

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

Subsidiary Legislation made under s.118.

Gibraltar Merchant Shipping (Organisations for Inspection, Survey and Certification of Ships) Regulations 2011

LN.2011/158

	<i>Commencement</i>	22.9.2011
Amending enactments	Relevant current provisions	Commencement date
LN. 2015/223	r. 2	31.12.2015
2020/385	Long title, rr. 2(1), 3(4)(a), 6(1)-(2), 7(4), 8(2), 9(2)-(4), Sch.	1.1.2021

Transposing:

Directive 2009/15/EC

Directive 2014/111/EU

Implementing:

Regulation (EC) No 391/2009

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SCHEDULE

**MINIMUM CRITERIA FOR ORGANISATIONS TO OBTAIN OR TO CONTINUE TO
ENJOY COMMUNITY RECOGNITION**

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

**Gibraltar Merchant Shipping (Organisations for
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In exercise of the powers conferred on it by section 118 of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993, and all other enabling powers, the Government has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Organisations for Inspection, Survey and Certification of Ships) Regulations 2011 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

“Administration” means, in the case of Gibraltar, the Maritime Administrator and, in all other cases, where the context so requires, the entity in the relevant flag State that is competent for the matters set out in these Regulations and the EU retained legislation;

“authorisation” means an act whereby an Administration grants an authorisation, or delegates powers, to a recognised organisation;

“cargo ship safety radio certificate” means the certificate introduced by the 1988 Protocol amending SOLAS, adopted by the IMO;

“class certificate” means a document issued by a recognised organisation certifying the structural and mechanical fitness of a ship for a particular use or service in accordance with the rules and procedures laid down and made public by that recognised organisation;

“Directive” means Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administration, as amended from time to time;

“Regulation (EC) No 391/2009” means Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations, as amended from time to time;

“inspections and surveys” means such inspections and surveys that are mandatory under the international conventions;

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“international conventions” means–

- (a) the International Convention for the Safety of Life at Sea of 1 November 1974 (SOLAS 74) with the exception of chapter XI-2 of the Annex thereto;
- (b) the International Convention on Load Lines of 5 April 1966; and
- (c) the International Convention for the Prevention of Pollution from Ships of 20.12.2014 L 366/86 Official Journal of the European Union EN 2 November 1973 (MARPOL),

together with the protocols and amendments thereto, and the related codes of mandatory status in all Member States, with the exception of paragraphs 16.1, 18.1 and 19 of part 2 of the IMO Instruments Implementation Code, and of sections 1.1, 1.3, 3.9.3.1, 3.9.3.2 and 3.9.3.3 of part 2 of the IMO Code for Recognized Organizations, in their up-to-date version;

“location” or “located” refers to the place of the registered office, central administration or principal place of business of an organisation;

“organisation” means a classification society or other legal entity, together with their subsidiaries and any other entities under their control, which jointly or separately, carry out tasks falling under the scope of these Regulations, and for this purpose, control means such rights, contracts or any other means, in law or in fact, which, either separately or in combination confer the possibility of exercising decisive influence on a legal entity or enable that entity to carry out tasks falling under the scope of these Regulations and the EU retained legislation” for “the Directive;

“Paris Memorandum of Understanding” means an administrative agreement (commonly known as the “Paris MoU”) concluded in 1982 to develop a harmonised system for the inspection of foreign ships under which each maritime administration has to inspect at least 25% of foreign ships visiting their ports;

“port State control administration” means an Administration that takes the responsibility, while a foreign flag ship is in its port waters, for the enforcement of international standards for ships’ safety, pollution prevention and shipboard living and working conditions, in pursuance of Directive 2009/16/EC on port State control as amended from time to time and the Paris Memorandum of Understanding (Paris MoU);

“recognised organisation” means an organisation recognised in accordance with these Regulations and the EU retained legislation;

“rules and procedures” means a recognised organisation’s requirements for the design, construction, equipment, maintenance and survey of ships;

“ship” means a ship falling within the scope of the international conventions;

“statutory certificate” means a certificate issued by or on behalf of a flag State in accordance with the international conventions.

(2) Terms and expressions used but not defined in these Regulations shall have the same meaning as they have under the EU retained legislation.

Enforcement of international conventions.

3.(1) The Administration shall ensure the appropriate enforcement of the provisions of the international conventions, in particular with regard to the inspection and survey of ships and the issue of statutory certificates and exemption certificates as provided for by the international conventions.

(2) The Administration may, for the purposes of subregulation (1), with regard to the ships flying the flag of Gibraltar—

- (a) authorise organisations to undertake fully or in part inspections and surveys related to statutory certificates including those for the assessment of compliance with regulation 10, and if appropriate, to issue or renew the related certificates; or
- (b) rely upon organisations to undertake fully or in part the inspections and surveys referred to in paragraph (a).

(3) The Administration shall not entrust the duties mentioned in subregulation (2) to any organisation unless that organisation is a recognised organisation.

(4) Notwithstanding subregulation (3), the duties mentioned in subregulation (2), may, for the cargo ship safety radio certificate, be entrusted to a private body—

- (a) recognised by the Administration of the United Kingdom; and
- (b) having sufficient expertise and qualified personnel to carry out specified safety assessment work on radio-communication on its behalf.

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- (5) For the purposes of this regulation, the Administration shall—
- (a) act in accordance with the Schedule and the Appendix to IMO Resolution A.847(20); and
 - (b) in all cases, approve the first issue of the exemption certificates.
- (6) This regulation does not apply to the certification of specific items of marine equipment.

Monitoring of organisations.

4. Every recognised organisation acting on behalf of the Administration shall be closely monitored by the Administration and the outcome of such monitoring shall be reflected in the biennial report referred to in regulation 9.

Refusal to authorise any organisation.

5.(1) Without prejudice to subregulation (2), and subject to regulations 6, 7 and 9, the Administration shall not, in principle, refuse to authorise any of the recognised organisations to carry out duties referred to in regulation 3(2).

(2) The Administration may restrict the number of recognised authorisations in accordance with its needs but shall only do so where its decision is based on objective and transparent grounds.

Reciprocal treatment for recognised organisations.

6.(1) The Administration may, in order to accept that a recognised organisation located outside Gibraltar or in the United Kingdom (“third State”) is to carry out the duties referred to in regulation 3 or part of such duties, request the third State in question to grant reciprocal treatment for those recognised organisations which are located in Gibraltar or in the United Kingdom.

(2) A request by the Administration under subregulation (1) need not be made if the IMO itself requests the third State where a recognised organisation is located to grant reciprocal treatment for those recognised organisations which are located in Gibraltar or in the United Kingdom.

Working relationship between the Administration and organisations.

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7.(1) The Administration shall, for the purpose of regulation 3(2), establish a working relationship between itself and the organisations acting on its behalf.

(2) The working relationship referred to in subregulation (1) shall be regulated by a formalised written and non-discriminatory agreement or equivalent legal arrangements setting out the specific duties and functions assumed by the organisations and including at least–

- (a) the provisions set out in Appendix II of IMO Resolution A.739(18) on guidelines for the authorisation of organisations acting on behalf of the Administration, while drawing inspiration from the Annex, Appendixes and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on model agreement for the authorisation of recognised organisations acting on behalf of the Administration;
- (b) the following provisions concerning financial liability–
 - (i) if liability arising out of any incident is finally and definitely imposed on the Administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property or personal injury or death, which is proved in that court of law to have been caused by a willful act or omission or gross negligence of the recognised organisation, its bodies, employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said loss, damage, injury or death is, as decided by that court, caused by the recognised organisation;
 - (ii) if liability arising out of any incident is finally and definitely imposed on the Administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for personal injury or death, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation to the extent that the said personal injury or death is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to euro 4 million;

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(iii) if liability arising out of any incident is finally and definitely imposed on the Administration by a court of law or as part of the settlement of a dispute through arbitration procedures, together with a requirement to compensate the injured parties for loss or damage to property, which is proved in that court of law to have been caused by any negligent or reckless act or omission of the recognised organisation, its employees, agents or others who act on behalf of the recognised organisation, the Administration shall be entitled to financial compensation from the recognised organisation, to the extent that the said loss or damage is, as decided by that court, caused by the recognised organisation; the Member States may limit the maximum amount payable by the recognised organisation, which must, however, be at least equal to euro 2 million;

(c) provisions for a periodical audit by the Administration or by an impartial external body appointed by the Administration into the duties the organisations are undertaking on its behalf, as referred to in regulation 9;

(d) the possibility for random and detailed inspections of ships;

(e) provisions for reporting essential information about their classed fleet, changes, suspensions and withdrawals of class.

(3) The agreement or the equivalent legal arrangement may set the requirement that the recognised organisation has a local representation in Gibraltar which must be registered as a company under the Companies Act.

(4) The Minister shall ensure that precise information on the working relationship established in accordance with this regulation is transmitted to the IMO.

Suspension or withdrawal of authorisation.

8.(1) Notwithstanding the minimum criteria specified in the Schedule, where the Administration considers that a recognised organisation can no longer be authorised to carry out on its behalf the duties referred to in regulation 3, it may suspend or withdraw such authorisation.

(2) Where the Administration takes a decision suspending or withdrawing the authorisation of a recognised organisation under subregulation (1), it shall immediately inform the Minister of its decision and the Minister shall ensure that the decision, together with the grounds on which it is based, is transmitted without delay to the IMO.

Reporting and assessment of organisations.

9.(1) The Administration shall assess, at least on a biennial basis, that the recognised organisations which are authorised on its behalf to carry out duties under regulation 3 have been carrying them out to its satisfaction and shall immediately inform the Minister of its assessments.

(2) The Minister shall ensure that a report of the results of the assessments referred to in subregulation (1) is transmitted to the IMO by 31 March of each year following the year for which compliance with the duties has been assessed.

(3) The Administration shall, in conjunction with the IMO, and in accordance with the procedures set out in the EU retained legislation, assess all the recognised organisations authorised by the Administration on a regular basis and at least every two years in order to verify that such organisations meet the obligations under the EU retained legislation and fulfil the minimum criteria specified in the Schedule.

(4) Where the Administration discovers, during the exercise of its inspection rights and obligations as a port State control administration—

- (a) the issue of valid statutory certificates by a recognised organisation acting on behalf of a flag State to a ship which does not fulfil the relevant requirements of the international conventions; or
- (b) any failure of a ship carrying a valid class certificate and relating to items covered by that certificate,

and the ship represents—

- (i) a serious threat to safety and the environment; or
- (ii) shows evidence of particularly negligent behaviour of the recognised organisations,

the Administration shall produce a report and forward it to the Minister who shall ensure that the report is transmitted to the IMO and the flag State concerned.

Standards for ship's construction and maintenance.

10.(1) The Administration shall ensure that ships flying the flag of Gibraltar are designed, constructed, equipped and maintained in accordance with the rules and procedures relating to

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hull, machinery and electrical installation and control installation requirements of a recognised organisation.

- (2) The Administration must—
- (a) cooperate with the recognised organisation which it authorises in the development of the rules and procedures of that organisation; and
 - (b) confer with the recognised organisation with a view to achieving consistent interpretation of the international conventions.

Repeal.

11. The Gibraltar Merchant Shipping (Organisation for Inspections, Survey and Certification of Ships) Regulations 2002 are repealed.

Saving and transitional provisions.

12.(1) In this regulation a reference to the “repealed Regulations” shall be construed as a reference to the Regulations repealed by regulation 11.

(2) Any proceedings which have been instituted under the repealed Regulations (including any appeal) which have not been concluded at the time of the coming into operation of these Regulations shall be continued as though the repealed Regulations had not been repealed.

(3) Where proceedings for an offence committed under the repealed Regulations have not been commenced at the commencement of these Regulations—

- (a) if there is an equivalent offence under these Regulations, proceedings must be brought under these Regulations;
- (b) if there is no equivalent offence, proceedings cannot be brought.

(4) Any order, instruction direction, exemption, notice, permit, complaint or other non-legislative instrument made or issued by any person or body under the repealed Regulations which could be made or issued by an equivalent person or body under these Regulations continues to have effect as if made or issued by that person or body under these Regulations until it expires, it is varied or revoked under these Regulations.

SCHEDULE

Regulations 3(5), 8(1) and 9(3)

**MINIMUM CRITERIA FOR ORGANISATIONS TO OBTAIN OR TO CONTINUE
TO ENJOY COMMUNITY RECOGNITION**

**PART A
GENERAL MINIMUM CRITERIA**

1. A recognised organisation must have legal personality in the State of its location. Its accounts shall be certified by independent auditors.
2. The recognised organisation must be able to document extensive experience in assessing the design and construction of merchant ships.
3. The recognised organisation must be equipped at all times with significant managerial, technical, support and research staff commensurate with the size of the fleet in its class, its composition and the organisation's involvement in the construction and conversion of ships. The recognised organisation must be capable of assigning to every place of work, when and as needed, means and staff commensurate with the tasks to be carried out in accordance with general minimum criteria under paragraphs 6 and 7 and with the specific minimum criteria under part B.
4. The recognised organisation must have and apply a set of own comprehensive rules and procedures, or the demonstrated ability thereto, for the design, construction and periodic survey of merchant ships, having the quality of internationally recognised standards. They must be published and continually upgraded and improved through research and development programmes.
5. The recognised organisation must have its register of ships published on an annual basis or maintained in an electronic database accessible to the public.
6. The recognised organisation must not be controlled by shipowners or shipbuilders, or by others engaged commercially in the manufacture, equipping, repair or operation of ships. The recognised organisation is not substantially dependent on a single commercial enterprise for its revenue. The recognised organisation does not carry out class or statutory work if it is identical to or has business, personal or family links to the shipowner or operator. This incompatibility shall also apply to surveyors employed by the recognised organisation.

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7. The recognised organisation must operate in accordance with the provisions set out in the Annex to IMO Resolution A.789(19) on specifications on the survey and certification functions of recognised organisations acting on behalf of the administration, in so far as they cover matters falling within the scope of the EU Regulation.

PART B
SPECIFIC MINIMUM CRITERIA

1. The recognised organisation must provide worldwide coverage by its exclusive surveyors or, in exceptional and duly justified cases, through exclusive surveyors of other recognised organisations.
2. The recognised organisation must be governed by a code of ethics.
3. The recognised organisation must be managed and administered in such a way as to ensure the confidentiality of information required by the administration.
4. The recognised organisation must provide relevant information to the administration and to interested parties.
5. The recognised organisation, its surveyors and its technical staff shall carry out their work without in any way harming the intellectual property rights of shipyards, equipment suppliers, and shipowners, including patents, licences, know-how, or any other kind of knowledge whose use is legally protected at international, European Union or national level; under no circumstances, and without prejudice to the assessment powers of the Administration and in particular under Article 9 of the EU Regulation, may either the recognised organisation or the surveyors and technical staff, whom it employs, pass on or divulge commercially relevant data obtained in the course of their work of inspecting, checking, and monitoring ships under construction or repair.
6. The recognised organisation's management must define and document its policy and objectives for, and commitment to, quality and must ensure that this policy is understood, implemented and maintained at all levels in the recognised organisation. The recognised organisation's policy must refer to safety and pollution prevention performance targets and indicators.
7. The recognised organisation must ensure that—
 - (a) its rules and procedures are established and maintained in a systematic manner;

- (b) its rules and procedures are complied with and an internal system to measure the quality of service in relation to these rules and procedures is put in place;
- (c) the requirements of the statutory work for which the recognised organisation is authorised are satisfied and an internal system to measure the quality of service in relation to compliance with the international conventions is put in place;
- (d) the responsibilities, powers and interrelation of personnel whose work affects the quality of the recognised organisation's services are defined and documented;
- (e) all work is carried out under controlled conditions;
- (f) a supervisory system is in place which monitors the actions and work carried out by surveyors and technical and administrative staff employed by the recognised organisation;
- (g) surveyors have an extensive knowledge of the particular type of ship on which they carry out their work as relevant to the particular survey to be carried out and of the relevant applicable requirements;
- (h) a system for qualification of surveyors and continuous updating of their knowledge is implemented;
- (i) records are maintained, demonstrating achievement of the required standards in the items covered by the services performed, as well as the effective operation of the quality system;
- (j) a comprehensive system of planned and documented internal audits of the quality related activities is maintained in all locations;
- (k) the statutory surveys and inspections required by the harmonised system of survey and certification for which the recognised organisation is authorised are carried out in accordance with the provision set out in the Annex and Appendix to IMO Resolution A.948(23) on survey guidelines under the harmonised system of survey and certification;
- (l) clear and direct lines of responsibility and control are established between the central and the regional offices of the recognised organisation and between the recognised organisations and their surveyors.

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8. The recognised organisation must have developed, implemented and must maintain an effective internal quality system based on appropriate parts of internationally recognised quality standards and in compliance with EN ISO/IEC 17020:2004 (inspection bodies) and with EN ISO 9001:2000 (quality management systems, requirements), as interpreted and certified by the quality assessment and certification entity referred to in Article 11(1) of the EU Regulation.
9. The rules and procedures of the recognised organisation must be implemented in such a way that the organisation remains in a position to derive from its own direct knowledge and judgment a reliable and objective declaration on the safety of the ships concerned by means of class certificates on the basis of which statutory certificates can be issued.
10. The recognised organisation must have the necessary means of assessing, through the use of qualified professional staff and pursuant to the provisions set out in the Annex to IMO Resolution A.913(22) on guidelines on implementation of the International Safety Management (ISM) Code by administrations, the application and maintenance of the safety management system, both shore-based and on board ships, intended to be covered in the certification.
11. The recognised organisation must allow participation in the development of its rules and procedures by representatives of the administration and other parties concerned.