
STATUTORY INSTRUMENTS

1985 No. 447

MERCHANT SHIPPING

The Merchant Shipping (Liner Conferences) (Gibraltar) Order 1985

Made - - - - 20th March 1985
Coming into Operation 10th April 1985

At the Court at Buckingham Palace, the 20th day of March 1985

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 15(4) of the Merchant Shipping (Liner Conferences) Act 1982, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Merchant Shipping (Liner Conferences) (Gibraltar) Order 1985 and shall come into operation on 10th April 1985.
2. The provisions of the Merchant Shipping (Liner Conferences) Act 1982 (except sections 12 and 13 thereof), the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 and the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985 shall extend to Gibraltar, subject to the modifications and adaptations specified in the schedule hereto.

G.I. de Deney
Clerk of the Privy Council

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more**

SCHEDULE

PART A

“TEXT OF THE MERCHANT SHIPPING (LINER CONFERENCES) ACT 1982, AS EXTENDED TO GIBRALTAR, SUBJECT TO MODIFICATIONS AND ADAPTATIONS

Main implementing provisions

Introductory provisions: the Code and the Contracting Parties to it

1.—(1) In this Act “the Code” means the Convention on a Code of Conduct for Liner Conferences signed at Geneva on 6th April 1974.

(2) The text of the Code is set out in the Schedule to this Act as it applies in the United Kingdom.

(3) Her Majesty may by Order in Council made under this Act as it applies in the United Kingdom certify which states are Contracting Parties to the Code, and in respect of what countries they are parties, and such an Order in Council shall be conclusive evidence of the matters certified by it.

Implementing Regulations: Application

2.—(1) Those provisions of the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 as extended to Gibraltar which provide that the provisions of Chapters I to V of the Code shall apply—

- (i) to a conference which has its seat in Gibraltar, so far as it serves the trade between states which are Contracting Parties to the Code, and
- (ii) to a conference which does not have its seat in Gibraltar, so far as it serves the trade between Gibraltar and another state which is a Contracting Party to the Code.

shall so apply whether or not the law of Gibraltar would fall to be applied in accordance with the ordinary rules of private international law.

(2) For the purposes of subsection (i) a conference has its seat in Gibraltar if, and only if—

- (a) it is incorporated or formed under the law of Gibraltar; or
- (b) its central management and control is exercised in Gibraltar.

Implementing Regulations: Implied Terms

3. Where the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 as extended to Gibraltar provide that a mandatory provision of the Code has effect as an implied term of a contract, then—

- (a) any agreed terms which are to any extent inconsistent with that term shall to that extent be of no effect; and
- (b) without prejudice to paragraph (a), any agreed provision for the settlement of disputes arising out of the contract shall apply to disputes arising out of that term only if—
 - (i) the parties to the contract have expressly agreed that that provision shall apply to such disputes; or
 - (ii) the parties to the dispute in question agree that it should apply to that dispute.

Power to exclude or restrict operation of the Code for lack of reciprocity

4. Where after consultation with the Governor it appears to the Secretary of State that—
- (a) a state which is a Contracting Party to the Code has made reservations when becoming a party to the Code or has materially failed to fulfil its obligations under the Code, and
 - (b) the implementation of those reservations or, as the case may be, the failure to fulfill those obligations is damaging to or threatens to damage the shipping or trading interests of Gibraltar,

the Governor may, with the concurrence of the Secretary of State, by regulations exclude or restrict the operation of all or any of the provisions of Chapters I to V of the Code, as they apply by virtue of regulations made under this Act as it applies in the United Kingdom and extended to Gibraltar, in relation to trade with that state or in relation to persons having any such connection with that state as may be specified in the regulations.

Proceedings arising out of the Code

Liability of members of conference to be in proportion to their responsibility

5.—(1) Where proceedings arising out of the Code are brought against a member of a conference in respect of damage or loss suffered by any person and other members of the conference are also liable (whether jointly or otherwise) in respect of the same damage or loss, the liability of that member to make good that damage or loss shall be in proportion to his responsibility.

The reference above to the liability of other members of the conference is to any such liability which has been or could be established in proceedings brought before the same court or other tribunal by or on behalf of the person suffering the damage or loss; and for the purposes of this subsection it is immaterial by reference to what law the issue of liability was or would be determined.

(2) In ascertaining the responsibility of a member of a conference for the purposes of subsection (1), regard shall be had not only to the member's part (if any) in the particular matters giving rise to the proceedings but also to his general involvement in the affairs of the conference as shown, for example, by his share of the conference trade, the nature of pooling arrangements to which he is a party and the extent to which he contributes to the administrative expenses of the conference.

(3) Subsections (1) and (2) apply to any proceedings in Gibraltar and to proceedings elsewhere in which the extent of the liability of a member of a conference falls to be determined by reference to the law of Gibraltar.

- (4) Where in proceedings arising out of the Code—
- (a) judgment is given against a member of a conference in respect of damage or loss caused to any person, and
 - (b) the extent of the member's liability is not determined by reference to subsections (1) and (2),

the member shall not, if it is sought to enforce the judgment in Gibraltar, be liable to make good any greater proportion of that damage or loss than if the extent of his liability had been determined by reference to those subsections.

(5) A member of an unincorporated conference against which judgment is given, whether in Gibraltar or elsewhere, in proceedings arising out of the Code in respect of damage or loss caused to any person by a breach of duty by the conference, shall not, by virtue of section 6(3), be liable to make good any greater proportion of that damage or loss than he would have been if the proceedings had been brought against him and the other members of the conference in respect of a duty owed by

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

all the members of the conference and the extent of his liability had been determined by reference to subsections (1) and (2).

(6) Subsections (4) and (5) shall not affect the enforcement in Gibraltar of a judgment required to be enforced there by virtue of Part I of the Judgments (Reciprocal Enforcement) Ordinance (1)

Proceedings by or against unincorporated conferences

6.—(1) A conference which is not a body corporate may nevertheless sue and be sued in its own name in proceedings arising out of the Code.

(2) Subsection (1) applies to any proceedings in Gibraltar and to proceedings elsewhere, in which the capacity of a conference to sue and be sued in its own name falls to be determined by reference to the law of Gibraltar.

(3) A judgment given for or against an unincorporated conference in proceedings brought against the conference in its own name, whether in Gibraltar or elsewhere, shall be binding on the members of the conference, and such a judgment given against a conference shall be enforceable—

- (a) against any property held in trust for the purposes of the conference, to the like extent and in the like manner as if the conference were a body corporate; and
- (b) against any member of the conference, subject to section 5(5).

(4) Subsection (3) applies to judgments given by a court of Gibraltar or which are enforceable or entitled to recognition in Gibraltar.

Restrictions on legal proceedings

7.—(1) Legal Proceedings arising out of a dispute relating to the application or operation of the Code may be brought in Gibraltar only in the Supreme Court; and in this section “the court” means the Supreme Court.

(2) Proceedings arising out of a dispute to which Article 23, paragraph 2 applies (disputes to be resolved within the framework of the national jurisdiction concerned) shall not be entertained by the court except as permitted by that paragraph.

(3) The court shall stay proceedings before it if on the application of a party to the proceedings, made after appearance but before delivering any pleadings or taking any other steps in the proceedings, it is shown that the proceedings arise out of a dispute to which Article 23, paragraph 4 applies and that—

- (a) the dispute has not been referred to conciliation in accordance with that paragraph or has been so referred and conciliation proceedings are still in progress; or
- (b) the parties to the dispute have made an agreement to which Article 25, paragraph 1 applies (agreed procedures in lieu of conciliation) which is capable of being, or has been, performed.

(4) The court may attach to a stay granted under subsection (3) such conditions as appear to it appropriate, in particular conditions with respect to the institution or prosecution of conciliation or other proceedings; and the court may remove a stay granted under that subsection if any such condition is not complied with or if at any time it appears to the court that the circumstances are such that a new application for the stay would not be granted.

(5) In relation to an arbitration agreement to which Article 25, paragraph 1 applies, subsections (3) and (4) apply in place of section 8 of the Arbitration Ordinance (2) (which also provides for the staying of legal proceedings).

(1) Laws of Gibraltar Revised Ed. 1964, Cap. 80.

(2) Laws of Gibraltar Revised Ed. 1964, Cap. 6.

8.—(1) No legal proceedings arising out of a dispute relating to the application or operation of the Code shall be brought in Gibraltar after the end of the period of two years from the date on which the cause of action accrued or, if later the end of the period of six months from the date on which conciliation proceedings relating to the dispute were completed or abandoned.

(2) The following provisions of the Limitation Ordinance (3) apply to the limitation period prescribed by subsection (1) as they apply to the limitation periods prescribed by that ordinance—

- (a) section 28(1) (extension of period in case of legal disability);
- (b) section 32 (postponement of period in case of fraud, concealment or mistake).

Recognition and enforcement of recommendations, etc. of conciliators

9.—(1) Where a recommendation of conciliators has become binding as between two or more parties in accordance with Article 37, then, subject to subsection (2)—

- (a) it shall be recognised in Gibraltar as conclusive as between those parties of the dispute to which it relates; and
- (b) any of those parties may apply to have the recommendation registered for enforcement in the Supreme Court.

(2) A recommendation shall not be so recognised or enforced if it is affected by any of the matters mentioned in sub-paragraphs (a) to (d) of Article 39, paragraph 2 (disability, fraud, coercion, public policy or irregularity of composition or procedure of the conciliators), unless the affected part can be severed as mentioned in Article 39, paragraph 3 and the remainder of the recommendation recognised and enforced.

(3) Where the costs to be borne by a party to conciliation proceedings in accordance with Article 43, paragraph 1 (costs of the conciliation and its administration) have been determined, the person to whom those costs are to be paid may apply to have the determination registered for enforcement in the Supreme Court.

(4) A party in whose favour an award of costs has been made by conciliators under Article 43, paragraph 3 (vexatious or frivolous proceedings) may apply to have the award registered for enforcement in the Supreme Court.

(5) Provision may be made by the rules of court as to—

- (a) the manner in which application is to be made for registration of a recommendation, determination or award under this section;
- (b) the documents to be produced and the matters to be proved by a person seeking recognition of a recommendation or enforcement of a recommendations, determination or award;
- (c) the manner in which a recommendation, determination or award is to be registered under this section;
- (d) the manner in which and the conditions subject to which a recommendation, determination or award so registered may be enforced.

(6) Subject to any provision made under subsection (5)(d), a recommendation, determination or award registered under this section shall, for the purposes of its enforcement, be of the same force and effect, the Supreme Court shall have the same powers in relation to its enforcement, and proceedings for or with respect to its enforcement may be taken, as if the recommendation, determination or award had been a judgment or decree originally given in the Supreme Court and had (where relevant) been entered.

(7) Where a recommendation, determination or award is registered under this section, the reasonable costs or expenses of, and incidental to, its registration are recoverable as if they were

(3) Laws of Gibraltar Revised Ed. 1964, Cap. 91.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more***

sums recoverable under it, except that they carry interest as if they were the subject of an order for the payment of costs or expenses made by the Supreme Court on the date of registration.

Other supplementary provisions

Governor to be appropriate authority in Gibraltar

10.—(1) The appropriate authority in Gibraltar for the purposes of the Code is the Governor.

(2) Information obtained by the Governor as appropriate authority for the purposes of the Code shall not, without the consent of the person from whom it was obtained, be disclosed except—

- (a) for the purpose of the discharge by the Governor of his functions in connection with the Code; or
- (b) for the purpose of any proceedings arising out of the Code; or
- (c) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings, whether under this Act or otherwise;

and a person who discloses any information in contravention of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

(3) Proceedings for an offence under subsection (2) shall not be brought except by or with the consent of the Attorney General of Gibraltar.

Exclusion of restrictive practices law

11.—(1) No agreement shall so far as it relates to any restriction to which this section applies be unenforceable by virtue of any rule of law about unreasonable restraint of trade.

(2) This section applies to restrictions of any of the following descriptions which relate to the trade between states which are Contracting Parties to the Code and are accepted within the framework of a conference, that is to say—

- (a) restrictions in respect of the provision of international liner services accepted by the operators of such services under an agreement to which two or more such operators are parties;
- (b) restrictions in respect of international liner services accepted by operators of such services or persons for whom such services are provided under an agreement to which one or more such operators and one or more such persons are parties;
- (c) restrictions in respect of the supply or acquisition of any service in connection with the operation of international liner services accepted by operator's of such services or persons in the business of supplying such a service under an agreement to which one or more such operators and one such supplier are parties.

(3) Where a restriction relates only in part to the matters mentioned in subsection (2), this section applies to the restriction so far as it relates to those matters.

(4) For the purposes of paragraph (a), (b) or (c) of subsection (2) it is immaterial that there are other parties to an agreement in addition to those mentioned in that paragraph, except that paragraph (c) does not apply where the parties to an agreement include more than one such supplier as is mentioned in that paragraph.

GENERAL

Interpretation

14.—(1) In this Act—

“Article” means Article of the Code;

“the Code” has the meaning given by section 1(1);

“conciliation” means international mandatory conciliation under Chapter VI of the Code, and references to the institution or completion of conciliation proceedings shall be construed in accordance with subsection (2);

“conference” has the meaning given by Chapter I of the Code;

“Governor” means the Governor of Gibraltar or any officer authorised by him;

“judgment”, in relation to proceedings arising out of the Code, means any judgment, decree, order, award, recommendation or determination of any description given or made in such proceedings, and references to the giving of a judgment shall be construed accordingly;

“mandatory provision”, in relation to the Code means a provision identified as such by the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985 as extended to Gibraltar;

“proceedings arising out of the Code” means legal proceedings, conciliation proceedings, arbitration proceedings or any other proceedings for the determination or, resolution of a dispute arising out of the Code;

“trade” has the same meaning as in the Code.

(2) For the purposes of this Act conciliation proceedings relating to a dispute are instituted when a party to the dispute requests that it be referred to conciliation and are completed when the conciliators notify the parties of their recommendations.

Short title and commencement

15.—(1) This Act may be cited as the Merchant Shipping (Liner Conferences) Act 1982.

(2) This Act comes into force on such day as the Governor may appoint by order.”

PART B

MODIFICATIONS AND ADAPTATIONS IN THE EXTENSION OF THE MERCHANT SHIPPING (LINER CONFERENCES) (MANDATORY PROVISIONS) REGULATIONS 1985 TO GIBRALTAR

1. In regulations 1(1) and 2, for the words “the United Kingdom” wherever they occur and in regulation 1(2) for the words “United Kingdom”, there shall be substituted the word “Gibraltar”.

2. In regulations 1(2) (in the definitions of “representative of shippers”, “shipper” and “shippers' organisations”) for the words “Secretary of State” there shall be substituted the word “Governor”.

3. The references to the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985 shall be construed as references to those regulations as extended to Gibraltar.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format. The electronic version of this UK Statutory Instrument has been contributed by Westlaw and is taken from the printed publication. **Read more**

PART C

MODIFICATIONS AND ADAPTATIONS IN THE EXTENSION OF THE MERCHANT SHIPPING (LINER CONFERENCES) (MANDATORY PROVISIONS) REGULATIONS 1985 TO GIBRALTAR

1. In regulations 1(1), 2(1), 2(3), 2(4) and 3, and the headings to regulation 2, for the words “the United Kingdom” wherever they occur there shall be substituted the word “Gibraltar”. In regulation 2(2), for the words after “the law of” there shall be substituted the words “Gibraltar, and has its principal place of business in Gibraltar”.

2. In regulations 2(1), 2(2), and 2(3), for the words “of British nationality” wherever they occur, there shall be substituted the words “established in Gibraltar”.

3. In regulations 3 and 5, for the references to the Secretary of State there shall be substituted references to the Governor.

EXPLANATORY NOTE

This Order extends to Gibraltar, the provisions of the Merchant Shipping (Liner Conferences) Act 1982 and the regulations which implement that Act (namely the Merchant Shipping (Liner Conferences) (Mandatory Provisions) Regulations 1985, and the Merchant Shipping (Liner Conferences) (Conditions for Recognition) Regulations 1985). The purpose of the Merchant Shipping (Liner Conferences) Act 1982 is to enable effect to be given to the United Nations Convention on a Code of Conduct for Liner Conferences, 1974.