

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5350 GIBRALTAR Monday 12th October 2026

B. 29/26

CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS ACT 2026

ARRANGEMENT OF CLAUSES

Clause

PART 1 PRELIMINARY

1. Title.
2. Commencement.
3. Interpretation.
4. Purpose of the Act.
5. Scope.
6. Additional measures.
7. Duties of Maritime Administrator, Gibraltar Port Authority and Captain of the Port.
8. Certifying Authorities.

PART 2 SEDIMENT RECEPTION FACILITIES

9. Licence for sediment reception facilities.
10. Notification to IMO.

PART 3 DISCHARGE OF BALLAST WATER AND SEDIMENTS

11. Requirement to conduct ballast water management.
12. Exceptions.
13. Exemptions.
14. Equivalents.

PART 4 BALLAST WATER MANAGEMENT

15. Ballast water management plan.
16. Ballast water record book.
17. Location of ballast water exchange.
18. Ballast water exchange standard.
19. Ballast water and sediment treatment standard.

PART 5 EQUIPMENT

20. Designation of nominated bodies.
21. Approval of ballast water management systems.
22. Application for grant of type approval.
23. Grant of type approval: obligations of nominated bodies.
24. Duration, suspension and withdrawal of type approval.
25. Ballast water management systems which use active substances.
26. Prototype ballast water management systems.

PART 6 SURVEY AND CERTIFICATION OF SHIPS

27. Prohibition on Gibraltar ships proceeding to sea without an IBWM Certificate.
28. Prohibition on non-Gibraltar ships proceeding to sea without an IBWM Certificate or appropriate documentation.
29. Survey of Gibraltar ships.
30. Issue of IBWM certificate by a Certifying Authority in respect of Gibraltar ships.
31. Regulations for fees.
32. Endorsement of IBWM certificates by a Certifying Authority in respect of Gibraltar ships.
33. Duration and validity of an IBWM Certificate.
34. Extension of periods of validity of IBWM Certificates by a Certifying Authority.
35. Extension of periods of validity of Certificates by a surveyor.
36. Responsibilities of the owner and the master.
37. Additional surveys of Gibraltar ships.
38. Issue or endorsement of IBWM Certificates by another Contracting State.
39. Issue or endorsement of IBWM Certificates in respect of non-Gibraltar ships.
40. Procedure to be adopted when a ship is deficient.
41. Form of the IBWM Certificate.
42. Arbitration.
43. Cancellation of IBWM Certificates.
44. Surrender of an IBWM Certificate.
45. Prohibited acts with IBWM Certificates.
46. IBWM Certificate kept on board ship.
47. Transfer of flag.

PART 7 ENFORCEMENT

48. Inspection of ships.
49. Prohibition on discharge following sampling.
50. General provision on detention.
51. Relationship with port State control.
52. Detention of the ship by the Gibraltar Port Authority for offence.
53. Investigation of alleged contraventions by Gibraltar ships and non-Gibraltar ships.

- 54. Right of appeal.
- 55. Compensation.
- 56. Offences and penalties.
- 57. Defences.
- 58. Jurisdiction for criminal offences.

PART 8 MISCELLANEOUS

- 59. Amendments to listed enactments.
- 60. Enforcement and application of fines.
- 61. Offences by bodies corporate.
- 62. Service of documents and notices.
- 63. Service of documents on foreign companies.
- 64. Power to make regulations.
- 65. Communication of information.
- 66. Saving and transitional provision.

SCHEDULE

THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5350 GIBRALTAR Monday 12th October 2026

B. 29/26

BILL

FOR

AN ACT to make provision for the implementation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, adopted in London on the 13th February 2004, and for other connected purposes.

ENACTED by the Legislature of Gibraltar.

Title.

1. This Act may be cited as the Control and Management of Ships' Ballast Water and Sediments Act 2026.

Commencement.

2. This Act comes into operation on the day of publication.

PART 1 PRELIMINARY

Interpretation.

3. In this Act-

“active substance” means a substance or organism, including a virus or a fungus, that has a general or specific action on or against harmful aquatic organisms and pathogens;

“additional survey” means a survey carried out under section 37;

“anniversary date” means the day and the month of each year corresponding to the date of expiry of the relevant IBWM Certificate;

“annual survey” means a survey by a surveyor to verify that the structure, equipment, systems, fittings, arrangements, material and processes associated with a ship's ballast water management plan-

- (a) have been maintained to conform with this Act so as to ensure that the ship, in all respects, remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources; and
- (b) remain satisfactory for the service for which the ship is intended;

“ballast water” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;

“ballast water capacity” means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging ballast water, including any multi-use tank, space or compartment designed to allow carriage of ballast water;

“ballast water exchange” means the process involving-

- (a) the discharge of ballast water from a tank on a ship; and
- (b) the uptake of water into the tank simultaneously with, or immediately after, the discharge;

“ballast water management” means mechanical, physical, chemical or biological processes, used either singly or in combination, to remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediments;

“ballast water management plan” has the meaning given in section 15;

“ballast water management system” means any system which processes ballast water such that it meets or exceeds the discharge standards in section 19 -

- (a) and includes-
 - (i) ballast water treatment equipment;
 - (ii) its associated control and monitoring equipment;
 - (iii) piping arrangements as specified by the manufacturer; and
 - (iv) its sampling facilities;
- (b) but does not include a ship’s ballast water fittings that would be required if a ballast water management system is not fitted;

“ballast water record book” has the meaning given in section 16;

“ballast water tank” means any tank, space or compartment on board a ship used for carrying ballast water;

“BGTW” means the area of sea, the seabed 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;

“body corporate” means a legal person or any legal entity in possession of that status under any law of Gibraltar, other than the Government, a public authority in the exercise of public functions or a public international organisation;

“BWMS Code” means the Code for Approval of Ballast Water Management Systems under the Convention;

“Captain of the Port” means the person appointed 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” has the meaning given in section 8;

“changes the ship type” refers to a ship conversion that-

- (a) substantially alters the dimensions or carrying capacity of the ship; or
- (b) changes the type of cargo carried as a result of a major alteration of the ship;

“commissioning test” means a test conducted to validate the installation of a ballast water management system which meets the requirements of the Convention;

“Contracting State” means-

- (a) a State that has ratified the Convention and for the purposes of this Act, Gibraltar is deemed to be a Contracting State; and
- (b) where the context so requires, it includes the competent authorities in the Contracting State that are recognised by the Government of the State as the appropriate authority for dealing with any matters under this Act;

“Convention” means the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, adopted in London on the 13th February 2004 and includes-

- (a) the Annexes and Appendices;
- (b) any amendments or protocols as may from time to time supplement, amend or revise the Convention;
- (c) the Guidelines;

- (d) all other instruments, standards and specifications of a mandatory nature adopted by the International Maritime Organization, or any other organisation with any responsibility for these, and this includes those that have been adopted by the applicable Resolutions of the IMO Marine Environment Protection Committee;
- (e) the BWMS Code; and
- (f) any other resolutions, guidance, recommendations (however described), or guidelines of international bodies that are involved with the adoption, monitoring or promotion of the obligations or standards under the Convention, including but not limited to the IMO;

“constructed” in respect of a ship, means a stage of construction where-

- (a) the keel is laid; or
- (b) construction identifiable with the ship begins; and
- (c) assembly of the ship has commenced comprising at least 50 tonnes or 1 percent of the estimated mass of all structural material, whichever is less; or
- (d) the ship undergoes a major conversion;

“discharge” in relation to ballast water and sediments, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;

“electronic record book” means a device or system used to record information electronically;

“endorsement” in relation to an IBWM Certificate, means an endorsement in the form specified in the Convention, and “endorse” and “endorsed” are to be construed accordingly;

“exchange” means a process involving the replacement of water in a ballast water tank using the sequential method or pump-through method which complies with sections 17 and 18;

“flag State” in relation to a ship, means the State whose flag the ship is entitled to fly;

“foreign State” means a State other than Gibraltar;

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

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

“Guidelines” means-

- (a) the Guidelines relating to the uniform implementation of the Convention, adopted by the International Maritime Organization, or any other organisation with any responsibility for the Guidelines, and this includes those that have been adopted by the applicable Resolutions of the IMO Marine Environment Protection Committee; and
- (b) where there is reference to “the Guidelines” in any section of this Act, it refers specifically to the Guideline that is relevant to that section;

“gross tonnage” means the gross tonnage calculated in accordance with regulation 13 of the Gibraltar Merchant Shipping (Tonnage Measurement of Ships) Regulations 2017;

“harmful aquatic organisms and pathogens” means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of these areas;

“high seas” means all the waters beyond-

- (a) BGTW; and
- (b) the internal waters, archipelagic waters, territorial sea and the exclusive economic zone of any foreign State;

“IBWM Certificate” means an International Ballast Water Management Certificate, containing the information specified in Appendix 1 of the Annex to the Convention and issued-

- (a) by a Certifying Authority in accordance with Part 6 of this Act; or
- (b) by a Contracting State in accordance with Regulation E-2 of the Convention;

“IMO” means the International Maritime Organization;

“in writing” includes the provision of a written communication by electronic mail, facsimile or similar means which are capable of producing a document containing the text of any communication;

“initial survey” means a survey by a surveyor completed before a ship is put in service or before an IBWM Certificate is first issued in respect of that ship to verify that-

- (a) there is on board the ship an approved ballast water management plan; and
- (b) the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship’s ballast water management plan fully comply with the requirements of Part 3 and Part 4;

“intermediate survey” means a survey by a surveyor to verify that the equipment, associated systems and processes for a ship’s ballast water management-

- (a) fully comply with the requirements of Part 3 and Part 4; and
- (b) are in good working order;

“major conversion” means a conversion of a ship which-

- (a) changes its ballast water capacity by 15 per cent or greater;
- (b) changes the ship type;
- (c) in the opinion of the Maritime Administrator, is projected to prolong its life by 10 years or more; or
- (d) results in modifications to its ballast water management system other than the replacement in kind of components,

but does not include where there is a conversion of a ship to achieve the standard specified in section 18.

“Maritime Administrator” means the person appointed under section 3(1) of the Gibraltar Merchant Shipping (Registration) Act, 1993, and section 3(1) of the Gibraltar Merchant Shipping (Safety, Etc.) Act, 1993;

“master” means the person having the command or charge of a ship;

“Minister” means the Minister with responsibility for the Port and maritime services;

“nautical mile” means an international nautical mile of 1,852 metres;

“nominated body” means a person or body designated as a nominated body under section 20;

“offshore terminal” means an installation situated away from the shore, where bulk, fluid or gas cargo, or more than one of these, is-

- (a) transferred between ships;
- (b) loaded onto a ship after having been transported from the shoreline; or
- (c) unloaded from a ship for transporting to the shoreline;

“port of Gibraltar” has the meaning given to it in the Port Act;

“Port State Control Officer” has the same meaning as under the Merchant Shipping (Port State Control) Regulations 2011;

“pump-through method” means a process by which replacement ballast water is pumped into a ballast water tank while ballast water is simultaneously discharged from the tank;

“reception facility” means a facility that is capable of safely disposing of ballast water or sediments in a manner that does not impair or damage the environment, human health, property or resources of Gibraltar or foreign States;

“renewal survey” means a survey by a surveyor to verify that-

- (a) there is on board a ship an approved ballast water management plan; and
- (b) the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship's ballast water management plan fully comply with the requirements of Part 3 and Part 4;

“resources” means any aquatic resources which may be commercially exploited;

“sediment” means matter settled out of ballast water within a ship;

“sequential method” means a process by which a ballast water tank is first emptied and then re-filled with replacement ballast water;

“ship” means a vessel of any type whatsoever operating in the aquatic environment and includes-

- (a) submersibles;
- (b) floating craft;
- (c) floating platforms;
- (d) floating storage units;
- (e) floating production storage and offloading units;

“survey” means a survey carried out by a surveyor;

“surveyor” means a person appointed by a Certifying Authority;

“treatment” means mechanical, physical, chemical or biological processes or methods, used singly or in combination, to ensure that ballast water and sediments discharged from a ship meet the standard in section 19 and under the Convention;

“unduly detained” and “unduly delayed” have the same meaning as under the Convention; and

“UNCLOS” means the United Nations Convention on the Law of the Sea, signed at Montego Bay on the 10th December 1982.

(2) In the application of this Act to a floating platform, a reference to the master of a ship includes a reference to the manager of that platform.

(3) Any direction given under this Act must be in writing.

(4) Any power under this Act to give a direction includes power to vary or cancel the direction by a subsequent direction.

(5) In this Act, words and expressions that are not defined must-

(a) if defined in the Convention, have the meaning given in the Convention; and

(b) to the fullest extent possible, be construed so as to give effect to the Convention.

Purpose of the Act.

4.(1) The purpose of this Act is to give effect in Gibraltar to the provisions of the Convention.

(2) Save as otherwise provided in this Act, the provisions of this Act are in addition to, and not in substitution for any other provision in Gibraltar law.

Scope.

5.(1) Subject to subsection (3), this Act applies to-

(a) a Gibraltar ship wherever it may be;

(b) any other ship while it is in BGTW.

(2) For the purposes of subsection (1), a ship that is in dry dock in Gibraltar is taken to be in BGTW.

(3) This Act does not apply to-

(a) a ship which is not designed or constructed to carry ballast water;

(b) a Gibraltar ship which operates only in BGTW, where the Maritime Administrator has determined that the criteria described in subsection (4) are satisfied;

(c) a ship which operates solely in the area specified in paragraph (b) where the Maritime Administrator has agreed that the ship is not subject to any requirements

under the Convention, and where the Maritime Administrator has determined that the criteria in subsection (4) are satisfied;

- (d) a Gibraltar ship which operates solely in the waters of another Contracting State where that State has agreed that the ship is not subject to any requirements which implement the Convention in that State;
- (e) a Gibraltar ship which operates solely in accordance with paragraph (d) and on the high seas, where the Maritime Administrator has determined that the criteria described in subsection (4) are satisfied;
- (f) a warship, naval auxiliary or other ship owned or operated by a State and used only on government, non-commercial service; or
- (g) a ship which carries permanent ballast water in sealed tanks, which is not subject to discharge.

(4) For the purposes of subsection (3)(b),(c) and (e), the criteria are that the discharge of ballast water from a ship would not impair or damage the environment, human health, property or resources within the areas specified in subsection (3)(b),(c) and (e), or those of adjacent states or other States.

(5) Where the Maritime Administrator does not agree to act in accordance with subsection (3)(c) they must notify the flag State of the ship that the Convention applies to that ship.

(6) The provisions of this Act must not be applied in a manner which provides more favourable treatment to ships from foreign States.

Additional measures.

6.(1) Where the Captain of the Port or the Maritime Administrator determines that additional measures to those contained in Parts 3 and 4 of this Act are necessary to prevent, reduce or eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments, the Government may by regulations-

- (a) make provision for the implementation of any additional measures;
- (b) amend this Act for the purpose of implementing any additional measures;

(2) Regulations under subsection (1)(a) or (1)(b) may (among other things) be exercised by modifying any provision made by or under an enactment, including in this Act.

(3) Regulations made under subsection (1)(a) or (1)(b) may contain such consequential, supplementary, incidental and transitional provisions as the Government may consider necessary or expedient.

(4) The additional measures referred to in subsection (1) may require a ship to meet a specified standard or requirement, but must not-

- (a) compromise the safety and security of any ship;
- (b) under any circumstances, conflict with any international obligation which may apply to a ship.

(5) Prior to making any regulations under subsection (1), the Government must consult with the Captain of the Port, the Maritime Administrator and any adjacent State or other State that may be affected by any additional measures.

(6) If the Government intends to make any regulations under subsection (1)(a) or (1)(b), it must-

- (a) take account of the Guidelines;
- (b) in the form required under the Convention, communicate to the IMO, its intention to make the regulations not less than 6 months, prior to their commencement; and
- (c) to the extent required by UNCLOS, obtain the approval of the IMO.

(7) The period of 6 months referred to in subsection (6)(b) does not apply where the additional measures are for the purposes of an emergency or an epidemic.

(8) At the time of commencing any regulations under subsection (1), the Government must endeavour to make appropriate arrangements, as far as practicable, to reduce any burden on a ship.

(9) The Government may, by a direction issued to the Captain of the Port or the Maritime Administrator, waive the imposition of any standard or requirement in any regulations made under subsection (1) for a period of time, or where specific circumstances may exist, as it deems fit.

(10) The Government may as it deems appropriate, impose any terms and conditions in relation to a direction that is issued under subsection (9).

Duties of Maritime Administrator, Gibraltar Port Authority and Captain of the Port.

7.(1) The-

- (a) Maritime Administrator;
- (b) Gibraltar Port Authority; and
- (c) Captain of the Port,

must each comply with their respective duties and obligations as set out under the provisions of this Act.

(2) The Maritime Administrator may authorise or appoint an employee of the Government to assist them with their duties and obligations under this Act, or act on their behalf in relation to those duties and obligations.

(3) The Captain of the Port may authorise any employee of the Port Department that holds an authorisation in writing from the Captain of the Port to act on their behalf in relation to any duty or obligation under this Act.

(4) The Gibraltar Port Authority may nominate an employee of the Authority, or any employee of any Government department or any other authority to discharge any of the Authority's functions under this Act.

(5) Any arrangements made by the Maritime Administrator, the Captain of the Port or the Gibraltar Port Authority under this section for the discharge of any of their functions by another person, shall not prevent the Maritime Administrator, the Captain of the Port or the Gibraltar Port Authority from exercising those functions.

Certifying Authorities.

8.(1) In this Act, "Certifying Authority" means-

- (a) the Maritime Administrator; or
- (b) any organisation authorised by the Maritime Administrator, that is included in Schedule 3 of the Gibraltar Merchant Shipping (Ship Registration) Regulations 1997.

(2) Subject to subsection (4), authorisation under subsection (1)(b) may be given conditionally or unconditionally.

(3) Without prejudice to the generality of subsection (2), conditions made by the Maritime Administrator may impose limitations on any authorisation relating to-

- (a) individual ships;
- (b) classes of ships;
- (c) the extent of any survey to be carried out by or on behalf of that organisation.

(4) The Maritime Administrator may specify in relation to a specific case or to a class of cases, that for the purpose of this Act a survey, or part of a survey, may only be carried out by the Maritime Administrator and not by any other organisation authorised by the Maritime Administrator.

(5) A Certifying Authority, other than the Maritime Administrator, is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and its property is not to be regarded as property of, or held on behalf of, the Crown.

PART 2

SEDIMENT RECEPTION FACILITIES

Licence for sediment reception facilities.

9.(1) Except under a licence granted under the Port Operations (Registration and Licensing) Act 2005, no person may use a shipyard or facilities within the port of Gibraltar for the purposes of cleaning the ballast water tanks of ships that are subject to the provisions of this Act.

(2) The owner or operator responsible for the sediment reception facilities must ensure at all times that these facilities-

- (a) are designed and operated in accordance with the Guidelines;
- (b) operate without causing undue delay to ships;
- (c) provide for the safe disposal of sediments from ships' ballast water tanks in a manner that does not impair or damage the environment, human health, property or resources of Gibraltar or foreign States.

(3) In this Part-

- (a) "shipyard" means any yard or dry dock (including the precincts) in which ships are constructed, reconstructed, repaired, fitted or finished;
- (b) "facilities" means all buildings, plant and equipment which have been created for the purposes of providing the services referred to under this section.

Notification to IMO.

10. The Gibraltar Port Authority must notify the IMO for transmission to the other Contracting States of all cases where any sediment reception facilities for-

- (a) the repair of ballast water tanks; or
- (b) the cleaning of ballast water tanks,

are believed not to be in accordance with the requirements of the Convention.

PART 3
DISCHARGE OF BALLAST WATER AND SEDIMENTS

Requirement to conduct ballast water management.

11.(1) Subject to section 12, section 13 and section 26 , any ballast water and sediments taken on board a ship must not be discharged from that ship unless they are subject to ballast water management which meets the requirements of subsection (2).

(2) The requirements referred to in subsection (1) are-

- (a) treatment or exchange; or
- (b) treatment where-
 - (i) the ship was constructed on or after 8th September 2017;
 - (ii) the ship had-
 - (aa) an IOPP renewal survey in the period beginning on 8th September 2014 and ending on 7th September 2017; and
 - (bb) an IOPP renewal survey in the period beginning on 8th September 2017 and ending on 7th September 2019;
 - (iii) the ship had an IOPP renewal survey in the period beginning on 8th September 2019 and ending immediately before the coming into force of this Act;
 - (iv) the ship's first IOPP renewal survey was after the coming into force of this Act; or
 - (v) the ship is not subject to an IOPP renewal survey, and the discharge is after 8th September 2024.

(3) In this section "IOPP renewal survey" means the renewal survey for a ship associated with the International Oil Pollution Prevention Certificate in accordance with Annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978.

Exceptions.

12.(1) Section 11 does not apply to-

- (a) the discharge of ballast water or sediments to a reception facility of a type which has been designed taking into account the Guidelines;

- (b) the discharge of ballast water or sediments necessary for the purpose of-
 - (i) ensuring the safety of a ship in an emergency;
 - (ii) saving life at sea; or
 - (iii) avoiding or minimising the discharge of pollution from the ship;
- (c) the accidental discharge of any ballast water or sediments resulting from damage to the ship or its equipment-
 - (i) where all reasonable precautions have been taken before and after the-
 - (aa) occurrence of the damage; or
 - (bb) discovery of the damage or discharge,for the purpose of preventing or minimising the discharge; and
 - (ii) unless the owner, manager, demise charterer or master wilfully or recklessly caused the damage; or
- (d) the discharge of ballast water or sediments, where the same ballast water or sediments are taken on board a ship and subsequently discharged on the high seas; or
- (e) the discharge of ballast water and sediments, where the same ballast water or sediments-
 - (i) are taken on board a ship;
 - (ii) discharged in the same location where they originated; and
 - (iii) are not mixed with any ballast water or sediments from a different location which have not been subject to ballast water management in accordance with section 11;

(2) In subsection (1)(e) (ii), “same location” means in the case of Gibraltar means within one nautical mile of the point of uptake of the ballast water or sediment.

Exemptions.

13.(1) Subject to subsection (2), the Maritime Administrator may exempt discharges of any ballast water or sediments in a specified location, in BGTW, from the requirements of section 11 where the same ballast water or sediments are –

- (a) taken on board the ship in a location specified by the Maritime Administrator; and

- (b) not mixed with any ballast water or sediments from a location which has not been specified by the Maritime Administrator.
- (2) The grant of an exemption under subsection (1) must be based on and reviewed in accordance with the Guidelines, or any approach or procedure which is published and based on the Guidelines.
- (3) Subject to subsection (4), an exemption by the Maritime Administrator is valid-
 - (a) from the date specified in the exemption;
 - (b) for the period specified in the exemption, which must not exceed 5 years.
- (4) An exemption by the Maritime Administrator is valid only if it is given in writing and may be-
 - (a) granted subject to the conditions and limitations as the Maritime Administrator may specify; and
 - (b) varied or cancelled by a notice given in writing by the Maritime Administrator.
- (5) The Maritime Administrator must not grant an exemption under this section which may impair, endanger or damage the environment, human health, property or resources of Gibraltar or of adjacent States or other foreign States.
- (6) The particulars of any exemption granted under subsection (1) must be recorded in the ship's ballast water record book.

Equivalents.

14.(1) A relevant ship may meet the requirements under the Convention through equivalent compliance if this has been approved by the Maritime Administrator and -

- (a) the owner or master of the ship has made an application to the Maritime Administrator for permission for the equivalent compliance;
- (b) a surveyor-
 - (i) is satisfied that the equivalent compliance applied for is at least as effective as that required by the Convention; and
 - (ii) has endorsed the application to the Maritime Administrator to that effect; and
- (c) the equivalent compliance complies with any conditions or limitations set out in the approval.

(2) An approval given by the Maritime Administrator is valid only if it is given in writing and the Maritime Administrator has determined the application taking account of the Guidelines.

(3) An approval under this section may be-

- (a) given subject to any conditions and limitations as the Maritime Administrator may specify; and
- (b) varied or cancelled by notice given in writing by the Maritime Administrator.

(4) In this section-

- (a) “equivalent compliance” means any fitting, material, appliance or apparatus, or other provision made, as an alternative to one that complies with the Convention;
- (b) “overall length” means the length of the hull excluding any bowsprit, boom, bumpkin and pulpit; and

(c) “relevant ship” means-

- (i) a ship engaged primarily in search and rescue operations which is less than 50 metres in overall length and which has a maximum ballast water capacity of 8 cubic metres; or
- (ii) a ship which is a pleasure vessel;

(d) “pleasure vessel” means any vessel which is-

- (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
- (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

- (iii) wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club;

and no payments other than those referred to above are made by or on behalf of the users of the vessel, other than by the owner, and in this definition, “immediate family” means, in relation to an individual, the husband, wife of the individual, and a brother, sister, ancestor or lineal descendant of that individual or of that individual’s husband or wife.

PART 4

BALLAST WATER MANAGEMENT

Ballast water management plan.

15.(1) Every ship must carry on board a ballast water management plan specific to that ship which has been-

- (a) in the case of a Gibraltar ship, approved by a Certifying Authority; or
- (b) in the case of any other ship, approved by that ship’s flag State.

(2) The Certifying Authority must, take into account the Guidelines, when considering whether to approve a ballast water management plan.

(3) The master of a ship must ensure that-

- (a) the officers and crew of the ship are-
 - (i) familiar with their duties under the ballast water management plan; and
 - (ii) familiar with the ballast water management plan, where this is appropriate to their duties; and
- (b) the ballast water management plan relating to the ship is implemented.

(4) The ballast water management plan must include-

- (a) safety procedures for the ship and the crew for the operation of ballast water management;
- (b) a detailed description of the actions to be taken to implement the requirements of this Act or the Convention, including the procedures for the discharge of sediments at sea and to shore;
- (c) the procedures for coordinating ballast water management which involves discharge of ballast water and sediments into the sea with the authorities of the State into whose waters the discharge is to take place;
- (d) details of the officer on board in charge of ensuring that the ballast water management plan is properly implemented; and

- (e) the reporting requirements under section 36(4)(a) and (b), and where the ship is not a Gibraltar ship, the requirements under section 36(4)(a) and (c).

(5) The ballast water management plan must be-

- (a) written in the working language of the ship's crew; and
- (b) translated into English, French or Spanish, in the case of non-Gibraltar ships, where the working language is not one of these languages; and
- (c) translated into English, in the case of Gibraltar ships, if the working language is not English.

Ballast water record book.

16.(1) Every ship must have and maintain on board a ballast water record book that contains the information specified in Appendix II to the Convention.

(2) For the purposes of subsection (1), the ballast water record book may be-

- (a) an electronic record book approved in accordance with this section;
- (b) integrated into another record book or system.

(3) An electronic record book must-

- (a) in the case of a Gibraltar ship, be approved by the Certifying Authority; or
- (b) in the case of any other ship, be approved by the ship's flag State.

(4) An approval given under subsection (3) must take account of the requirements under the Convention.

(5) An approval given under subsection (3)(a) may, on giving reasonable notice, be continued, altered or cancelled.

(6) An approval given under subsection (3)(a), or a continuation, alteration or cancellation under subsection (5) must-

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(7) The requirement that the approval referred to in subsection (3)(a), or a continuation, alteration or cancellation under subsection (5), be in writing is satisfied where the text of the approval, continuation, alteration or cancellation is-

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

(8) The following operations must be fully recorded without delay in the ballast water record book, namely -

- (a) when ballast water is taken on board the ship;
- (b) whenever ballast water is circulated or treated for ballast water management purposes;
- (c) when ballast water is discharged into the sea;
- (d) when ballast water is discharged to a reception facility;
- (e) for accidental or other exceptional uptake or discharges of ballast water; and
- (f) for additional operational procedures and general remarks, including details of ballast water sampling.

(9) In the event of-

- (a) a discharge of ballast water as referred to in section 12;
- (b) a discharge of ballast water which is covered by an exemption granted under section 13; or
- (c) a discharge of ballast water in accordance with section 17(6); or
- (d) an accidental or exceptional discharge of ballast water not permitted under this Act,

an entry must be made in the ballast water record book describing the circumstances of, and the reason for, the discharge.

(10) Each entry in the ballast water record book must be signed by the officer in charge of the operation concerned.

(11) The master of the ship must-

- (a) sign each completed page of the ballast water record book; or

(b) verify a group of electronic entries as soon as reasonably practicable.

(12) The ballast water record book must be-

- (a) written in the working language of the ship's crew;
- (b) translated into English, French or Spanish in the case of a non-Gibraltar ship, where the working language is not one of these languages; and
- (c) translated into English in the case of a Gibraltar ship, where the working language is not English.

(13) Where an entry has been written in the official language of the ship's flag State, as well as the language referred to in subsection (12), the entry made in the official language of the ship's flag State must prevail in case of a dispute or discrepancy.

(14) Subject to subsection (15), the ballast water record book must-

- (a) be kept on board the ship to which it relates;
- (b) be retained on board the ship to which it relates for a period of two years after the last entry has been made; and
- (c) be readily available for inspection at all reasonable times.

(15) In the case of an unmanned ship under tow, the ballast water record book may be kept on the towing ship.

(16) The ballast water record book must be retained by the owner for a period of 3 years after the period in subsection (14)(b) has elapsed.

Location of ballast water exchange.

17.(1) Subject to subsections (5) and (6), ballast water exchange must, where possible, be carried out-

- (a) at least 200 nautical miles from the nearest land; and
- (b) in water at least 200 metres in depth.

(2) Subject to subsections (5) and (6), where it is not possible to carry out ballast water exchange in accordance with subsection (1), ballast water exchange must be carried out-

- (a) as far as possible from the nearest land and in any case not less than 50 nautical miles from the nearest land; and
- (b) in water at least 200 metres in depth.

(3) Subject to subsections (5) and (6), where it is not possible to carry out ballast water exchange in accordance with subsections (1) or (2), ballast water exchange may be carried out in an area designated under subsection (7) in accordance with any conditions imposed under subsection (8) provided that the ballast water exchange takes place-

- (a) as far as possible from the nearest land;
- (b) with the prior written consent of the relevant authorities of other coastal States;
- (c) with the prior consent of the Gibraltar Port Authority.

(4) Ballast water exchange in accordance with subsections (1) to (3) must take into account the Guidelines.

(5) Subsections (1) and (2) do not apply to a ship where compliance with it would require the ship to-

- (a) deviate from its intended voyage; or
- (b) delay its voyage.

(6) Subsections (1) to (3) do not apply where the master of a ship reasonably decides that conducting ballast water exchange in accordance with those subsections would threaten-

- (a) the safety or stability of the ship;
- (b) the crew; or
- (c) the passengers,

because of adverse weather, ship design or stress, equipment failure, or any other extraordinary circumstances.

(7) The Gibraltar Port Authority and the relevant authorities of other coastal areas may designate areas of sea, outside BGTW, in which ships may conduct ballast water exchange, unless in their opinion conducting ballast water exchange in this way would threaten-

- (a) the safety or stability of the ship;
- (b) the crew;
- (c) the passengers; or
- (d) safety of life at sea,

because of adverse weather, ship design or stress, equipment failure, or any other extraordinary circumstances.

(8) A designation under subsection (7)-

- (a) may only be made for areas of sea where the distance from the nearest land or the depth of water does not meet the parameters in subsections (1) and (2);
- (b) must be made in writing and must take into account the Guidelines;
- (c) may be subject to conditions as may be specified in it; and
- (d) may be varied or revoked in writing by the Gibraltar Port Authority and the relevant authorities of the other coastal States.

(9) In this section “from the nearest land” means-

- (a) in the case of Gibraltar, from the baseline from which the territorial sea of Gibraltar is established in accordance with UNCLOS;
- (b) in the case of all other States, from the baseline from which the State’s territorial sea is established, in accordance with international law, except that for the purposes of this section, “from the nearest land” off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in-

latitude 11°00' S, longitude 142°08' E
to a point in latitude 10°35' S, longitude 141°55' E
thence to a point latitude 10°00' S, longitude 142°00' E
thence to a point latitude 9°10' S, longitude 143°52' E
thence to a point latitude 9°00' S, longitude 144°30' E
thence to a point latitude 10°41' S, longitude 145°00' E
thence to a point latitude 13°00' S, longitude 145°00' E
thence to a point latitude 15°00' S, longitude 146°00' E
thence to a point latitude 17°30' S, longitude 147°00' E
thence to a point latitude 21°00' S, longitude 152°55' E
thence to a point latitude 24°30' S, longitude 154°00' E
thence to a point on the coast of Australia in latitude 24°42' S, longitude 153°15' E.

Ballast water exchange standard.

18.(1) Where the sequential method of ballast water exchange is used, it must achieve 95 per cent volumetric exchange of ballast water.

(2) Where the pump-through method of ballast water exchange is used-

- (a) at least three times the volume of the ballast water tank must be pumped through the tank in question; or

- (b) it must achieve 95 per cent volumetric exchange of ballast water.

Ballast water and sediment treatment standard.

19.(1) Treatment must ensure that the concentration of any viable organisms and indicator microbes in ballast water and sediments discharged into the sea is less than-

- (a) 10 viable organisms per cubic metre for large organisms;
- (b) 10 viable organisms per millilitre for small organisms;
- (c) 1 colony-forming unit of toxicogenic *Vibrio cholera* (O1 and O139) per 100 millilitres or less than 1 colony-forming unit per gram (wet weight) of zooplankton samples;
- (d) 250 colony-forming units of *Escherichia coli* per 100 millilitres; and
- (e) 100 colony-forming units of Intestinal Enterococci per 100 millilitres.

(2) In this section-

- (a) “large organism” means an organism equal to or greater than 50 micrometres in minimum dimension;
- (b) “small organism” means an organism equal to or greater than 10 micrometres and less than 50 micrometres in minimum dimension; and
- (c) “viable organism” means organisms that have the ability to successfully generate new individuals in order to reproduce the species.

PART 5 EQUIPMENT

Designation of nominated bodies.

20.(1) The Maritime Administrator may, with the prior approval or consent of the Minister, designate any person or body (“nominated body”) to carry out the requirements for ballast water management system type approval under the Convention, for ballast water management systems installed on Gibraltar ships.

(2) A designation must be made in writing and set out-

- (a) the functions to be performed by the nominated body;
- (b) the equipment to which the designation applies; and

- (c) any time limit or condition which applies to the designation.
- (3) The Maritime Administrator may revoke a designation -
 - (a) on request by the nominated body; or
 - (b) where the nominated body fails to comply with any time limit or condition imposed under subsection (2)(c).
- (4) The Maritime Administrator may vary a designation-
 - (a) on request by the nominated body; or
 - (b) where it appears necessary or expedient to do so.
- (5) The Maritime Administrator may inspect a nominated body to ensure it is performing its functions-
 - (a) under section 23; and
 - (b) in accordance with the conditions of its designation.
- (6) Where a person applies for designation under subsection (1), the Maritime Administrator must inform that person in writing of the reasons for-
 - (a) refusing to designate that person as a nominated body; or
 - (b) imposing any condition more onerous than proposed by the applicant.
- (7) The Maritime Administrator must inform a nominated body in writing of the reasons for the revocation or variation of a designation.

Approval of ballast water management systems.

21.(1) Subject to section 26(5), a ballast water management system when it is installed on a Gibraltar ship, must have a BWMS Type Approval Certificate issued under section 23.

(2) A copy of the BWMS Type Approval Certificate must be kept on board the ship to which it relates.

(3) The BWMS Type Approval Certificate must be written in English or translated into English.

(4) In this Act, a “BWMS Type Approval Certificate” means a certificate which –

- (a) contains the information set out in the Convention; and
- (b) is in the form contained in the Convention.

(5) If a ballast water management system installed on board a ship during the period of validity of a BWMS Type Approval Certificate needs to be replaced, it must be replaced with a system for which the current BWMS Type Approval Certificate is in force.

(6) A ballast water management system on a ship must be safe in relation to that ship, its equipment and its crew.

Application for grant of type approval.

22.(1) A manufacturer must apply to a nominated body for type approval of a ballast water management system in accordance with this section.

(2) An application under subsection (1) must be-

- (a) in writing; and
- (b) must include-
 - (i) the name and address of the manufacturer;
 - (ii) a written declaration that the same or similar application has not been lodged with another nominated body; and
 - (iii) the documentation specified in the BWMS Code.

(3) A manufacturer intending to make the application referred to in subsection (1) must notify the Maritime Administrator prior to submitting the application to the nominated body.

(4) The notification referred to in subsection (3) must include supporting information on the ballast water management system.

Grant of type approval: obligations of nominated bodies.

23.(1) A nominated body must decide whether to grant or refuse type approval for ballast water management systems in accordance with the requirements under this Part.

(2) On receipt of the application for type approval in accordance with section 22, and the documentation specified in the BWMS Code, a nominated body must-

- (a) agree with the applicant the location where the examination and applicable tests are to be carried out;
- (b) perform or have performed the tests set out in the BWMS Code in accordance with the requirements set out in the BWMS Code.

(3) Type approval tests must be conducted at-

- (a) the laboratories that meet the requirements in the BWMS Code, and that are accredited for these tests by the United Kingdom Accreditation Service; or
- (b) a laboratory recognised by the nominated body as offering suitable and satisfactory guarantee of technical and professional competence, quality procedures and autonomy with particular reference to the applicable standards approved and published by the International Organization for Standardization.

(4) Upon the completion of the testing referred to in subsection (2)(b), a ballast water management system that achieves satisfactory compliance with all the applicable requirements under the BWMS Code must be granted type approval by the nominated body in accordance with the BWMS Code.

(5) Where a nominated body grants type approval for a ballast water management system, it must-

- (a) issue a BWMS Type Approval Certificate to the manufacturer; and
- (b) provide the Maritime Administrator with a type approval report containing the information specified in the BWMS Code.

(6) Where a nominated body refuses to grant a type approval, it must notify the manufacturer, giving detailed reasons for its decision in writing.

(7) The BWMS Type Approval Certificate issued under subsection (5) must contain the information set out in the BWMS Code and be in the form contained in the BWMS Code.

(8) Any upgrades of the ballast water management system that relate to the safe operation of that system must be reported to the nominated body who must assess the upgrade in accordance with the BWMS Code.

(9) On the issuance of a type approval for a ballast water management system by a nominated body on behalf of the Maritime Administrator, the Maritime Administrator must notify the IMO as required under the BWMS Code.

Duration, suspension and withdrawal of type approval.

24.(1) A BWMS Type Approval Certificate issued by a nominated body is valid for the period, and subject to the conditions that are specified in the Certificate, not exceeding five years beginning with the date of issue of the Certificate.

(2) Where a nominated body knows or has reason to believe that equipment to which it has granted a BWMS Type Approval Certificate no longer complies with the requirements set out in this Act or under the Convention, it must-

- (a) require the manufacturer to take immediate corrective measures to ensure that the equipment complies with those requirements; and

(b) where necessary, suspend or withdraw its approval for that equipment.

(3) A nominated body may, by giving notice to the manufacturer, restrict, suspend or cancel a BWMS Type Approval Certificate where a manufacturer fails to take the corrective measures required under subsection (2)(a).

(4) Before issuing a notice under subsection (3), the nominated body must give the manufacturer not less than 10 days to make written representations.

(5) A notice under subsection (3) must-

(a) be in writing;

(b) specify the date on which it is said to take effect; and

(c) specify the grounds for the decision.

(6) The nominated body must send a copy of any notice given under subsection (3) to the Maritime Administrator.

Ballast water management systems which use active substances.

25.(1) A ballast water management system that makes use of active substances or preparations containing one or more active substances, must be approved by the IMO, in accordance with the procedure adopted by the IMO.

(2) The Minister may, upon the advice of the Environmental Agency, prohibit the use of-

(a) any ballast water management system which uses active substances; or

(b) any active substances used in ballast water management systems,

on ships.

(3) In providing any advice to the Minister, the Environmental Agency must consider whether the ballast water management system complies with the requirement in subsection (1), and any applicable requirements published by the IMO in respect of systems using active substances or preparations containing one or more active substances.

(4) Prior to the Minister issuing a prohibition, the Environmental Agency must notify any person who may reasonably be aggrieved by a prohibition, in writing, and giving that person not less than 10 days to make written representations to the Minister.

(5) A prohibition under subsection (2) must-

(a) be in writing;

(b) specify the date on which it takes effect; and

(c) specify the grounds for the decision.

(6) A prohibition must be complied with in accordance with its terms.

(7) The Minister may upon-

(a) the advice of the Environmental Agency;

(b) representations made by an aggrieved person under subsection (4) (if any),

withdraw, vary, or keep the prohibition issued under subsection (2) in place.

(8) The Maritime Administrator must be kept informed by the Environmental Agency of any prohibitions, and any withdrawal or variation of any prohibitions.

Prototype ballast water management systems.

26.(1) The Maritime Administrator may, with the prior approval and consent of the Minister, approve programmes to test and evaluate prototype ballast water management systems, and must take into account the Guidelines before approving a prototype ballast water management system.

(2) Where-

(a) a ship which is permitted to manage ballast water through exchange or treatment participates in a programme approved under subsection (1); and

(b) the prototype ballast water management system is operated consistently and as designed,

the requirement in section 11 to conduct ballast water management through treatment does not apply to the ship until 5 years after the date on which it otherwise would.

(3) A ship to which subsection (2) applies is not required to manage ballast water through exchange.

(4) Where-

(a) a ship which is permitted to manage ballast water only through treatment participates in a programme approved under subsection (1); and

(b) the prototype ballast water management system-

(i) has the potential to exceed the minimum standard in section 19; and

(ii) is operated consistently and as designed,

the requirement in section 11 to conduct ballast water management through treatment does not apply to the ship until 5 years after the date of installation of the prototype on the ship.

(5) Section 21 does not apply to a prototype ballast water management system being tested and evaluated on a programme approved under subsection (1).

(6) An approval under subsection (1) is valid only if given in writing, and may be-

- (a) granted subject to any conditions and limitations as the Maritime Administrator may specify; and
- (b) varied or revoked by a notice given in writing by the Maritime Administrator.

PART 6

SURVEY AND CERTIFICATION OF SHIPS

Prohibition on Gibraltar ships proceeding to sea without an IBWM Certificate.

27. Subject to section 50(2), a Gibraltar ship to which this Act applies must not-

- (a) proceed to sea; or
- (b) if it is already at sea, remain at sea,

unless an IBWM Certificate has been issued in respect of that Gibraltar ship, which is valid.

Prohibition on non-Gibraltar ships proceeding to sea without an IBWM Certificate or appropriate documentation.

28.(1) A ship, other than a Gibraltar ship, must not proceed to sea from the port of Gibraltar unless-

- (a) a Contracting State has issued, and where appropriate endorsed, an IBWM Certificate in respect of that ship and that IBWM Certificate, and where appropriate that endorsement, is valid;
- (b) the Government of a State which is not a Contracting State, has issued, and where appropriate endorsed, a certificate in respect of that ship which is deemed by the Certifying Authority to have the same force as an IBWM Certificate issued in accordance with the requirements of the Convention, and that certificate and, where appropriate, that endorsement, is still valid;
- (c) documentation has been issued in respect of that ship which is still valid and shows that a surveyor-
 - (i) has carried out an initial survey of the ship;

- (ii) is satisfied that the ship can proceed to sea without presenting a threat of harm to the environment, human health, property or resources; or

- (d) the ship has been permitted to proceed in accordance with section 50(2).

(2) A person permitting a ship to proceed as referred to in subsection (1)(d) must inform the ship's next port of call of all information relevant to a ship which is liable to be detained under section 50(1).

Surveys of Gibraltar ships.

29. A Gibraltar ship to which this section applies must be subjected to-

- (a) an initial survey, that must be completed before the ship is put in service or before an IBWM Certificate is first issued in respect of that ship;
- (b) a renewal survey, which must be completed before a subsequent IBWM Certificate is issued;
- (c) an intermediate survey-
 - (i) in the period beginning three months before, and ending three months after, the second anniversary date of the issue of an IBWM Certificate; or
 - (ii) in the period beginning three months before, and ending three months after, the third anniversary date of the issue of an IBWM Certificate; and
- (d) an annual survey which must be completed in the period beginning three months before, and ending three months after, the anniversary date of the issue of an IBWM Certificate, except where an intermediate survey referred to in paragraph (c) has been completed within that period.

Issue of IBWM certificate by a Certifying Authority in respect of Gibraltar ships.

30.(1) A Certifying Authority must issue an IBWM Certificate in respect of a Gibraltar ship where-

- (a) that Certifying Authority has been notified by a surveyor that the surveyor has carried out an initial or renewal survey;
- (b) the notification referred to in paragraph (a) includes confirmation that, at the date of that survey, the surveyor is satisfied that-
 - (i) there is on board the ship an approved ballast water management plan;
 - (ii) the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship's ballast water management plan fully comply with the requirements of Part 4 and Part 5 of this Act; and

- (iii) any ballast water management system which has not previously been subject to a survey under this Act-
 - (aa) has been installed in accordance with the requirements under the Convention; and
 - (bb) has been subject to a commissioning test which shows that it processes any ballast water or sediments in a way that they meet the standard in section 19; and
- (c) any fee due under the Gibraltar Merchant Shipping (Fees, Charges and Taxes) Regulations 2009 has been paid to that Certifying Authority, where the Certifying Authority is the Maritime Administrator.

(2) An IBWM Certificate issued under this section must be in English.

Regulations for fees.

31.(1) Subject to subsection (2), the fees and charges provided in Table 'C' of the Schedule to the Gibraltar Merchant Shipping (Fees, Charges and Taxes) Regulations 2009 shall apply to any fees and charges payable under this Act.

(2) The Minister may dis-apply subsection (1) and, by regulations, make further or different provision and-

- (a) prescribe fees and charges that are payable under this Act;
- (b) make provision as to whom those charges must be payable; and
- (c) provide penalties for the non-payment or the late payment of fees.

Endorsement of IBWM certificates by a Certifying Authority in respect of Gibraltar ships.

32.(1) A Certifying Authority must endorse an IBWM Certificate in respect of a Gibraltar ship where that Certifying Authority has been notified by a surveyor that the surveyor has carried out-

- (a) an intermediate survey, and the notification includes confirmation that-
 - (i) the survey took place in accordance with section 29; and
 - (ii) at the date of the survey, the surveyor was satisfied that the equipment, associated systems and processes for the ship's ballast water management fully comply with the requirements of Part 4 and Part 5 and are in good working order; or

- (b) an annual survey, and the notification includes confirmation that-
 - (i) the survey took place in accordance with section 29; and
 - (ii) at the date of the survey, the surveyor is satisfied the structure, equipment, systems, fittings, arrangements, material and processes associated with the ship's ballast water management plan-
 - (aa) have been maintained to conform with this Act so as to ensure that the ship, in all respects, remains fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources; and
 - (bb) remain satisfactory for the service for which the ship is intended.

(2) Where-

- (a) an annual survey is completed before the beginning of the period specified in section 29(d); or
- (b) an intermediate survey is completed before the beginning of the period specified in section 29(c) (i) or (ii),

the anniversary date shown on the relevant IBWM Certificate must be amended by an endorsement on the Certificate by the surveyor undertaking the survey to a date not more than three months later than the date on which the survey referred to in paragraphs (a) or (b) is completed.

(3) Where the anniversary date on an IBWM Certificate is amended in accordance with subsection (2)-

- (a) the subsequent annual or intermediate survey must be completed at the intervals prescribed in section 29 using the new anniversary date; and
- (b) the date of expiry of the IBWM Certificate may remain unchanged provided that one or more annual or intermediate surveys, as the case may be, are completed so that the maximum intervals between the surveys as prescribed in section 29 are not exceeded.

Duration and validity of an IBWM Certificate.

33.(1) An IBWM Certificate issued in respect of a Gibraltar ship is valid from the date of completion of the initial or renewal survey which immediately preceded the issue of that Certificate.

(2) Subject to subsections (4) to (6) and sections 34 and 35, an IBWM Certificate issued in respect of a Gibraltar ship is valid for the period specified in the IBWM Certificate, and this period must not exceed five years beginning with-

- (a) the date specified in subsection (1);
- (b) the date of expiry of the previous IBWM Certificate where the renewal survey is completed-
 - (i) within 3 months before the expiry of that IBWM Certificate; or
 - (ii) after the date of expiry of that IBWM Certificate; or
- (c) the original date of expiry of the previous IBWM Certificate, where a new IBWM Certificate has been issued in respect of a ship referred to in section 34(1)(b) or (3).

(3) Subsection (4) applies where, following a renewal survey, an IBWM Certificate is issued in respect of-

- (a) a ship to which subsection (2)(b)(ii) applies; or
- (b) a ship referred to in section 34(1)(b) or (3).

(4) In the circumstances described in subsection (5), the Maritime Administrator may direct a Certifying Authority that the new IBWM Certificate is to be valid for the period specified in the Certificate, not exceeding 5 years beginning with the date of completion of the renewal survey in question.

(5) The circumstances are where the owner of the ship-

- (a) submits a request to the Maritime Administrator for a direction under subsection (4);
- (b) satisfies the Maritime Administrator that the owner is justified in making a request; and
- (c) complies with any reasonable additional survey requirements which the Maritime Administrator may impose.

(6) An IBWM Certificate issued in respect of a Gibraltar ship ceases to be valid-

- (a) upon the ship being transferred to the flag of a foreign State;
- (b) if a survey under section 29 is not completed in accordance with the requirements under this Act;
- (c) upon the ship proceeding to sea when-
 - (i) section 37 applies to the ship; but

- (ii) the requirements of section 37(3) have not been complied with;
- (d) if the relevant IBWM Certificate is not endorsed following an intermediate survey or annual survey;
- (e) for so long as the IBWM Certificate is suspended in accordance with section 40(3);
- (f) upon the IBWM Certificate being cancelled by the Maritime Administrator under section 43;
- (g) subject to section 35, upon a new IBWM Certificate being issued in respect of the ship; or
- (h) upon the date of expiry of the IBWM Certificate.

(7) In this section and section 35, “the original date of expiry” means the date on which the relevant IBWM Certificate would have expired but for any extension of its period of validity.

Extension of periods of validity of IBWM Certificates by a Certifying Authority.

34.(1) The Certifying Authority that issued the IBWM Certificate in respect of a Gibraltar ship may extend the period of validity of that Certificate-

- (a) to a maximum period of 5 years provided that-
 - (i) the remaining period of validity for that Certificate prior to the extension is less than 5 years; and
 - (ii) any surveys required under section 29(c) have been carried out; and
- (b) for a period not exceeding 3 months if-
 - (i) the renewal survey has not been completed before the date of expiry of that Certificate;
 - (ii) at the date of expiry, the ship is not in the port in which the survey is to be carried out; and
 - (iii) it appears to the Certifying Authority that it is proper and reasonable to do so solely for the purpose of enabling that ship to proceed to the port in which the survey is to be carried out.

(2) Where the period of validity of an IBWM Certificate has been extended under subsection (1)(b), the ship in question must not leave the port of survey until a new IBWM Certificate has been issued in respect of that ship.

(3) Subject to subsection (4), the Certifying Authority that issued the IBWM Certificate in respect of a Gibraltar ship engaged solely on short voyages, may extend the period of validity of that Certificate for a period not exceeding one month.

(4) A Certifying Authority must not extend the period of validity of an IBWM Certificate under subsection (3) if the period of validity of that Certificate has already been extended under-

(a) subsection (1)(a) or (b); or

(b) section 35.

(5) Where the period of validity of an IBWM Certificate is extended under subsection (1) or (3), the issuing Certifying Authority must endorse the IBWM Certificate.

(6) In this section “short voyage” means a voyage which-

(a) does not exceed 1,000 nautical miles between the last port of call in the State in which the voyage begins and the last port of call in the voyage before beginning any return voyage; and

(b) on any return voyage does not exceed 1,000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the State in which the voyage began,

and for the purposes of this definition no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather, or any other circumstances that neither the master of the ship, nor the owner, nor the charterer, if any, of the ship could have prevented or forestalled.

Extension of periods of validity of Certificates by a surveyor.

35.(1) A surveyor may extend the period of validity of an IBWM Certificate issued in respect of a Gibraltar ship by endorsing that Certificate if-

(a) a renewal survey has been completed by the surveyor;

(b) the surveyor is satisfied as to the matters described in section 30(1)(b); and

(c) a new IBWM Certificate cannot be issued or placed on board the ship before the date on which the existing Certificate is due to expire.

(2) Where an IBWM Certificate has been endorsed under subsection (1), that Certificate is valid for the further period as is specified in the Certificate, not exceeding five months beginning with the original date of expiry of the Certificate.

Responsibilities of the owner and the master.

36.(1) The owner and the master of a ship must ensure that the condition of the ship and its equipment, systems and processes are maintained to conform-

- (a) in the case of a Gibraltar ship, or any ship surveyed in accordance with this Act, with the provisions of this Act; or
- (b) in the case of any other ship, with the requirements of the Convention,

so as to ensure that the ship, in all respects, remains fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

(2) The owner and the master of a ship must ensure that, after any survey of the ship required by this Act has been completed, no change, except by way of direct replacement, is made to the structure, equipment, fittings, arrangements or materials associated with the ship's ballast water management plan and covered by the survey, without the approval of-

- (a) the Certifying Authority who appointed the surveyor to carry out the survey;
- (b) the Maritime Administrator, where the relevant survey was carried out and the relevant IBWM Certificate was issued by a Contracting State other than Gibraltar following a request made by the Maritime Administrator in accordance with section 38; or
- (c) the administration of the ship's flag State, where the ship is not a Gibraltar ship.

(3) Whenever-

- (a) an accident occurs to a ship; or
- (b) a defect is discovered in a ship,

which substantially affects the ability of the ship to conduct ballast water management in accordance with Part 3 and Part 4, the owner, demise charterer or master of the ship must comply with the requirements of subsection (4).

(4) The requirements are that-

- (a) the accident or defect is reported at the earliest opportunity to the Certifying Authority that issued the IBWM Certificate in respect of the ship;
- (b) in the case of a Gibraltar ship in a port outside Gibraltar, the accident or defect is immediately reported to the appropriate maritime authorities in the State in which the port is situated;
- (c) in the case of any other ship in the port of Gibraltar-

- (i) an accident is reported to the Maritime Administrator, and the Captain of the Port or the Gibraltar Port Authority;
- (ii) a defect is reported to the Maritime Administrator.

(5) Whenever an accident or defect is reported to a Certifying Authority in accordance with subsection (4)(a), the Certifying Authority-

- (a) must cause an investigation to be initiated to determine whether or not an additional survey is necessary; and
- (b) must, if it considers that an additional survey is necessary, cause that survey to be carried out.

(6) Whenever an accident or defect is reported to a Certifying Authority in accordance with subsection (4)(a), and the ship in question is a Gibraltar ship and in a port outside Gibraltar, the Certifying Authority must take all appropriate steps to ascertain that the requirement in subsection (4)(b) has been complied with.

(7) In subsection (2) “direct replacement” means the direct replacement of equipment and fittings with equipment and fittings that conform with the relevant requirements which apply to that ship.

Additional surveys of Gibraltar ships.

37.(1) This section applies to a Gibraltar ship where-

- (a) a repair resulting from an investigation referred to in section 36(5) has been made to the ship; or
- (b) a change, replacement or significant repair has been made to the structure, equipment, systems, fittings, arrangements or material necessary to achieve full compliance with Parts 3, 4 and 5 of this Act.

(2) A ship to which this section applies must not-

- (a) proceed to sea; or
- (b) if it is already at sea, remain at sea,

unless the requirements set out in subsection (3) are met.

(3) The requirements referred to in subsection (2) are that-

- (a) a survey has been carried out in respect of the ship;
- (b) at the date of the survey the surveyor is satisfied that-

- (i) the change, replacement or significant repair has been made effectively; and
- (ii) the ship complies in all respects with the requirements of this Act; and
- (c) the surveyor has issued a report expressing the satisfaction required by paragraph (b).

(4) Where a survey of a ship under subsection (3) results from the installation of a new ballast water management system, in order to be satisfied that the change or replacement has been made effectively, the surveyor must verify that it-

- (a) has been installed in accordance with the requirements of the Convention;
- (b) has been subject to a commissioning test which shows that it processes any ballast water or sediments in order to meet the standard in section 19.

(5) In the case of a dispute as to whether a repair effected or intended to be effected in respect of a ship is a significant repair for the purposes of subsection (1)(b), the owner or master of a ship may serve a written request upon the Maritime Administrator seeking advice.

(6) A repair is not to be regarded as being a significant repair for the purposes of this section unless the Maritime Administrator advises to the contrary within 21 days of receipt of a request under subsection (5).

Issue or endorsement of IBWM Certificates by another Contracting State.

38.(1) The Maritime Administrator may request another Contracting State to survey a Gibraltar ship, and, if the Contracting State is satisfied that the ship complies with the requirements of the Convention, to-

- (a) issue or authorise the issue of an IBWM Certificate in respect of that ship; or
- (b) endorse, or authorise the endorsement of, an existing IBWM Certificate,

in accordance with the Convention.

(2) Where an IBWM Certificate is issued in accordance with a request under subsection (1)-

- (a) it has the same force and effect as if it had in fact been issued by the Maritime Administrator;
- (b) the Maritime Administrator is to be treated as the Certifying Authority in relation to the IBWM Certificate; and
- (c) any reference in this Act to the Certifying Authority that issued the Certificate is to be treated as a reference to the Maritime Administrator.

Issue or endorsement of IBWM Certificates in respect of non-Gibraltar ships.

39.(1) The Maritime Administrator, when requested to do so by another Contracting State, may cause a survey to be carried out in respect of a ship which flies the flag of that Contracting State.

(2) If a survey as described in subsection (1) has been carried out, and is an initial or renewal survey, the Maritime Administrator must issue, or authorise the issue of, an IBWM Certificate where-

- (a) a surveyor has notified a Certifying Authority that, at the date of that survey, they are satisfied of the matters referred to in section 30(1)(b) as appropriate; and
- (b) any fees due to the Maritime Administrator in accordance with section 31 have been paid.

(3) If a survey has been carried out as described in subsection (1), and is an intermediate or annual survey, the Maritime Administrator must endorse, or authorise the endorsement of, an IBWM Certificate where-

- (a) a surveyor has notified the Certifying Authority that, at the date of the survey, they are satisfied of the matters referred to in section 32(1)(a) or (b) as appropriate; and
- (b) any fees due to the Maritime Administrator in accordance with section 31 have been paid.

(4) An IBWM Certificate issued or endorsed under subsections (2) or (3)-

- (a) must contain a statement that it has been issued or endorsed at the request of the Contracting State that made the request referred to in subsection (1); and
- (b) has the same effect as if it had been issued or endorsed by the Contracting State which made the request referred to in subsection (1).

(5) The Maritime Administrator must, as soon as possible after the completion of a survey carried out under subsection (1), send to the Contracting State that made the request a copy of-

- (a) the IBWM Certificate issued or endorsed in accordance with subsections (2) or (3); and
- (b) the report of the survey.

Procedure to be adopted when a ship is deficient.

40.(1) This section applies where a surveyor determines that a ship's ballast water management-

- (a) does not conform to the particulars of the IBWM Certificate, if any, issued in respect of that ship; or
- (b) is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

(2) In the circumstances described in subsection (1) the surveyor must immediately-

- (a) advise the owner or master of the corrective action which, in the opinion of the surveyor, is required within a specific timeframe; and
- (b) where the ship has a valid IBWM Certificate, notify the Certifying Authority that issued the IBWM Certificate that the owner or master has been advised in accordance with paragraph (a).

(3) Where-

- (a) an IBWM Certificate has been issued in respect of a Gibraltar ship and is still valid; and
- (b) the corrective action advised in accordance with subsection (2)(a) is not taken within the timeframe specified by the surveyor,

the Certifying Authority must suspend the validity of that IBWM Certificate until that corrective action has been taken.

(4) Where a Certifying Authority suspends the validity of the IBWM Certificate issued in respect of a ship it must immediately give notice of any suspension-

- (a) to the owner of the ship; and
- (b) where the ship is in a port outside Gibraltar, to the relevant maritime authorities of the State in which the port is situated.

(5) Where the owner of the ship is given notice of the suspension, that owner must notify the master of the ship of the suspension.

(6) In the application of subsections (1) and (2) to a ship which is not a Gibraltar ship-

- (a) “the Certifying Authority” means the appropriate maritime authorities of the ship’s flag State or a diplomatic representative of that State; and
- (b) “surveyor” includes a person authorised by that flag State to survey the ship.

Form of the IBWM Certificate.

41.(1) An IBWM Certificate issued by or on behalf of the Maritime Administrator must be drawn up-

- (a) in the English language; and
- (b) in accordance with the requirements of the Convention.

(2) Where in the case of a Gibraltar ship, an IBWM Certificate is not issued in the English language by a person, other than the Maritime Administrator, a translation in English must be provided by the owner.

(3) Where in the case of a non-Gibraltar ship, the IBWM Certificate for a ship is issued in the official language of the Contracting State that issued the Certificate, and this is not English, French or Spanish-

- (a) a translation into English, French or Spanish must be included by the owner; and
- (b) a translation into English must be included by the owner, where the ship is in BGTW.

Arbitration.

42.(1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a Gibraltar ship, that applicant may serve a written notice on the responsible person within 21 days from the date of receiving notification of that outcome—

- (a) stating that there is a dispute between them; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) Following receipt of a notice under subsection (1), an arbitrator must be appointed by agreement between the applicant and the responsible person.

(3) In default of agreement between the applicant and the responsible person, the arbitrator is a person appointed by the President or Vice President of the Chartered Institute of Arbitrators in England and Wales, following a request made by-

- (a) one party, after giving written notice to the other party; or
- (b) the parties jointly, in writing.

(4) No person can be appointed as arbitrator under subsection (3) unless that person is-

- (a) a person who holds a certificate of competency as—
 - (i) a master or chief mate on a seagoing ship of 3,000 gross tonnage or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to the STCW;
 - or

- (ii) a chief engineer officer or second engineer officer on a seagoing ship powered by main propulsion machinery of 3,000 kW propulsion power or more, in accordance with Regulation II/2 of Chapter 3 of the Annex to the STCW;
- (b) a person who holds a certificate of competency equivalent to a certificate referred to in subsection (a);
- (c) a naval architect;
- (d) a qualified person;
- (e) a person with special experience of shipping matters, or of activities carried on in ports; or
- (f) a member of the Chartered Institute of Arbitrators.

(5) An arbitrator appointed under this section has the powers of inspection conferred by section 48 of this Act.

(6) The rules for arbitration set out in subsection (7) apply unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.

(7) The rules referred to in subsection (6) are-

- (a) the arbitration procedures must follow the procedure applicable in civil proceedings in the Supreme Court with the necessary adaptations;
- (b) legal representatives need not be used to represent the parties and submissions may be made to the arbitrator in writing in lieu of attending the arbitration hearing;
- (c) if both parties agree, the arbitrator may consult an expert, or call for an expert's report, upon any matter relevant to the dispute, or invite an expert to attend the hearing as an assessor;
- (d) the arbitrator may visit the ship, or any establishment, in connection with the hearing if this is considered to be necessary;
- (e) the arbitrator's decision, and the reasons for the decision, must be made in writing and will be binding on both parties;
- (f) the costs of an arbitration are in the discretion of the arbitrator, who may direct to and by whom and in what manner those costs or any part of those costs must be paid;

- (g) the arbitrator must after hearing any party who would like to be heard on costs, amend their award and provide any directions as they may think appropriate for the payment of the costs of the arbitration.

(8) In this section—

- (a) “applicant” means a person who makes an application for arbitration required by this Act;
- (b) “qualified person” means a person who is a barrister or solicitor in Gibraltar of at least 10 years’ standing; or
- (c) “responsible person” means-
 - (i) the Certifying Authority responsible under section 30 or section 38 for the issue of the IBWM Certificate in connection with which a survey required by this Act is carried out; or
 - (ii) in the case of a dispute relating to an additional survey, the Certifying Authority which issued the IBWM Certificate in respect of the ship; and
- (d) “STCW” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978.

Cancellation of IBWM Certificates.

43.(1) This section applies in relation to an IBWM Certificate issued by or at the request of the Maritime Administrator.

(2) The Maritime Administrator may cancel an IBWM Certificate issued in respect of a Gibraltar ship where there is reason to believe that-

- (a) the IBWM Certificate was issued on false or erroneous information; or
- (b) since any survey required by this Act, the structure, equipment or machinery of the ship has sustained damage or is otherwise deficient.

(3) The Maritime Administrator must communicate the cancellation of an IBWM Certificate by notice in writing to the owner and master, and the notice must contain the grounds for the cancellation.

Surrender of an IBWM Certificate.

44.(1) The Maritime Administrator may direct the owner or master to surrender an IBWM Certificate issued to a Gibraltar ship where that IBWM Certificate has-

- (a) expired;

- (b) been suspended under section 40; or
- (c) been cancelled under section 43.

(2) A direction given by the Maritime Administrator under subsection (1) may specify that an IBWM Certificate must be surrendered within a specific timeframe and in the manner directed by the Maritime Administrator.

Prohibited acts with IBWM Certificates.

45. In relation to a Gibraltar ship, no person may-

- (a) intentionally alter an IBWM Certificate, unless permitted to do so under this Act;
- (b) intentionally make a false IBWM Certificate;
- (c) in connection with any survey required under this Act, knowingly or recklessly furnish false information;
- (d) with intent to deceive, use or lend an IBWM Certificate, or permit an IBWM Certificate to be used by another person; or
- (e) fail to surrender an IBWM Certificate when required to do so in accordance with section 44.

IBWM Certificate kept on board ship.

46. Where an IBWM Certificate has been issued in respect of a ship, the owner and master of that ship must ensure that the IBWM Certificate is readily available on board the ship for examination at all times, except where it is surrendered in accordance with section 44.

Transfer of flag.

47.(1) Where-

- (a) a Gibraltar ship is transferred to the flag of another Contracting State; and
- (b) within 3 months after the date of transfer if that Contracting State so requests,

the Maritime Administrator must arrange to send that Contracting State-

- (i) a copy of the IBWM Certificate issued in respect of that ship before its transfer; and
- (ii) where available, a copy of the report of the most recent survey in respect of that ship.

(2) Where the registration of a ship registered in another Contracting State is transferred under section 28(2) of the Gibraltar Merchant Shipping (Ship Registration) Regulations 1997, the Maritime Administrator may within 3 months after the date of transfer send a request to the other Contracting State to provide the Maritime Administrator with-

- (i) a copy of the IBWM Certificate issued in respect of that ship before its transfer; and
- (ii) where available, a copy of the report of the most recent survey in respect of that ship.

PART 7 ENFORCEMENT

Inspection of ships.

48.(1) Except where subsection (6) applies, the Maritime Administrator or Gibraltar Port Authority may arrange to inspect a ship and its equipment, any part of the ship, any articles on board and any documents carried in the ship for the purpose of -

- (a) verifying that there is on board a valid IBWM Certificate in respect of the ship;
- (b) inspecting the ballast water record book; or
- (c) taking samples of the ship's ballast water.

(2) For the purposes of subsection (1), the Maritime Administrator or Gibraltar Port Authority may at all reasonable times go on board a ship and carry out the matters set out in subsection (1)(a) to (c).

(3) The powers conferred by subsection (2) are exercisable outside BGTW by the Maritime Administrator, if the ship is a Gibraltar ship.

(4) The powers under this section to go on board a ship, which is not a Gibraltar ship, may only be exercised if the ship is-

- (a) in BGTW;
- (b) at an offshore terminal in BGTW; or
- (c) a floating platform in BGTW, other than a floating platform which is in transit.

(5) When exercising the powers under this section, the ship must not be unnecessarily delayed by the Maritime Administrator or Gibraltar Port Authority.

(6) The Maritime Administrator or Gibraltar Port Authority may exercise the powers in subsection (7) where-

- (a) the ship-
 - (i) does not carry a valid IBWM Certificate; or
 - (ii) is detected to have contravened the provisions of this Act or the Convention; or
 - (b) there are clear and objective grounds for believing that-
 - (i) the condition of the ship or its equipment does not correspond substantially with the particulars of the IBWM Certificate; or
 - (ii) the master or the crew are not familiar with essential shipboard procedures relating to ballast water management or have not implemented these procedures.
- (7) The powers of the Maritime Administrator or the Gibraltar Port Authority are-
- (a) at any reasonable time (or, in a situation where in their opinion there is an immediate threat of harm to the environment, human health, property or resources, at any time)-
 - (i) to board any ship, and take with them if they have reasonable cause to apprehend any serious obstruction in the execution of their duty, a police officer; and
 - (ii) to take with them any equipment or materials required for any purpose for which the power of entry is exercised;
 - (b) to carry out such tests and inspections (and to make such recordings), as may in any circumstances be necessary;
 - (c) to direct that the ship or any part of the ship or anything in the ship or such a part must be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purposes of any tests or inspections under paragraph (b);
 - (d) to take any measurements and photographs as they consider necessary for the purpose of any tests or inspections under paragraph (b);
 - (e) to take samples of any articles or substances found in the ship which they have the power to enter, and of the atmosphere in or in the vicinity of the ship, taking into account the Guidelines;
 - (f) in the case of any article or substance which they find in the ship and which appears to them to have caused or to be likely to cause an immediate threat of harm to the environment, human health, property or resources, to cause it to be dismantled or

subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);

- (g) in the case of any article or substance as is mentioned in paragraph (f), to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely-
 - (i) to examine it and do to it anything which they have power to do under paragraph (f);
 - (ii) to ensure that it is not tampered with before their examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act;
- (h) to require any person whom they have reasonable cause to believe is able to give any information relevant to any test or inspection under paragraph (b) above-
 - (i) to attend at a place and time specified by them; and
 - (ii) to answer (in the absence of persons other than any persons whom the Maritime Administrator or the Gibraltar Port Authority may allow to be present) any questions as the Maritime Administrator or the Gibraltar Port Authority think fit to ask; and
 - (iii) to sign a declaration of the truth of their answers;
- (i) to require the production of, and inspect and take copies of or of any entry in-
 - (i) any books or documents which by virtue of any provision of this Act are required to be kept; and
 - (ii) any other books or documents which they consider it necessary for them to see for the purposes of any tests or inspections under paragraph (b); and
 - (iii) (where the information is recorded in computerised form) extracts from any records which are required to be kept under this Act or it is necessary for them to see for the purposes of any tests or inspections under paragraph (b);
- (j) to require any person to afford them such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the Maritime Administrator or the Gibraltar Port Authority to exercise any of the powers conferred on them by this section;

- (k) any other power for the reasons mentioned in subsection (6) which is conferred by regulations made by the Minister.

(8) The Minister may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (7)(e).

(9) Where the Maritime Administrator or the Gibraltar Port Authority propose to exercise the powers conferred by subsection (7), they must, if so requested by a person who at the time is present on and has responsibilities in relation to the ship, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(10) Before exercising the power conferred by subsection 7(f), the Maritime Administrator or Gibraltar Port Authority must consult any persons who appear to them to be appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which it is proposed to be done under that power.

(11) Where under the power conferred by subsection (7)(g) the Maritime Administrator, or the Gibraltar Port Authority, take possession of any article or substance found in any ship, they must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify what they have seized and stating that they have taken possession of it under that power, and-

- (a) before taking possession under that power of any substance they must if it is practical and safe for them to do so, take a sample of the substance; and
- (b) give to a responsible person on board the ship, a portion of the sample marked in a manner sufficient to identify it.

(12) No answer given by a person in pursuance of a requirement imposed under subsection (7)(h) is admissible in evidence in any proceedings against that person.

(13) Nothing in this section shall be taken to compel the production by any person of a document of which they would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Supreme Court.

(14) Where the ship is inspected for the purposes of subsection (6)(a)(ii) and the ship is not a Gibraltar ship, the person or authority exercising the powers of inspection must ensure that the report of the inspection is sent to-

- (a) the appropriate maritime authorities of the ship's flag State, or a diplomatic representative of that State; and
- (b) any other party to the Convention who requested the inspection.

(15) Where the ballast water record book is inspected under this section the person exercising the power of inspection may-

- (a) make a copy of an entry in that book; and
- (b) require the master to certify that the copy is a true copy of the original.

(16) Any copy certified in accordance with subsection (15) is to be admissible in any judicial proceedings as evidence of the facts stated in it.

(17) The inspection of a ballast water record book and the taking of a certified copy of an entry as described in subsection (15) must be performed as expeditiously as possible without causing the ship to be unduly delayed.

(18) The time required to analyse samples of a ship's ballast water taken in accordance with this section must not be used to delay the operation, movement or departure of the ship.

(19) Every person being employed in the administration of this Act or any regulations made under this Act must regard information obtained in the exercise of the powers contained in this Act as entirely confidential, save as where otherwise provided under this Act.

(20) It is an offence for a person-

- (a) without reasonable cause, to fail to comply with any requirement imposed under this section;
- (b) prevent any person from appearing before or from answering any question to which the Maritime Administrator or the Gibraltar Port Authority, may, by virtue of this section require an answer;
- (c) intentionally obstruct the Maritime Administrator or the Gibraltar Port Authority in the exercise or performance of their powers or duties under this section;
- (d) to make a statement to the Maritime Administrator or Gibraltar Port Authority which they know to be false or misleading in a material particular, or recklessly to make a statement which is false or misleading in a material particular, where the statement is made in purported compliance with a requirement to furnish any information imposed by or under this section;
- (e) intentionally to make a false entry in any record required under this section;
- (f) with intent to deceive, to forge or use a document required under this section, or to make or have in their possession a document so closely resembling any such document as to be likely to deceive.

(21) A person convicted of an offence under subsection (20) (a), (c), (d), (e) or (f), is liable-

- (a) on summary conviction to a fine at level 5 on the standard scale or to imprisonment for 12 months, or to both;
- (b) on conviction on indictment to imprisonment for two years, or to a fine, or to both.

(22) A person convicted of an offence under subsection (20)(b) is liable on summary conviction to a fine at level 5 on the standard scale or to imprisonment for three months, or to both.

Prohibition on discharge following sampling.

49.(1) Where a sampling of a ship's ballast water under section 48(1)(c) indicates that the ship poses a threat to the environment, human health, property or resources, the person or authority exercising the powers of inspection must serve on the master of the ship a notice which-

- (a) prohibits the ship from discharging ballast water until the threat has been removed; and
- (b) states the grounds for the prohibition.

(2) The person or authority exercising the powers of inspection must ensure that a copy of the notice is sent-

- (a) in the case of a Gibraltar ship, to the Certifying Authority that issued the ship's IBWM Certificate; or
- (b) in the case of a ship which is not a Gibraltar ship, immediately to the appropriate maritime authorities of the ship's flag State, or a diplomatic representative of that State.

(3) Where the ship is permitted to proceed to its next port of call, the person or authority exercising the powers of inspection must ensure that a copy of the notice is sent to that port.

(4) A notice served under subsection (1) must be complied with.

(5) The Environmental Agency must be informed by the person or authority exercising the powers of detention as soon as reasonably practicable when a notice is issued under subsection (1).

General provision on detention.

50.(1) Where-

- (a) a determination is made of the kind mentioned in section 40(1) in relation to a ship; or
- (b) a surveyor has clear grounds for believing that-

- (i) an IBWM Certificate is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
- (ii) documentation referred to in section 28(1)(b) (“appropriate documentation”) is required to have been issued in respect of a ship but has not been issued, or has been issued but is not valid;
- (iii) a ship’s ballast water management does not correspond with the particulars of the IBWM Certificate, if any, or other appropriate documentation issued in respect of that ship;
- (iv) the master or crew of a ship are not familiar with essential shipboard procedures relating to the prevention of pollution by ballast water or have not implemented these procedures; or
- (v) an offence under section 56 is being committed in respect of a ship,

the ship is liable to be detained by the Maritime Administrator until they are satisfied that the ship can proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

(2) Notwithstanding subsection (1), the Maritime Administrator may permit a ship which is liable to be detained under subsection (1) to proceed to sea for the purpose of-

- (a) discharging ballast water; or
- (b) proceeding to the nearest appropriate repair yard or reception facility available,

provided that in proceeding to sea the ship will not present a threat of harm to the environment, human health, property or resources.

(3) Where the Maritime Administrator permits a ship to proceed to sea under subsection (2), they must inform the ship’s next port of call of all information relevant to the detention of the ship under subsection (1).

(4) The power under this section to detain a ship may only be exercised if the ship is-

- (a) in BGTW;
- (b) at an offshore terminal in BGTW; or
- (c) a floating platform in BGTW, other than a floating platform which is in transit.

(5) Where a surveyor has clear grounds for believing that an offence under section 56(1)(a) has been committed in respect of a ship, that ship is liable to be detained by the Maritime Administrator.

(6) Where a ship is liable to be detained under this section, the Maritime Administrator must serve on the master a detention order which –

- (a) states the grounds for the detention; and
- (b) requires the terms of the order to be complied with in order for the ship to be released by the Maritime Administrator.

(7) With the prior written approval of the Captain of the Port, the detention order may-

- (a) include a direction that the ship-
 - (i) remain in a particular place; or
 - (ii) be moved to a particular anchorage or berth, and
- (b) if it includes a direction, specify circumstances relating to the safety or the prevention of pollution in which the master may move the ship from that place, anchorage or berth.

(8) The Captain of the Port may grant the approval referred to in subsection (7), where it is possible in the circumstances to accommodate the ship in a particular place, anchorage or berth.

(9) Where the master of a ship has been served with a detention order in accordance with subsection (6) and-

- (a) the master proceeds to sea otherwise than in accordance with the order, before the ship is released; or
- (b) the master fails to comply with a direction given under subsection (7),

the master of the ship shall be guilty of an offence.

(10) A person guilty of an offence under subsection (9) is liable-

- (a) on summary conviction, to a fine at level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

(11) The owner, and any person who sends a ship to sea, must, if party or privy to the offence committed under subsection (9), also be guilty of an offence under that subsection and liable accordingly.

(12) Where a ship proceeding to sea in contravention of subsection (9)(a), or failing to comply with a direction given under subsection (7), carries away without their consent any person on board in the execution of their duty, namely any person authorised to detain the ship under this section or a surveyor, the master and owner shall each-

(a) be liable to pay all expenses of and incidental to that person being taken to sea; and

(b) be guilty of an offence.

(13) A person guilty of an offence under subsection (12) is liable-

(a) on summary conviction, to a fine at level 5 on the standard scale;

(b) on conviction on indictment, to a fine.

(14) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea must be construed accordingly.

(15) Where the ship is detained, the Maritime Administrator must-

(a) in the case of a Gibraltar ship, inform the Certifying Authority that issued the ship's IBWM Certificate;

(b) in the case of a ship which is not a Gibraltar ship, immediately inform the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State.

(16) Where a ship is detained under subsection (5), the person having power to detain the ship must immediately release the ship-

(a) if no proceedings for an offence under section 56(1)(a) are commenced within a period of 7 days beginning with the day on which the ship is detained;

(b) if any proceedings for an offence under section 56(1)(a), instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;

(c) if either-

(i) the sum of £30,000, by way of security, is paid to the Government; or

(ii) security which, in the opinion of the Maritime Administrator, is satisfactory and is for an amount not less than £30,000, is given to the Government,

by or on behalf of the owner, manager, demise charterer or master;

(d) where the owner, manager, demise charterer or master is convicted of an offence under section 56(1)(a), if any costs or expenses ordered to be paid by any of them, and any fine imposed on the owner, manager, demise charterer or the master, has been paid; or

- (e) if the release is ordered by a court or tribunal referred to in Article 292 of UNCLOS and any bond or other financial security ordered by that court or tribunal is posted.

(17) The Maritime Administrator must repay any sum in pursuance of subsection (16)(c) or release any security so given-

- (a) if no proceedings for an offence under section 56(1)(a) are instituted within the period of 7 days beginning with the day on which the sum is paid; or
- (b) if any proceedings for an offence under section 56(1)(a), instituted within that period are concluded without the owner, manager, demise charterer or master being convicted.

(18) Where a sum has been paid, or security has been given by any person in accordance with subsection (16)(c) and the owner, manager, demise charterer or master is convicted of an offence under section 56(1)(a), the sum that is paid or the amount made available under the security must be applied as follows-

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
- (b) next, in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(19) Where a ship is detained under subsection (1)(b)(v) for an offence which is being committed, the Maritime Administrator must immediately release the ship if satisfied that the terms of the detention order have been complied with.

(20) For the purposes of interpreting the references in this section and section 52 to the institution of proceedings, or their conclusion without the owner, manager, demise charterer or master being convicted-

- (a) proceedings for an offence under section 56 are commenced when -
 - (i) laying an information before a magistrate;
 - (ii) a person is brought before the court in accordance with section 133(1)(b) of the Criminal Procedure and Evidence Act 2011;
 - (iii) a bill of indictment is preferred in accordance with section 289(2)(b) of the Criminal Procedure and Evidence Act 2011;
- (b) proceedings for the offence under section 56 are concluded without the owner, manager, demise charterer or master being convicted on the occurrence of one of the following events-

- (i) the discontinuance of the proceedings;
- (ii) the acquittal of the owner, manager, demise charterer or master;
- (iii) the quashing of the conviction of any of the persons mentioned in subparagraph (ii);
- (iv) the entry of a nolle prosequi by the Attorney-General in respect of the owner, manager, demise charterer or master.

(21) Where the application of subsection (20)(a) would result in there being more than one time for the institution of proceedings, they must be taken to have been instituted at the earliest of those times.

(22) The Gibraltar Port Authority must—

- (a) cooperate with the Maritime Administrator or a Port State Control Officer with a view to facilitating the accommodation of a detained ship; and
- (b) be informed at the earliest convenience when a notice of detention is issued.

(23) The Government may by Order amend the sum by way of security payable to it under subsection (16) and section 52(12) to any other sum that it deems adequate and sufficient.

Relationship with port State control.

51.(1) The provisions in the Merchant Shipping (Port State Control) Regulations 2011 are to be read as far as possible in a consistent way with this Act and any other enactment.

(2) For the purposes explained in subsection (1), the Government may, by regulations, under this section provide for the repeal, amendment or modification of any provision of this Act where this provision is—

- (a) in conflict with, or inconsistent with;
- (b) made unclear by; or
- (c) rendered unnecessary by,

the Merchant Shipping (Port State Control) Regulations 2011.

(3) A reference to the Merchant Shipping (Port State Control) Regulations 2011 is a reference to that enactment as from time to time amended.

Detention of the ship by the Gibraltar Port Authority for offence.

52.(1) Where the Gibraltar Port Authority has clear grounds for believing that an offence has been committed under section 56(1)(a) by the discharge of a non-Gibraltar ship of ballast water or sediments into BGTW, the Gibraltar Port Authority may detain the ship.

(2) Where a non-Gibraltar ship is detained under subsection (1), the Gibraltar Port Authority must immediately notify the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

- (a) states the grounds for the detention; and
- (b) requires the terms of the order to be complied with before the ship is released by the Authority.

(4) With the prior written approval of the Captain of the Port, the detention order may-

- (a) include a direction that the ship-
 - (i) remain in a particular place; or
 - (ii) be moved to a particular anchorage or berth, and
- (b) if it includes a direction, specify circumstances relating to the safety or the prevention of pollution in which the master may move the ship from that place, anchorage or berth.

(5) Where the master of a ship has been served with a detention order in accordance with subsection (3) and-

- (a) the master proceeds to sea otherwise than in accordance with the order and before the ship is released; or
- (b) the master fails to comply with a direction given under subsection (4),

the master of the ship shall be guilty of an offence.

(6) A person guilty of an offence under subsection (5) is liable-

- (a) on summary conviction, to a fine at level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

(7) The owner, and any person who sends a ship to sea, must, if party or privy to the offence committed under subsection (5), also be guilty of an offence under that subsection and liable accordingly.

(8) Where a ship proceeding to sea in contravention of subsection (5), or failing to comply with a direction given under subsection (4), carries away without their consent any person on board in the execution of their duty, namely any person authorised to detain the ship under this section, the master and the owner shall each-

- (a) be liable to pay all expenses of and incidental to that person being taken to sea; and
- (b) be guilty of an offence.

(9) A person guilty of an offence under subsection (8) is liable-

- (a) on summary conviction, to a fine at level 5 on the standard scale;
- (b) on conviction on indictment, to a fine.

(10) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending to sea must be construed accordingly.

(11) Where the ship is detained under this section, the Gibraltar Port Authority must-

- (a) inform the Certifying Authority that issued the ship's IBWM Certificate;
- (b) immediately inform the appropriate maritime authorities of the ship's flag State or a diplomatic representative of that State.

(12) Where a ship is detained under this section, it must be immediately released by the Gibraltar Port Authority-

- (a) if no proceedings for an offence under section 56(1)(a) are commenced within a period of 7 days beginning with the day on which the ship is detained;
- (b) if any proceedings for an offence under section 56(1)(a), commenced within that period, are concluded without the owner, manager, demise charterer or master being convicted;
- (c) if either-
 - (i) the sum of £30,000 is paid to the Government by way of security; or
 - (ii) security which, in the opinion of the person that issued the detention order, is satisfactory and is for an amount not less than £30,000, is given to the Government,

by the owner, manager, demise charterer or master;

- (d) where the owner, manager, demise charterer or master is convicted of an offence under section 56(1)(a), if any costs or expenses ordered to be paid by any of these persons, and any fine imposed on the owner, manager, demise charterer or the master, has been paid; or
- (e) if the release is ordered by a court or tribunal referred to in Article 292 of UNCLOS and any bond or other financial security ordered by that court or tribunal is posted.

(13) The Gibraltar Port Authority must repay any sum paid under subsection (12)(c) or release any security given-

- (a) if no proceedings for an offence under section 56(1)(a) are commenced within the period of 7 days beginning with the day on which the sum is paid; or
- (b) if any proceedings for an offence under section 56(1)(a) are commenced within the period referred in paragraph (a), and are concluded without the owner, manager, demise charterer or master being convicted.

(14) Where a sum has been paid, or security has been given by any person in accordance with subsection (12)(c) and the owner, manager, demise charterer or master is convicted of an offence under section 56(1)(a), the sum that is paid or the amount made available under the security must be applied as follows-

- (a) first, in payment of any costs or expenses ordered by the court to be paid by the owner, manager, demise charterer or master; and
- (b) next, in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(15) The provisions of section 50(20) and (21) apply to this section.

(16) The Captain of the Port may grant the approval referred to in subsection (4), where it is possible in the circumstances to accommodate the ship in a particular place, anchorage or berth.

Investigation of alleged contraventions by Gibraltar ships and non-Gibraltar ships.

53.(1) Upon receiving evidence that a Gibraltar ship has failed to discharge ballast water through ballast water management in accordance with this Act or under the Convention, the Maritime Administrator must-

- (a) cause the matter to be investigated;
- (b) inform the IMO of the action taken; and
- (c) where a Contracting State has reported the contravention, inform that State of the action taken.

(2) If the Maritime Administrator has not taken any action within one year of the date on which they received the evidence referred to in subsection (1), the Maritime Administrator must inform the Contracting State that reported the violation, that no action has been taken.

(3) Where a request for an investigation is received from a Contracting State, the Maritime Administrator may inspect the ship when it is in BGTW, and a report of that investigation must be sent to the Contracting State requesting it.

(4) The Maritime Administrator may request further information from the other Contracting State in order to consider any report or request under this section.

(5) The Maritime Administrator may send-

- (a) evidence to another Contracting State that a non-Gibraltar ship has failed to discharge ballast water through ballast water management in accordance with the Convention;
- (b) a request for an investigation to another Contracting State concerning a non-Gibraltar ship.

Right of appeal.

54.(1) Where-

- (a) an owner, master, or representative; or
- (b) any other person or body,

is affected by a decision, order or notice made by the Maritime Administrator or the Gibraltar Port Authority in carrying out their duties under this Act, and the arbitration procedure in section 42 cannot be applied, any of the persons or bodies referred to in paragraphs (a) or (b) may appeal against that decision by filing a notice of appeal with the Supreme Court within 21 days from the date that the decision, order or notice is served on those persons or bodies.

(2) Where a decision, notice or order is made by the Maritime Administrator or the Gibraltar Port Authority, that decision, notice or order must state that the persons or bodies referred to in subsection (1)(a) or (b) may appeal to the Supreme Court, and the practical arrangements for this.

(3) The filing of the notice of appeal under subsection (1) does not suspend the operation of a detention order.

(4) Where a notice of appeal is filed in accordance with subsection (1), the Supreme Court may hear the appeal at an earlier date if it is satisfied that there is a proper case for an expedited hearing.

(5) The Supreme Court must have regard in coming to a decision, to any matters whether specified or not in the decision, order or notice which appear to it to be relevant as to whether there was a valid basis or reasonable grounds for the decision, order or notice.

(6) Where on an appeal under this section the Supreme Court decides as respects any matters to which the appeal relates, that in all the circumstances the matters did not constitute a valid reason or reasonable grounds for the decision, order or notice complained of, it must-

- (a) revoke any order or notice issued or set aside any decision taken;
- (b) affirm any order or notice made or confirm any decision taken, with any modifications as it may in the circumstances think fit,

and in any case other than the ones described in paragraphs (a) or (b), the court must affirm the order or notice or confirm the decision in its original form.

(7) The Supreme Court must include in its decision a finding whether or not there was a valid basis for the decision, notice or order.

Compensation.

55.(1) Where the Supreme Court has allowed an appeal under section 54, and the appeal concerns a ship which is unduly detained, it may award the appellant compensation for any loss or damage suffered by reason of the decision, and costs as the court thinks fit.

(2) An action for any costs or compensation payable by the Government under this section may be brought in the Supreme Court against the Attorney-General in an action by the claimant against the Attorney-General as defendant, and the rules of court for the time being in force apply to this action.

(3) Any compensation granted under this section is payable out of the Consolidated Fund.

Offences and penalties.

56.(1) Any contravention of-

- (a) section 11(1) or section 49(4) are offences by the owner, manager, demise charterer and master of the ship;
- (b) section 15(1), (4) or (5), section 16(1) (3), (8) to (10), (12) or (14), section 21(2) or section 34(2) are offences by the owner, manager, demise charterer and master of the ship;
- (c) section 15(3) or section 16(11) are offences by the master of the ship;
- (d) section 16(10) is an offence by the officer in charge of the relevant operation;
- (e) section 16(16), section 21(1) or section 40(5) are offences by the owner of the ship;

- (f) section 9(2) is an offence by the owner or operator of the sediment reception facilities in question;
- (g) section 25(7), section 27, section 28, section 36(1) or (2), section 37(2) are offences by the owner and master of the ship;
- (h) section 36(3) is an offence by the owner, demise charterer and the master of the ship; or
- (i) section 45 is an offence by the person in question.

(2) Any failure by a master to comply with a requirement under section 48(15)(b) is an offence.

(3) An offence under subsections (1) or (2) is punishable-

- (a) on summary conviction by a fine at level 5 on the standard scale; or
- (b) on conviction on indictment by a fine.

Defences.

57.(1) Except for offences under sections 48(20), 50(9),(11) or (12), or 52(5), (7) or (8), in proceedings for any other offence under this Act, it is a defence for the person charged with the commission of an offence to prove that they took all reasonable steps and exercised all due diligence to ensure that the provision in question was complied with.

(2) Without prejudice to subsection (1), in any proceedings for an offence comprising a contravention of section 11(1) or section 49(4) , it is a defence for the person charged with the commission of an offence to prove that-

- (a) the ship was not a Gibraltar ship;
- (b) the discharge took place in waters that were not in BGTW; and
- (c) the ship was in BGTW at the time of the institution of the proceedings by reason only of stress of weather or any other reason beyond the control of the owner, manager, charterer or master of the ship.

Jurisdiction for criminal offences.

58.(1) A court in Gibraltar has jurisdiction to hear any matter which is an offence under this Act -

- (a) where the conduct that constitutes the offence is committed wholly or partly in Gibraltar, or in BGTW by a ship; or

(b) in the case of a Gibraltar ship, wherever this ship may be.

(2) Notwithstanding subsection (1), a court in Gibraltar may decline jurisdiction in relation to any matter.

(3) The jurisdiction under this section is in addition to and not in derogation of any jurisdiction or power of the courts in Gibraltar.

PART 8 MISCELLANEOUS

Amendments to listed enactments.

59.(1) The enactments together with the relevant provisions listed in column 1 of the table in the Schedule are amended to the extent set out in column 2.

(2) The Government may by Order amend the Schedule.

Enforcement and application of fines.

60.(1) Where the court imposes a fine in respect of an offence committed by an owner, manager, demise charterer or master of a ship under section 56(1)(a) of this Act, and the fine is not paid within the time and in the manner specified by the court, the court may, in addition to any other powers for enforcing payment, have power to direct that the amount of the unpaid fine be levied by distress of the ship and the ship's equipment.

(2) Where-

(a) an owner, manager, demise charterer or master is convicted of an offence under section 56(1)(a) of this Act; and

(b) the court imposes a fine in respect of that offence,

the court may, if it appears that any person has incurred, or will incur, expenses in removing any pollution or making good any damage, which is attributable to this offence, order that the whole or part of the fine to be paid to that person towards defraying those expenses.

(3) The court may order the release of the ship or any equipment detained pursuant to subsection (1) if the unpaid fine and any costs associated with the distress have been paid to the satisfaction of the court.

(4) If the fine is not paid within the period of 7 days after the making of an order under subsection (1), the court may, while the default continues, cause the ship to be independently appraised and sold by public auction.

(5) The court must apply the proceeds of sale in the payment of-

- (a) all reasonable expenses or costs incurred by the court, or the party seeking enforcement;
- (b) the fine,

and must pay the surplus (if any), on demand, to the owner of the ship, or any other person entitled to it.

Offences by bodies corporate.

61.(1) Where an offence under any provision of this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(3) A fine imposed on an unincorporated association on its conviction for an offence shall be paid out of the funds of the association.

(4) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of or to have been attributable to any neglect on the part of a partner he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

Service of documents and notices.

62.(1) Any notice or document required or authorised to be served on or given to a person may be served or given by delivering it to them, or by leaving it at their proper address, or by sending it by post to them at that address.

(2) Any document or notice may -

- (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body;
- (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.

(3) For the purposes of this section, the proper address of any person on or to whom any such notice or document is to be served or given shall be their last known address, except that-

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;

- (b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership,

and for the purposes of this subsection the principal office of a company registered outside Gibraltar or of a partnership carrying on business outside Gibraltar shall be their principal office in Gibraltar.

(4) If the person to be served with or given any notice or document has specified an address in Gibraltar other than their proper address within the meaning of subsection (3) as the one at which they or someone on their behalf will accept notices or documents of the same description as that notice or document, that address shall also be treated for the purposes of this section as their proper address.

(5) Any document or notice to be served on the master of a ship may be served-

- (a) where there is a master, by leaving it for them on board the ship with the person appearing to be in command or charge of the ship;
- (b) where there is no master, on-
 - (i) the owner; or
 - (ii) if there is no owner, on any registered agent of the owner that has an address in Gibraltar; or
 - (iii) where no registered agent is known or can be found, by leaving a copy of it fixed to the mast of the ship.

(6) In the case of any document or notice to be given to-

- (a) the Maritime Administrator, by delivering it to that person, or by delivering it at or sending it by registered post to the offices of the Gibraltar Maritime Administration;
- (b) the Gibraltar Port Authority, by leaving it at the principal office of the Gibraltar Port Authority or sending it by registered post to the principal office of the Authority.

Service of documents on foreign companies.

63.(1) Any document or notice to be served on a foreign company for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act alleged to have been committed by that company as the owner of the ship, must be treated as duly served on that company if the document or notice is served on the master of the ship.

(2) In the case of an offence-

- (a) in respect of a ship other than a floating platform, the reference to the “owner” in subsection (1) is to the owner, manager or demise charterer; and
- (b) in respect of a floating platform –
 - (i) the reference to “owner” in subsection (1) is to the owner of the platform; and
 - (ii) the reference to “master” in subsection (1) is to the manager of the platform.

(2) In this section “foreign company” means a company or other body corporate incorporated outside Gibraltar which is not one to which section 439 of the Companies Act 2014 applies so as to authorise service of the document or notice in question.

Power to make regulations.

64.(1) The Government may, by regulations, make provision as the Government considers appropriate -

- (a) in respect of any matter that arises from or is incidental to this Act; or
- (b) for the implementation of –
 - (i) the Convention;
 - (ii) any other convention or international agreement; or
 - (iii) any other relevant international obligation or standards concerned with the Convention, or any other convention or international agreement which is applicable to Gibraltar, and any recommendations (however described) of the international bodies that are involved in the adoption, monitoring or promotion of these obligations and standards;
- (c) to amend this Act for the purpose of implementing in Gibraltar-
 - (i) the Convention, or any other international agreement or convention ;
 - (ii) any other international obligations or standards concerned with the Convention, or any other convention or international agreement which is applicable to Gibraltar ;
 - (iii) any recommendations (however described) of any international bodies that are involved with the adoption, monitoring or promotion of the obligations or standards referred to in subparagraph (ii).

(2) Regulations made under subsection (1) may contain such consequential, supplementary, incidental and transitional provisions as the Government considers it necessary or expedient.

(3) The power to make regulations under subsection (1)(c) may (among other things) be exercised by modifying any provision made in this Act, or under any enactment made by this Act;

(4) Section 23(b) of the Interpretation and General Clauses Act does not apply to any regulations made under this section.

Communication of information.

65.(1) The Maritime Administrator must report to the IMO and, where appropriate, make available to other Contracting States upon a written request being made to the Maritime Administrator, the following information-

- (a) any requirements and procedures concerning ballast water management, including the applicable provisions in Gibraltar law for the implementation of the Convention;
- (b) the availability and location of any sediment reception facilities for the disposal of ballast water and sediments;
- (c) any requirements for information from a ship which is unable to comply with the provisions of the Convention by reason of the matters set out in sections 12(1) and 17.

(2) Any information disclosed by the Maritime Administrator under subsection (1)(c) upon a request being received by the Maritime Administrator under subsection (1) must not be disclosed to any person other than any person executing their duty in accordance with this section, and must not be disclosed for any other purpose other than for the purposes set out in this section.

(3) The Maritime Administrator must take the necessary measures to ensure the confidentiality of information exchanged in accordance with this section, may not disclose any information until the intended recipient agrees to comply with any restrictions and conditions on the use of that information as are imposed by the Maritime Administrator.

(4) The Maritime Administrator may send a request under this section to the IMO or any Contracting State requesting information concerning any State relating to –

- (a) any requirements and procedures concerning ballast water management, including the applicable provisions under the law of another Contracting State for the implementation of the Convention;
- (b) the availability and location of any sediment reception facilities for the disposal of ballast water and sediments in the other Contracting State;
- (c) any requirements for information from a ship which is unable to comply with the provisions of the Convention by reason of the matters set out in sections 12(1) and 17 as they would apply or be implemented in the other Contracting State.

(5) Where-

- (a) the Maritime Administrator is the recipient of information provided to it by any other Contracting State or the IMO, upon a request being made by the Maritime Administrator to the IMO or another Contracting State; and
- (b) the information referred to is the type of information which is covered by this section,

the Maritime Administrator shall not be bound by any restrictions and conditions on the use of that information as is imposed by the IMO or other Contracting States, unless they receive prior notice of the information to be provided and agree to those restrictions and conditions.

Saving and transitional provision.

66.(1) The provisions in section 9 do not affect -

- (a) the validity of any licences issued under section 2E of the Port Operations (Registration and Licensing) Act 2005 before the commencement of this Act, which concern the repair of ballast water tanks;
- (b) an application for a licence under section 2E of the Port Operations (Registration and Licensing) Act 2005 concerning the repair of ballast water tanks made before the commencement of this Act.

(2) No decision on any proceedings instituted under sections 14 or 15 of the Port Operations (Registration and Licensing) Act 2005 are affected by the commencement of this Act.

SCHEDULE

Section 59

ENACTMENT (Provisions referred to)	EXTENT OF AMENDMENT
Oil in Territorial Waters Act Section 3(2)	Delete subsection (2) of section 3.
Merchant Shipping (Port State Control) Regulations 2011 is amended in accordance with this subsection as follows- Regulation 2 Schedule 4	1. In the definition of “Conventions” under regulation 2- (a) substitute the comma after paragraph (l) with a semi-colon; (b) after paragraph (l) insert- “(m) the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004, adopted in London on the 13 th February 2004, (the Ballast Water Convention),”. 2. In Schedule 4 add the following point after point 85- “86. International Ballast Water Management Certificate (IBWMC) (BWMC Art 9.1(a)).”.
Public Health (International Health) Rules 2014 Rule 7	In rule 7, insert after sub-rule (4)(e)– “(4A) The monitoring and control of the discharge by ships of ballast water must be carried out in accordance with the provisions of the Control and Management of Ships’ Ballast Water and Sediments Act 2026, and any inconsistency between rule 7(4)(d) and the provisions of that Act must be resolved by endeavouring to give effect to the implementation of any relevant international obligations. (4B) The “relevant international obligations” in rule (4A) means those

	obligations applicable to Gibraltar under the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, and under the International Health Regulations.”.
<p>Port Operations (Registration and Licensing) Act 2005</p> <p>Section 2</p>	<p>In section 2, in the definition of “port operations” -</p> <p>(a)omit “and” in paragraph (l);</p> <p>(b) insert “and” after the semi-colon in paragraph (m);</p> <p>(c) insert after paragraph (m)-</p> <p>“(n) works under or referred to in section 9 of the Control and Management of Ships' Ballast Water and Sediments Act 2026, which are not otherwise included in this definition;”.</p>
<p>Gibraltar Merchant Shipping (Safety, etc.) Act, 1993</p> <p>Long title</p> <p>Section 3</p> <p>Section 51</p> <p>Section 59</p> <p>Section 60</p> <p>Section 62</p> <p>Section 63</p> <p>Section 64</p> <p>Section 98</p> <p>Section 118</p> <p>New sections 118A and 118B.</p>	<p>1.In the long title of the Gibraltar Merchant Shipping (Safety, etc.) Act, 1993, after the words “IN RESPECT THEREOF,” insert-</p> <p>“FOR THE IMPLEMENTATION OF INTERNATIONAL AGREEMENTS OR INTERNATIONAL CONVENTIONS CONCERNING SHIPS TO WHICH THOSE INTERNATIONAL AGREEMENTS AND INTERNATIONAL CONVENTIONS APPLY, AND”.</p> <p>2.In section 3, after subsection (3) insert-</p> <p>“(3A) For the purposes of the Control and Management of Ships' Ballast Water and Sediments Act 2026, and notwithstanding subsection (3), the Maritime Administrator may authorise or appoint an employee of the Government to assist them with their duties and obligations under the said Act, or act on their behalf in relation to those duties and obligations.”.</p>

	<p>3. In section 51, after subsection (2) insert-</p> <p>“(3) This Part also makes provision for non-Gibraltar ships.”.</p> <p>4. In the heading of section 59 delete “registered”.</p> <p>5. In section 60, in subsection (1) delete “registered”.</p> <p>6. In section 62, after subsection (1) insert-</p> <p>“(1A) The Government must, by regulations, make provision as it considers appropriate for non-Gibraltar ships, to the extent that the Load Line Convention requires Gibraltar to make provision for these ships.”.</p> <p>7. In section 63, substitute subsection (1) with-</p> <p>“(1) The Government must make any regulations which are necessary for the purpose of giving effect to the requirements of the Safety Convention as to life saving appliances, in respect of-</p> <p style="padding-left: 40px;">(a) ships registered in Gibraltar; and</p> <p style="padding-left: 40px;">(b) any other ships, where Gibraltar is required to make provision for these ships under the Safety Convention.”.</p> <p>8. In section 64, after subsection (1) insert-</p> <p>“(1A) Where an international convention or international agreement which applies to Gibraltar permits a non-Gibraltar ship to be exempted from any requirements under regulations made under sections 59 or 63, the Government may, by regulations, make provision for any exemption.”.</p> <p>9. In section 98-</p>
--	---

	<p>(a) in subsection (1), after “registered ships” insert “, and any other ships (insofar as it is required),”;</p> <p>(b) after subsection (3) insert-</p> <p>“(4) Without prejudice to the generality of the power under subsection (1), provision may be made in regulations under that subsection for the detention of non-Gibraltar ships where they contravene any requirements in regulations.”.</p> <p>10. In section 118-</p> <p>(a) substitute subsection (1)(c) for-</p> <p>“(c) the implementation in Gibraltar of an international agreement or international convention, which is extended to Gibraltar, or where it is expected that extension will be obtained, and that international agreement or international convention-</p> <p>(i) concerns any matters contained in or dealt with under this Act; or</p> <p>(ii) applies to registered ships or any other ships where Gibraltar is required to make provision for these ships under the international agreement or international convention in question;”;</p> <p>(b) after subsection (1) insert-</p> <p>“(1A) Any regulations made under subsection (1)(c) may make provision for the repeal or amendment or variation of any provision of this Act, or the Schedule, where any provision of this Act, or the Schedule, is-</p> <p>(i) in conflict with;</p> <p>(ii) made unclear by; or</p> <p>(iii) rendered unnecessary by,</p> <p>a regulation made under subsection (1)(c), and this power shall include the power to provide for the provision</p>
--	---

	<p>to come into force although the agreement or convention, as the case may be, has not yet come into force.</p> <p>(1B) Regulations made under subsection (1)(c) may give effect to-</p> <p>(a) any relevant international obligations or standards concerned with the international Convention or international agreement;</p> <p>(b) any recommendations (however described) of international bodies that are involved with the adoption, monitoring or promotion of any obligations or standards under the international Convention or international agreement.</p> <p>(1C) Regulations made under subsection (1)(c) may contain such consequential, supplementary, incidental and transitional provisions as the Government considers it necessary or expedient.</p> <p>(1D) Section 23(b) of the Interpretation and General Clauses Act does not apply to any regulations made under subsection (1)(c).”.</p> <p>11. Insert after section 118-</p> <p>“Savings provision.</p> <p>118A. Any law of the European Community that was in force prior to the amendments made to section 118 under the Control and Management of Ships' Ballast Water and Sediments Act 2026, continues in full force and effect, and is not affected by any amendments made to that section.</p> <p>Subsidiary legislation.</p> <p>118B. Section 23(b) of the Interpretation and General Clauses Act does not apply to any regulations made under this Act.”.</p>
--	--

EXPLANATORY MEMORANDUM

This Bill implements the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 ("the Convention"). The Convention was adopted on 13th February 2004 and came into force internationally on 8th September 2017.

The Bill applies to Gibraltar ships wherever they may be and any other ship whilst it is operating in BGTW (clause 5). The Bill does not apply in relation to certain ships including those which are not designed or constructed to carry ballast water.

Part 2 provides that only licensed operators may use facilities in Gibraltar to clean ships' ballast water tanks, and sediment reception facilities must comply with approved guidelines and avoid delaying ships.

Part 3 imposes a prohibition on discharging any ballast water or sediments from a ship unless they are subject to ballast water management. There are exceptions and exemptions under clauses 12 and 13. In addition for certain ships there is power to approve equivalents under clause 14.

Part 4 requires ships to have an approved ballast water management plan (clause 15) and to carry a ballast water record book to record operations concerning ballast water (clause 16). Clause 17 imposes requirements on where ballast water exchange may take place and clause 18 sets the standard for the exchange of ballast water. Clause 19 sets the standard for the treatment of ballast water and sediments.

Part 5 of the Bill contains a power to designate nominated bodies to carry out type approval of ballast water management systems. Clause 21 imposes a requirement on Gibraltar ships to have a valid BWMS (ballast water management system) Type Approval Certificate when the BWMS is installed. The procedure for applying for type approval is contained in clause 22, whilst the requirements that must be fulfilled for type approval to be granted are in clause 23.

Clause 24 enables nominated bodies to suspend or withdraw type approval in certain circumstances. Clause 25 prohibits the use of systems which use active substances and the substances themselves. Clause 26 makes provision to approve the testing of prototype ballast water management systems.

Part 6 of the Bill provides that a Gibraltar ship must not proceed to sea or, if it is already at sea, remain at sea without a valid IBWM Certificate (International Ballast Water Management Certificate) (clause 27). There is a similar requirement for non-Gibraltar ships (clause 28). Gibraltar ships must be subjected to various surveys (clause 29) and if they satisfy the requirements of these surveys then a Certifying Authority must issue them with an IBWM Certificate (clause 30) or endorse an existing IBWM Certificate (clause 32). Part 6 also provides that an additional survey will be required following a change, replacement or significant repair (clause 37) and that the ship must be maintained to conform with the provisions of the Act following a survey.

Part 7 of the Bill makes provision in relation to the powers of inspection and detention of ships, and in relation to offences and penalties. It also provides for appeals, compensation, defences and other related matters.

Part 8 amends domestic legislation which is necessary to give the Convention proper effect, and makes amendments to other enactments to facilitate implementation of other international obligations. This Part also makes provision in relation to the enforcement of fines, corporate liability, service of documents and notices, power to make regulations, and a provision for communication of information to the IMO and other Contracting States for certain purposes. Finally, there is a savings and transitional provision in relation to licences under the Port Operations (Registration and Licensing) Act 2005, and applications for licences.