during the notification period.

(2) A notice under sub-regulation (1) must-

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- (a) state the date on which the abandonment security is to be or was terminated; and
 - (b) be given as soon as reasonably practicable after the shipowner becomes aware that the abandonment security is to be or was terminated.
- (3) Where the shipowner contravenes sub-regulation (1) that shipowner commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) In this regulation, the “notification period” means-
- (a) the period beginning with the date on which the shipowner becomes aware that the abandonment security is to be, or has been, terminated before the end of its period of validity; and
 - (b) ending with on the date that the shipowner becomes aware that the abandonment security has been replaced or reinstated.

Savings and adjustments.

32T (1) The provisions of this Part must not-

- (a) prejudice any right of recourse of the insurer or provider of financial security against third parties; and
 - (b) be intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned.
- (2) Any amounts payable by the provider under this Part can be offset against amounts received the seafarer from other sources arising from any rights, claims or remedies that may be the subject of compensation under this Part.

**PART VI
INSPECTION AND CERTIFICATION**

Inspection of Gibraltar ships.

33.(1) This regulation applies to-

- (a) a Gibraltar ship of 500 gross tonnage or over which is engaged in international voyages or is operating from a port in a country other than Gibraltar; and

- (b) at the request of the shipowner, to any other Gibraltar ship.
- (2) A ship to which this regulation applies is subject to the following inspections—
- (a) before a Maritime Labour Certificate is first issued in relation to the ship, an initial MLC inspection;
 - (b) within five years of the first issue of a Maritime Labour Certificate, and thereafter at intervals which must be no more than five years, a renewal MLC inspection;
 - (c) between the second and third anniversary dates of a Maritime Labour Certificate being issued, an intermediate MLC inspection.
- (3) In this Part of these Regulations—

“initial MLC inspection” means an inspection by which a certifying authority ascertains whether the ship meets the standards of the MLC Convention, of Directive 1999/63/EC and of Directive 2009/13/EC;

“renewal MLC inspection” means an inspection by which a certifying authority ascertains whether the ship continues to meet the standards of the MLC Convention, of Directive 1999/63/EC and of Directive 2009/13/EC;

“intermediate MLC inspection” means an inspection by which a certifying authority ascertains whether the ship continues to meet the standards of the MLC Convention, of Directive 1999/63/EC and of Directive 2009/13/EC.

Issue of Maritime Labour Certificates to Gibraltar ships.

34.(1) Where—

- (a) a certifying authority is satisfied after the completion of an initial or renewal MLC inspection of the crew accommodation of a Gibraltar ship that the standards of regulations 23 and 24 are being complied with; and
- (b) the Maritime Administrator is satisfied after the completion of an initial or renewal MLC inspection of a Gibraltar ship other than the crew accommodation that the standards of these Regulations other than regulations 23 and 24, and the standards of Directive 1999/63/EC and of Directive 2009/13/EC are being complied with,

the Maritime Administrator must issue a Maritime Labour Certificate.

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(2) Where—

- (a) a certifying authority is satisfied after the completion of an intermediate MLC inspection of the crew accommodation of a Gibraltar ship that the standards of regulations 23 and 24 are being complied with; and
- (b) the Maritime Administrator is satisfied after the completion of an intermediate MLC inspection of a Gibraltar ship other than the crew accommodation that the standards of these Regulations other than regulations 23 and 24, and the standards of Directive 1999/63/EC and of Directive 2009/13/EC are being complied with'

the Maritime Administrator must so endorse the Maritime Labour Certificate.

(3) If any ship which was previously under the flag of another State becomes a Gibraltar ship, the Maritime Administrator must issue a Maritime Labour Certificate only if fully satisfied that the ship is in compliance with the standards of the MLC, of Directive 1999/63/EC and of Directive 2009/13/EC.

(4) The Maritime Administrator may authorise another certifying authority to carry out an initial, renewal or intermediate MLC inspection of a Gibraltar ship as respects the standards of these Regulations other than regulations 23 and 24 and the standards of Directive 1999/63/EC and the standards of Directive 2009/13/EC.

(5) Where a certifying authority is satisfied, after the completion of an inspection which it is authorised under subregulation (4) to carry out, that the standards of these Regulations, of Directive 1999/63/EC and of Directive 2009/13/EC are being complied with, that certifying authority must issue or endorse (as appropriate) a Maritime Labour Certificate.

(6) An authorisation of another certifying authority by the Maritime Administrator under subregulation (4) may be an authorisation as respects a particular Gibraltar ship, Gibraltar ships of a particular description or Gibraltar ships in general.

Inspection and certification of Gibraltar ships by Governments of other States.

35.(1) The Maritime Administrator may, through a proper officer or otherwise, request the Government of an MLC State to carry out an initial, renewal or intermediate MLC inspection of a Gibraltar ship to which regulation 33 applies and, if fully satisfied that the ship is in compliance with the standards of the MLC, of Directive 1999/63/EC and of Directive 2009/13/EC—

- (a) to issue or authorise the issue of a Maritime Labour Certificate to the ship, or to endorse or authorise the endorsement of that Certificate, in accordance with the requirements of the MLC;
- (b) to include in the Certificate a statement to the effect that it has been issued at the request of the Maritime Administrator; and
- (c) to transmit a copy of the MLC survey report and the Certificate to the Maritime Administrator as soon as possible.

(2) A Certificate issued or endorsed in accordance with subregulation (1) must have the same force and receive the same recognition as a Certificate issued or endorsed by the Maritime Administrator or by a certifying authority authorised by the Maritime Administrator.

Interim Maritime Labour Certificates for Gibraltar ships.

36.(1) This regulation applies where—

- (a) a ship to which regulation 33 applies is first registered;
- (b) a ship to which regulation 33 applies is first registered as a Gibraltar ship; or
- (c) the person who was the owner of a ship to which regulation 33 applies on the date a valid Maritime Labour Certificate was issued in respect of that ship ceases to be the owner of that ship,

and no interim Maritime Labour Certificate has previously been issued in relation to that ship without a valid Maritime Labour Certificate having been issued to that ship after the interim Maritime Labour Certificate was so issued.

(2) Where a certifying authority or (where requested by the Maritime Administrator) the Government of an MLC State has verified that—

- (a) a ship has been inspected, so far as reasonable and practicable;
- (b) the owner of the ship has demonstrated that the ship has adequate procedures to comply with the requirements of these Regulations;
- (c) the master of the ship is familiar with the requirements of the MLC and the responsibilities for its implementation; and

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- (d) the Maritime Administrator or the Government of the MLC State has the information which would be necessary for it to produce Part 1 of a Declaration of Maritime Labour Compliance as respects the ship,

the Maritime Administrator, MLC State or certifying authority may issue an interim Maritime Labour Certificate.

- (3) An interim Maritime Labour Certificate may be issued for a period not exceeding six months.

Inspection and certification of non-Gibraltar ships by the Maritime Administrator.

37.(1) The Maritime Administrator may, at the request of an MLC State, inspect a ship registered in that State and, if satisfied that the standards of the MLC (and, if that MLC State is a member State of the European Union, the requirements of Directive 1999/63/EC and Directive 2009/13/EC) as implemented by that MLC State are complied with—

- (a) issue as respects the ship a Maritime Labour Certificate or endorse such a certificate; or
- (b) issue as respects the ship an interim Maritime Labour Certificate, or endorse such a certificate.

(2) The Maritime Administrator must include or have included in any Certificate issued or endorsed in accordance with subregulation (1) a statement to the effect that it has been issued or endorsed at the request of the MLC State in which the ship is registered, and must transmit a copy of the survey report and the Certificate to that State as soon as possible.

(3) A Certificate issued or endorsed in accordance with subregulation (1) has effect as if issued or endorsed by the State which requested the survey of the ship to be carried out.

Duration and validity of Maritime Labour Certificates.

38.(1) Subject to subregulation (2) below, the Maritime Administrator, a certifying authority authorised by the Maritime Administrator or an MLC State issuing a Maritime Labour Certificate in accordance with these Regulations must issue that certificate—

- (a) on the date of the MLC inspection;
- (b) as being valid from the date of issue; and
- (c) for a period of validity not exceeding five years.

(2) Notwithstanding sub-regulation (1)(c), where a renewal MLC inspection has been completed-

- (a) within a period of three months before the expiry of a Maritime Labour Certificate, the new Maritime Labour Certificate must be issued as being valid from the date of completion of the renewal MLC inspection for a period not exceeding five years from the date of expiry of the existing certificate; and
- (b) more than three months before the expiry date of the existing Maritime Labour Certificate, the new Maritime Labour Certificate shall be valid for a period not exceeding five years starting from the date of completion of the MLC renewal inspection.

(2A) Notwithstanding sub-regulation (1)(c), where, after a renewal MLC inspection completed prior to the expiry of a Maritime Labour Certificate, the ship is found to continue to meet the requirements of these Regulations, but a new certificate cannot immediately be issued to and made available on board that ship, the Maritime Administrator may-

- (a) extend the validity of the certificate for a further period not exceeding five months from the expiry date of the existing certificate; and
- (b) endorse the certificate accordingly.

(2B) The new certificate shall be valid for a period not exceeding five years starting from the date provided for in sub-regulation (2)..

(3) A Maritime Labour Certificate or interim Maritime Labour Certificate issued to a Gibraltar ship ceases to be valid-

- (a) as respects a ship to which regulation 33 applies, if an intermediate MLC inspection has not been completed within the period specified in regulation 33(2)(c) and the Certificate endorsed in accordance with regulation 34(2);
- (b) upon transfer of the ship to the flag of another State;
- (c) when the person who was the shipowner on the date the Certificate was issued ceases to be the shipowner;
- (d) if substantial changes are made to the ship's accommodation or recreational facilities for seafarers or its food and catering facilities; or

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- (e) the ship's accommodation or recreational facilities for seafarers or the ship's food and catering facilities have sustained damage or otherwise become deficient and that damage or deficiency has not been rectified.

(4) The Maritime Administrator may cancel a Maritime Labour Certificate or interim Maritime Labour Certificate issued to a Gibraltar ship where the Maritime Administrator has reason to believe that the certificate was issued on false or erroneous information, and may require such a certificate to be surrendered as directed.

(5) Where—

- (a) a Maritime Labour Certificate or interim Maritime Labour Certificate has been issued to a Gibraltar ship and has not expired; and
- (b) the Maritime Administrator has determined that there is clear evidence that the ship does not comply with the requirements of the MLC and that the failure of the ship to comply endangers the safety of the ship or its crew,

the Maritime Administrator may suspend the validity of the Maritime Labour Certificate or interim Maritime Labour Certificate, must give notice of any such suspension to the owner and the master of the ship, and may require the Certificate which has been so suspended to be surrendered as directed.

Declaration of Maritime Labour Compliance.

39.(1) The owner of a ship which is subject to an inspection in accordance with regulation 33, 35 or 36 must—

- (a) provide to the person undertaking the inspection the information necessary for that person to draw up Part 1 of a Declaration of Maritime Labour Compliance as respects the ship; and
- (b) draw up Part 2 of a Declaration of Maritime Labour Compliance as respects the ship.

(2) Where the person undertaking the inspection of a ship has been provided with information and with Part 2 of a Declaration of Maritime Labour Compliance as required by subregulation (1), that person must—

- (a) draw up Part 1 of a Declaration of Maritime Labour Compliance;
- (b) certify Part 2 of the Declaration of Maritime Labour Compliance; and

- (c) issue Part 1 and Part 2 of the Declaration of Maritime Labour Compliance.
- (3) In subregulations (1) and (2) “the person undertaking the inspection of the ship” means—
- (a) where an inspection of the ship has been undertaken by the Maritime Administrator, the Maritime Administrator;
 - (b) where an inspection of the ship has been undertaken by another certifying authority authorised by the Maritime Administrator under regulation 34(4), that certifying authority;
 - (c) where an inspection has been undertaken by an MLC State following a request by the Maritime Administrator under regulation 35, that MLC State.
- (4) A person drawing up Part I of a Declaration of Maritime Labour Compliance and certifying Part 2 of a Declaration of Maritime Labour Compliance must attach that Part I and Part 2 to the ship’s Maritime Labour Certificate.
- (5) A person carrying out any MLC inspection or any verification of the compliance of a ship with the MLC, must record the results of that MLC inspection or verification in Part 1 of the Declaration of Maritime Labour Compliance for that ship or otherwise make that information available to seafarers on the ship, inspectors and shipowners’ and seafarers’ representatives.

Appeals.

40.(1) In the case of any dispute or complaint with regard to any decision made by the Maritime Administrator in carrying out his duties under these Regulations, a shipowner may, within 7 days, make an appeal to the Minister with responsibility for the port and shipping and the Minister shall dispose of the appeal as soon as possible in writing by giving reasons for his decision.

- (2) On an appeal under subregulation (1), the Minister must either—
- (a) confirm the decision made by the Maritime Administrator or confirm it with such modifications as he thinks fit; or
 - (b) cancel it.
- (3) A second appeal may be made to the Supreme Court and only on a point of law.

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(4) An appeal under subregulation (3) must be made within 21 days from the decision made by the Minister under subregulation (1) and the Court shall give an expedited hearing to that appeal.

(5) An appeal to the Minister or to the Court does not suspend the operation of a notice of detention of a ship.

Documents to be carried on board Gibraltar ships.

41.(1) The shipowner and the master of a Gibraltar ship must ensure that there is carried on board a ship at all times a copy of the MLC.

(2) The shipowner and master of a ship to which a Maritime Labour Certificate or interim Maritime Labour Certificate has been issued and has not expired must ensure that the following documents are carried on board the ship and posted in a conspicuous place on board where they are available to seafarers—

- (a) the Maritime Labour Certificate or interim Maritime Labour Certificate for the ship;
- (b) if the ship has a Maritime Labour Certificate, Parts 1 and 2 of the Declaration of Maritime Labour Compliance.

(3) The shipowner and the master of a ship must make the documents referred to in subregulations (1) and (2) available, upon request, to seafarers on the ship, to inspectors, and to shipowners' and seafarers' representatives.

On-board and on-shore complaint procedure for Gibraltar ships.

42.(1) The shipowner and the master of a Gibraltar ship must ensure that there is available to a seafarer on that ship a procedure to lodge a complaint alleging a breach of the requirements of the MLC and for that complaint to be resolved fairly, effectively and expeditiously.

(2) A procedure to lodge a complaint and have it resolved must—

- (a) seek to resolve the complaint at the lowest level possible;
- (b) enable a seafarer to complain directly to the master of the ship; and
- (c) include the right of the seafarer to be accompanied or represented during any hearing which takes place under that procedure.

- (3) The owner and master of a ship must ensure that a seafarer is provided with—
- (a) a copy of the complaint procedure which is available to the seafarer in accordance with subregulation (1);
 - (b) contact information for the certifying authority for the ship;
 - (c) contact information for authority which is the competent authority for the inspection and enforcement of the MLC in the seafarer's country of residence; and
 - (d) the name of a person or persons on board the ship who can, on a confidential basis, provide the seafarer with impartial advice on their complaint and otherwise assist them in following the complaint procedure.

(4) A seafarer on a ship may lodge with the Maritime Administrator a complaint alleging a breach of the requirements of the MLC, and the Maritime Administrator must treat the source of any such complaint as confidential.

(5) The owner and master of a ship must ensure that a seafarer is not subjected to any detriment on the grounds that the seafarer has lodged a complaint, whether through an on-board procedure or to the Maritime Administrator, alleging a breach of the requirements of the MLC.

Documentation and complaint procedure requirements for MLC ships.

43.(1) An MLC ship of 500 gross tonnage or over and an MLC ship to which Regulation 5.1 of the MLC is applied at the request of the shipowner to the MLC State whose flag the ship flies must comply with the following requirements of the Maritime Labour Convention—

- (a) Standard A5.1.1 paragraph 2 (requirement to have copy of MLC on board);
- (b) Regulation 5.1.3 paragraphs 3 and 4 and Standard A5.1.3 paragraph 12 (Maritime Labour Convention Certificate and Declaration of Maritime Labour Compliance to be carried on board ship);
- (c) Regulation 5.1.5 and Standard A5.1.5 (On-board complaint procedures);
- (d) Regulation 5.2.2 and Standard A5.2.2 (Onshore seafarer complaint-handling procedures).

PART VIA

1995-13 Gibraltar Merchant Shipping (Safety, etc.)

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Subject matter of Part VIA.

43A.(1) This Part lays down rules to ensure that the Administration effectively discharges Gibraltar's obligations with respect to the implementation of the relevant parts of the Maritime Labour Convention, 2006.

- (2) This Part is without prejudice to—
- (a) Directive 2009/13/EC and Directive 2009/21/EC; and
 - (b) any higher standards for living and working conditions for seafarers set out therein.

Interpretation of Part.

43B. For the purposes of this Part, the following definitions shall apply in addition to the relevant definitions set out in the Annex to Directive 2009/13/EC—

“Administration” means the Maritime Administrator in the case of Gibraltar, and in other cases the corresponding authority of the MLC State;

“Directive 2009/13/EC” means Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC as the same may be amended from time to time;

“Directive 2009/21/EC” means Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements EC as the same may be amended from time to time;

“relevant parts of MLC 2006” means the parts of the Maritime Labour Convention, 2006 of which the content shall be considered as corresponding to the provisions in the Annex to Directive 2009/13/EC.

Monitoring of compliance.

43C.(1) The Administration shall ensure that effective and appropriate enforcement and monitoring mechanisms, including inspections at the intervals provided for in the MLC, are established in order to ensure that the living and working conditions of seafarers on Gibraltar ships and MLC ships, when in British Gibraltar Territorial waters, meet, and continue to meet, the requirements of the relevant parts of MLC 2006.

(2) With respect to ships of less than 200 gross tonnage not engaged in international voyages, the Administration may, in consultation with the shipowners' and seafarers' organisations concerned, decide to adapt, pursuant to Article II, paragraph 6 of the MLC, monitoring mechanisms, including inspections, to take account of the specific conditions relating to such ships.

(3) When fulfilling its obligations under this regulation, the Administration may, where appropriate, authorise public institutions or other organisations, including those of a Member State, if the latter agrees, which they recognise under the MLC as having sufficient capacity, competence and independence, to carry out inspections.

(4) In all cases under subregulation (3), the Administration shall remain fully responsible for the inspection of the living and working conditions of the seafarers concerned on Gibraltar ships and this provision is without prejudice to the Gibraltar Merchant Shipping (Organisations for Inspection, Survey and Certification of Ships) Regulations 2011.

(5) The Administration shall establish clear objectives and standards covering the administration of its inspection systems, as well as adequate overall procedures for their assessment of the extent to which those objectives and standards are being attained.

(6) The Captain of the ship and the shipowner shall ensure that every seafarer on board a ship flying the flag of Gibraltar has access to a copy of the Agreement implemented by Directive 2009/13/EC and such access may be provided electronically.

Personnel in charge of compliance monitoring.

43D.(1) The Administration shall ensure that personnel, including staff from institutions or other recognised organisations authorised to carry out inspections in accordance with regulation 43C(3) of the MLC and in charge of verifying the proper implementation of the relevant parts of the MLC, have the training, competence, terms of reference, full legal authority, status and independence necessary or desirable-

- (a) to enable them to carry out that verification; and
- (b) to ensure compliance with the relevant parts of MLC, 2006.

(2) A person who is authorised to undertake inspections pursuant to this Part may exercise the powers of detention specified in Part VII (Compliance and enforcement) when exercising a function or duty under this Part.

(3) All authorisations granted under this Part with respect to inspections shall, as a minimum, empower the certifying authority to require the rectification of deficiencies that it

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identifies in seafarers' living and working conditions, and to carry out inspections in that regard at the request of a port State.

- (4) The Administration shall establish-
- (a) a system to ensure the adequacy of work performed by recognised organisations, which includes information on all applicable laws of Gibraltar and Administrative Instructions and relevant international instruments; and
 - (b) procedures for communication with and oversight of such organisations.
- (5) The Administration shall-
- (a) ensure that the International Labour Office is provided with a current list of any recognised organisations authorised to act on its behalf; and
 - (b) keep this list up to date.

(6) The list referred to in subregulation (5) shall specify the functions that the recognised organisations have been authorised to carry out.

On-board complaint procedures, handling of complaints and corrective measures.

43E.(1) The Administration shall ensure that an appropriate on-board complaint procedure is in place in accordance with these Regulations.

- (2) Where the Administration –
- (a) receives a complaint which it does not consider manifestly unfounded; or
 - (b) obtains evidence that a Gibraltar ship or an MLC ship
 - (i) does not conform to the requirements of the relevant parts of the MLC 2006; or
 - (ii) there are serious deficiencies in its implementing measures,

then, the Administration shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

- (3) Every person dealing with or becoming aware of complaints shall-

- (a) treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' living and working conditions or a violation of laws and regulations; and
- (b) give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

**PART VII
COMPLIANCE AND ENFORCEMENT**

Inspection and detention of Gibraltar, etc. ships.

44.(1) For the purpose of checking compliance with these Regulations or a Maritime Labour Notice of a ship other than an MLC ship, the Maritime Administrator or a person appointed under section 56 of the Merchant Shipping (Safety, etc.) Act, 1993 may at all reasonable times go on board a ship and inspect the ship, its equipment, any article and any document carried on it.

(2) Where the Maritime Administrator or a person appointed under section 56 of the Merchant Shipping (Safety, etc.) Act, 1993 has clear grounds for believing that—

- (a) a ship other than an MLC ship is in contravention of a provision of these Regulations or a Maritime Labour Notice, or of a determination, exemption or approval made or authorisation or permission given by the Maritime Administrator in accordance with these Regulations; or
- (b) a person is working on a ship other than an MLC ship in contravention of a provision of these Regulations or a Maritime Labour Notice, or of a determination, exemption or approval made or authorisation or permission given by the Maritime Administrator in accordance with these Regulations,

that ship is liable to be detained.

Inspection and detention of MLC ships.

45.(1) The Maritime Administrator and a person appointed under section 56 of the Merchant Shipping (Safety, etc.) Act, 1993 may review the Maritime Labour Certificate and Part 1 and Part 2 Declaration of Maritime Labour Compliance of an MLC ship or the interim Maritime Labour Certificate of an MLC ship.

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(2) Where standard A5.2.1(a) to (c) or (d) of the MLC or a Maritime Labour Notice applies to an MLC ship, the Maritime Administrator and a person appointed under section 56 of the Merchant Shipping (Safety, etc.) Act, 1993 may carry out a more detailed inspection of the ship to ascertain the working and living conditions on board the ship.

(3) Where—

- (a) the Maritime Administrator believes that the working and living conditions on board an MLC ship are defective; or
- (b) the working and living conditions on board a ship have been alleged to be defective;

and that defect could constitute a clear hazard to the safety, health or security of seafarers or a serious breach of the requirements of the MLC or a Maritime Labour Notice, the Maritime Administrator and a person appointed under section 56 of the Merchant Shipping (Safety, etc.) Act, 1993 may carry out a more detailed inspection of the ship to ascertain the working and living conditions on board the ship.

(4) Where the Maritime Administrator or a person appointed under section 56 of the Merchant Shipping (Safety, etc.) Act, 1993 inspects an MLC ship and has clear grounds for believing that—

- (a) the ship does not comply with the requirements of the MLC or a Maritime Labour Notice; and
- (b) the non-compliance represents—
 - (i) a significant danger to the safety, health or security of seafarers, or
 - (ii) a serious or repeated breach of the requirements of the MLC or a Maritime Labour Notice,

the ship is liable to be detained.

Offences and penalties.

46.(1) Any person, other than the Maritime Administrator, is guilty of an offence if that person fails without reasonable cause to comply with a requirement of these Regulations, and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Any person is guilty of an offence if that person fails without reasonable cause to comply with a requirement of a determination, exemption, exception or approval made or authorisation or permission given by the Maritime Administrator in accordance with these Regulations, and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) If a ship to which regulation 33 applies proceeds or attempts to proceed to sea or on a voyage or excursion without a valid Maritime Labour Certificate and Part 1 and Part 2 Declaration of Maritime Labour Compliance or a valid interim Maritime Labour Certificate, the shipowner and the master of the ship is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Any person who—

- (a) intentionally alters a Maritime Labour Certificate or interim Maritime Labour Certificate;
- (b) intentionally makes a false Maritime Labour Certificate or interim Maritime Labour Certificate;
- (c) in connection with any inspection undertaken in accordance with these Regulations knowingly or recklessly furnishes false information;
- (d) with intent to deceive, uses, lends, or allows to be used by another, a Maritime Labour Certificate or interim Maritime Labour Certificate; or
- (e) fails to surrender a Maritime Labour Certificate or interim Maritime Labour Certificate as directed in accordance with regulation 37;
- (f) obstructs the Maritime Administrator or a person appointed under section 56 of the Merchant Shipping (Safety, etc.) Act, 1993 in the exercise of his powers under regulation 44 or 45;

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

(4) In any proceedings for an offence under this regulation, it is a defence for the person charged to prove that all reasonable steps had been taken by that person to ensure compliance with the requirement in question.

Consequential amendment.

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47. In regulation 2 of the Merchant Shipping (Port State Control) Regulations 2011, after paragraph (h) of the definition of “Conventions” insert the following paragraph–

“(i) the Maritime Labour Convention, 2006.”

SCHEDULE 1
MEDICAL CERTIFICATES

Regulation (6)(6)(a)(i).

Applications for and issuing of medical certificates.

1. If—

- (a) an application for a medical certificate is made to an approved medical practitioner;
- (b) a reasonable fee charged by that approved medical practitioner has been paid; and
- (c) the medical practitioner has examined the person to whom the application relates in accordance with the ILO/WHO Guidelines for Conducting Pre-Sea and Periodic Medical Fitness Examinations for Seafarers, as currently in force, and any other applicable international guidelines published by the International Labour Organisation, the International Maritime Organisation and the World Health Organisation, and considers that person to be fit to perform the duties which that person will carry out at sea;

the medical practitioner must issue that person with a medical certificate

2. The Maritime Administrator may—

- (a) having consulted shipowners and seafarers' organisations; and
- (b) having had regard to;

further determine the nature of the medical examination to be conducted in accordance with paragraph 1.

3. If a person is employed as a seafarer, or has been offered employment as a seafarer, at the time an application is made for a medical certificate under paragraph 1, the person's employer must ensure that the application is made and processed at no cost to the person to whom it relates.

Review of medical practitioner's decision.

4. A person who has been refused a medical certificate or who has had a restriction imposed on such a certificate and who—

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- (a) has applied to the Maritime Administrator, within one month of that refusal or imposition of a restriction, for review of that decision;
- (b) has included in that application the name of the medical practitioner who refused the certificate or imposed the restriction;
- (c) has consented to the disclosure by that medical practitioner of the information on which that refusal or imposition of a restriction was based;

may have the matter reviewed by an independent medical practitioner appointed by the Maritime Administrator.

5. An independent medical practitioner appointed by the Maritime Administrator in accordance with paragraph 4 must—

- (a) examine the person to whom the application relates in accordance with the ILO/WHO Guidelines for Conducting Pre-Sea and Periodic Medical Fitness Examinations for Seafarers, as currently in force, and any other applicable international guidelines published by the International Labour Organisation, the International Maritime Organisation and the World Health Organisation; and
- (b) if the medical practitioner, exercising full professional independence, considers that person to be fit to perform the duties which that person will carry out at sea, must issue that person with a medical certificate, and include in that certificate any restrictions or conditions appropriate to that person's medical condition and the duties which that person is to carry out at sea.

Interpretation.

6. In this Schedule—

“approved medical practitioner” means—

- (a) a medical practitioner entitled to practise in Gibraltar, and approved for the purpose of issuing medical certificates by the Maritime Administrator;
- (b) a medical practitioner approved by the Secretary of State to issue medical fitness certificates to seafarers;
- (c) in the case of a certificate solely concerning eyesight, a person approved by the Maritime Administrator as a person qualified to issue such a certificate.

“medical certificate” means a certificate—

- (a) in a form approved by the Maritime Administrator and containing the information determined by the Maritime Administrator to be required;
- (b) valid—
 - (i) unless it relates only to the certification of colour vision, for a maximum period, starting on the date of the medical examination, of one year in respect of a person under 18 years of age and two years in respect of any other person,
 - (ii) if it relates only to the certificate of colour vision, for a maximum period of six years,
 - (iii) for such shorter period as is specified on the certificate,
- (a) restricted to such capacity of sea service or geographical areas as are recorded on the certificate by the medical practitioner;
- (b) subject to such conditions as are recorded on the certificate by the medical practitioner.

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SCHEDULE 2

Regulation 2(1)

WORKFORCE AGREEMENTS

1. An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied—

- (a) the agreement is in writing;
- (b) it has effect for a specified period not exceeding five years;
- (c) it applies either—
 - (i) to all of the relevant members of the workforce, or
 - (ii) to all of the relevant members of the workforce who belong to a particular group;
- (d) the agreement is signed—
 - (i) in the case of an agreement of the kind referred to in sub-paragraph (c)(i), by the representatives of the workforce, and in the case of an agreement of the kind referred to in sub-paragraph (c)(ii), by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature); or
 - (ii) if the employer employed 20 or fewer individuals on the date referred to in sub-paragraph (d)(i) above, either by the appropriate representatives in accordance with that sub-paragraph or by the majority of the individuals employed by him; and
 - (iii) before the agreement was made available for signature, the employer provided all the employees to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it in full.

2. For the purposes of this Schedule—

“a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“relevant members of the workforce” are all of the employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are employees duly elected to represent the relevant members of the workforce, “representatives of the group” are employees duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfied the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in paragraph 2 are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of a group are members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no employee who is eligible to be a candidate is unreasonably excluded from standing for election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group;
- (e) the employees entitled to vote may vote for as many candidates as there are representatives to be elected; and
- (f) the election is conducted so as to secure that—
 - (i) so far as reasonably practicable, those voting do so in secret, and
 - (ii) the votes given at the election are fairly and accurately counted.

4. In this Schedule “employee” means an individual who has entered into or works under a contract of employment.