

**SECOND SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**  
No. 4067 of 20 March, 2014

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LEGAL NOTICE NO. 33 OF 2014.

**GIBRALTAR MERCHANT SHIPPING (SAFETY, ETC.) ACT, 1993**

**GIBRALTAR MERCHANT SHIPPING (ACCIDENT REPORTING  
AND INVESTIGATION) (AMENDMENT) REGULATIONS 2014**

In exercise of the powers conferred on it by section 118(1)(c) of the Gibraltar Merchant Shipping (Safety, etc.) Act 1993, and for the purpose of further transposing Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council into the law of Gibraltar, the Government has made the following Regulations—

**Title and commencement.**

1. These Regulations may be cited as the Gibraltar Merchant Shipping (Accident Reporting and Investigation) (Amendment) Regulations 2014 and come into operation on the day of publication.

**Amendments to the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012.**

2. The Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (the principal Regulations) are amended in accordance with regulations 3 to 11 below.

**Amendment to regulation 2.**

3. The principal Regulations are amended in regulation 2(1)—

- (a) by substituting the following definition for the definition of “accident”—

““accident” means one or both of the followings—

- (a) marine casualty that includes a serious casualty or very serious casualty;

- (b) marine incident that includes a serious injury;” and
- (b) by inserting the following definition after the definition of “the Directive”–  
““Deputy MAICO” means the person appointed under regulation 5A;”;
- (c) by deleting the definition of “major injury”;
- (d) by inserting in the definition of “Marine Accident Investigation Compliance Officer” the “Deputy MAICO or” after “requires, includes”.

**Insertion of regulation 5A.**

4. The principal Regulations are amended by inserting the following regulation after regulation 5–

**“Appointment of Deputy MAICO.**

5A. The Government may appoint a fit and proper person to be the Deputy MAICO–

- (a) who shall act under the direction of or on behalf of the MAICO; and
- (b) on such terms and conditions as may be specified in the instrument of his appointment.”.

**Amendment to regulation 7.**

5. The principal Regulations are amended in regulation 7, by inserting the following subregulations after subregulation (2)–

“(3) The inspectors appointed under this regulation must, as soon as possible, undergo such dedicated training as may be prescribed by the MAICO, in order to be qualified as accident investigators.

(4) The MAICO must maintain a list of inspectors who are qualified to conduct safety investigation under these Regulations.”.

**Amendments to regulation 9.**

6. Regulation 9 of the principal Regulations is amended–

- (a) by substituting “MAICO” for “Maritime Administrator” after “shall notify the” in subregulation (1);
- (b) by substituting “MAICO” for “Maritime Administrator” after “shall report to the” in subregulation (2);
- (c) by substituting “MAICO” for “Maritime Administrator” after “shall be provided to the” in sub-regulation (4);
- (d) by substituting “MAICO” for “Maritime Administrator” after “provide the” in subregulation (5);
- (e) by deleting subregulation (6);
- (f) by substituting the following subregulation for subregulation (7)–

“(7) In the case of an accident, any person reporting to the MAICO under this regulation shall, without delay, also inform the Maritime Administrator of the occurrence of that accident.”.

**Amendments to regulation 10.**

7. Regulation 10 of the principal Regulations is amended–

- (a) in sub-regulation (2) by substituting “may” for “shall” after “the MAICO”;
- (b) by substituting the following subregulations for subregulations (3) and (4)–

“(3) Where a notification has been received under subregulation (1) of regulation 9, or a report under subregulation (2), (4) or (5) of regulation 9, the MAICO shall–

- (a) decide whether or not an investigation, including any preliminary assessment, should be carried out; and

- (b) notify the Maritime Administration and the parties to the accident of his decision within 28 days following of the report by him.
- (4) Before deciding as to whether an investigation should be carried out, and if so, what form it should take, the MAICO may request for such information as he considers necessary concerning the accident and any remedial action taken as a result.
- (4A) Any person referred to in subregulation (1) or (2) of regulation 9, and any other person who is in possession of the information requested by the MAICO under sub-regulation (4), shall provide such information to the MAICO to the best of his ability and knowledge.”;
- (c) in subregulation (5)–
  - (i) by substituting “serious injury” for “major injury” after “loss of life or”;
  - (ii) by deleting “on receiving advice from the Maritime Administration” after “the MAICO”
  - (iii) in paragraph (b) by substituting “serious injury” for “major injury” after “any”.

**Amendment to regulation 13.**

8. Regulation 13(4)(b) of the principal Regulations is amended by substituting “MAICO” for “Maritime Administration”.

**Amendments to regulation 19.**

9. Regulation 19 of the Principal Regulations is amended by substituting the following subregulations for subregulations (1) to (8)–

“(1) Subject to subregulation (3), the MAICO shall cause a report of an investigation into an accident conducted pursuant to regulation 14(8)(a), to be prepared.

(2) The report shall set out–

- (a) conclusions relating to the facts of the accident;
- (b) where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts; and
- (c) recommendations for future safety.

(3) The MAICO may make the report publicly available in such manner as he thinks fit but in the case of an accident to which regulation 20 applies the MAICO must publish the report in accordance with the provisions of that regulation.

(4) The MAICO shall not make the report publicly available until he has—

- (a) served a notice under this regulation upon any person who, or organisation which, could be adversely affected by the report or, if that person is deceased, upon such person or persons as appear to the MAICO, at the time he proposes to serve notice pursuant to this sub-regulation, as best to represent the interests and reputation of the deceased in the matter; and
- (b) considered the representations relating to the facts or analysis contained in the report which may be made to him in accordance with subregulation (6) by or on behalf of the persons served with such notice.

(5) The notice referred to in subregulation (4)(a) shall be accompanied by a draft copy of the report.

(6) The representations referred to in subregulation (4)(b) shall be in writing and shall be served on the MAICO within 28 days of service of the notice referred to in subregulation (4)(a) or within such further period as may be allowed under regulation 23.

(7) Subject to any court order under regulation 18, no person shall disclose any information—

- (a) which has been furnished to him pursuant to subregulation (5);  
or
- (b) which has otherwise been furnished to him by or on behalf of the MAICO in advance of the publication of a report and

whose confidentiality is protected by regulation 18, or permit such information to be disclosed, save with the prior consent in writing of the MAICO, to any other person, except to such advisers as are necessary in order to make representations to the MAICO referred to in sub-regulation (4)(b), and those advisers shall similarly be subject to the duty not to disclose the information or permit it to be disclosed.

(8) A copy of the report when made publicly available shall be given by the MAICO to—

- (a) any person who has been served with a notice pursuant to subregulation (4)(a);
- (b) those persons or bodies to whom recommendations have been addressed in that report;
- (c) the IMO;
- (d) where regulation 10(7) to (9) applies, to the European Commission; and
- (e) any person or organisation whom the MAICO considers may find the report useful or of interest.”.

**Amendment to regulation 23.**

10. Regulation 23 of the principal Regulations is amended by substituting the following subregulation for subregulation (1)—

- “(1) The MAICO shall have the power to extend the period of 28 days prescribed in regulation 19(6) for only another 28 days, but the MAICO shall do so only if he considers that there are good reasons warranting such an extension having regard to the requirement in regulation 19(1) for a report of an investigation to be made available in the shortest time possible.”.

**Amendment to Schedule 2.**

11. Schedule 2 of the principal Regulations is amended in the note by inserting “incident” after “marine casualty or”.

Dated 20th March, 2014.

N F COSTA,  
For the Government.

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**EXPLANATORY MEMORANDUM**

These Regulations amend the Gibraltar Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 and further transpose Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC.