BERMUDA

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS
2004

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SCHEDULE

The Minister of Transport, in exercise of the powers conferred by section 93 of the Merchant Shipping Act 2002, and after consulting the persons referred to in section 94(3) of the Merchant Shipping Act 2002 makes the following regulations:

PART I
GENERAL

Citation
1 These Regulations may be cited as the Merchant Shipping (Health and Safety at Work) Regulations 2004.

Interpretation
2 In these Regulations—
   “Act” means the Merchant Shipping Act 2002;
   “Bermuda ship” means a ship which—
       (a) is a Bermuda ship within the meaning of section 16(3) of the Act; or
(b) is a Government ship within the meaning of section 4 of the Act;


"company", in relation to a ship to which these Regulations apply, means the owner of the ship or any other organisation or person such as the manager, or bareboat charterer, who has assumed the responsibility for operation of the ship from the owner;

"competent person" means a person who has sufficient training and experience or knowledge and other qualities, to enable him properly to undertake the duty imposed under the relevant provision in these Regulations, and in the case of a safety officer, has in addition, a minimum of two years consecutive sea service since attaining the age of 18, which, in the case of a safety officer on board a tanker, shall include at least six months service on such a ship;

"contract of employment" means a contract of employment, whether express or implied, and if express, whether oral or in writing;

"elected representative" means any person elected to represent a group of workers for the purposes of consultation with the employer on health and safety matters under regulation 20;

"employer" means a person by whom a worker is employed under a contract of employment;

"given birth" means delivered a living child or, after twenty-four weeks of pregnancy, a stillborn child;

"health and safety" includes the occupational health and safety of persons whilst on board a ship and whilst boarding or leaving a ship;

"Merchant Shipping Notice" means a Notice described as such and issued by the Minister of Transport;

"new or expectant mother" means a worker who is either pregnant, or has given birth within the previous six months, or is breast-feeding;

"public service vessel" means any vessel operated by and on behalf of a public body while it is carrying out the authorised functions of that body;

"relevant inspector" means a person mentioned in section 220(1) of the Act;

"sail training vessel" means a sailing vessel which is being used either—

(a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship; or

(b) to provide instruction in navigation and seamanship for yachtsmen;

"sea-going" means operating outside Bermuda territorial waters;

“trainees and apprentices” does not include persons who are training in a sail training vessel;
“worker” means any person employed by an employer under a contract of employment, including trainees or apprentices.

Application
3 (1) These Regulations shall apply to all activities of workers on Bermuda ships except when—
   (a) the activity of a worker is on a public service vessel or a vessel engaged in search and rescue; and
   (b) characteristics of that activity inevitably conflict with a provision of these Regulations;
and in such a case there shall be a duty on the employer so far as is reasonably practicable to ensure the health and safety of the worker when performing that activity.

   (2) Regulations 1, 2, 3, 28, 29 and 30 shall apply to ships other than Bermuda ships which are in Bermuda waters.

PART II
GENERAL DUTIES

Persons on whom duties are imposed
4 (1) Every—
   (a) employer; and
   (b) any other natural or legal person upon whom a duty is imposed by these Regulations;
shall comply with these Regulations.

   (2) Where a person in paragraph (1) does not have control of the matter to which the regulation relates because he does not have responsibility for the operation of the ship, then any duty imposed by that regulation shall also extend to any natural or legal person who has control of that matter.

General duties
5 (1) An employer shall ensure the health and safety of workers and other persons so far as is reasonably practicable, which duty shall be met by the application of the following principles—
   (a) the avoidance of risks, which among other things include the combating of risks at source and the replacement of dangerous practices, substances or equipment by non-dangerous or less dangerous practices, substances or equipment;
   (b) the evaluation of unavoidable risks and the taking of action to reduce them;
(c) adoption of work patterns and procedures which take account of the capacity of the individual, especially in respect of the design of the workplace and the choice of work equipment, with a view in particular to alleviating monotonous work and to reducing any consequent adverse effect on workers’ health and safety;

(d) adaptation of procedures to take account of new technology and other changes in working practices, equipment, the working environment and any other factors which may affect health and safety;

(e) adoption of a coherent approach to management of the vessel or undertaking, taking account of health and safety at every level of the organisation;

(f) giving collective protective measures priority over individual protective measures; and

(g) the provision of appropriate and relevant information and instruction for workers.

(2) Without prejudice to the generality of the duties under paragraph (1), the matters to which those duties extend shall include in particular—

(a) provision and maintenance of plant, machinery and equipment and systems of work that are, so far as is reasonably practicable, safe and without risk to health;

(b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risk to health in connection with the use, handling, stowage and transport of articles and substances;

(c) such arrangements as are appropriate, having regard to the nature of, and the substances used in, the activities and size of the operation, for the effective planning, organisation, control, monitoring and review of preventive and protective measures;

(d) provision of such information, instruction, training and supervision as is necessary to ensure the health and safety of workers and that of other persons aboard a ship who may be affected by their acts or omissions;

(e) maintenance of all places of work in the ship in a condition that is, so far as is reasonably practicable, safe and without risk to health;

(f) arrangements to ensure, so far as is reasonably practicable, that no person has access to any area of the ship to which it is necessary to restrict access on grounds of health and safety unless the individual concerned has received adequate and appropriate health and safety instruction;

(g) provision and maintenance of an environment for persons aboard a ship that is, so far as is reasonably practicable, safe and without risk to health;

(h) collaboration with any other persons referred to under regulation 4 to protect, so far as is reasonably practicable, the health and safety of all
authorized persons aboard the ship or engaged in loading or unloading activities in relation to that ship.

Health and safety policy
6 (1) Subject to paragraph (2), a written statement shall be prepared and, as often as may be appropriate, revised, of the employer’s general policy with respect to health and safety and the organisation and arrangements for the time being in force for carrying out that policy, and this and any revisions to it shall be brought to the notice of the workers.

(2) The written statement referred to in paragraph (1) shall not apply where five or less workers in aggregate are employed by the same employer, or by associated employers, in a Bermuda ship.

Risk assessment
7 (1) A suitable and sufficient assessment shall be made of the risks of the health and safety of workers arising in the normal course of their activities or duties, for the purpose of identifying—
   (a) groups of workers at particular risk in the performance of their duties; and
   (b) the measures to be taken to comply with the employer’s duties under these Regulations;
and any significant findings of the assessment and any revision of it shall be brought to the notice of workers.

(2) This assessment shall extend to the risks to the health and safety of other persons on board a ship in so far as they may be affected by the acts and omissions of the employer.

(3) The assessment referred to in paragraphs (1) and (2) shall be reviewed if—
   (a) there is reason to suspect that it is no longer valid; or
   (b) there has been a significant change in the matters to which it relates;
and where such a review identifies a need for any changes to procedures or practices, those changes shall be made.

(4) Every employer and every self-employed person on board a ship shall inform the company of any relevant risks to health and safety arising out of or in connection with the conduct of his own undertaking.

(5) Measures shall be taken, and if necessary protective equipment supplied, to ensure an improvement in the health and safety of workers and other persons in respect of those risks identified.

(6) Workers shall be informed of the measures taken for their protection.

New or expectant mothers
8 (1) Where—
the workers include women with potential for child-bearing; and

(b) the work is of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any process or working conditions, or physical, biological or chemical agents;

the assessment required by regulation 7(1) shall include the assessment of such risk.

(2) Where, in the case of an individual worker, any other action required to be taken by the employer under these Regulations would not avoid the risk referred to in paragraph (1), if it is reasonable to do so, and would avoid such risk, her working conditions or hours of work shall be altered.

(3) If it is not reasonable to alter the working conditions or hours of work, or if it would not avoid such risk, the employer shall, suspend the worker from work for so long as is necessary to avoid such risk.

(4) In paragraphs (1) to (3) references to risk, in relation to risk from any infectious or contagious disease are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.

Night work

9 (1) Where—

(a) a new or expectant mother works at night; and

(b) a certificate from a registered medical practitioner or registered midwife shows that it is necessary for her health or safety that she should not be at work for any period of such work identified in the certificate, the worker shall be offered suitable alternative daytime work, if any is available.

(2) Subject to paragraph (1), where no such alternative daytime work is available the worker shall be suspended from her work for so long as is necessary for her health or safety.

Notification of pregnancy

10 (1) Nothing in regulation 8(2) or (3) shall require any action to be taken in relation to a worker until she has notified the employer or the company, as the case may be, in writing that she is pregnant, has given birth within the previous six months or is breast-feeding.

(2) Nothing in regulation 8(2) or (3) or in regulation 9 shall require action to be maintained in relation to a worker—

(a) in a case—

(i) to which regulation 8(2) or (3) relates; and

(ii) where the worker has notified her employer that she is pregnant;
where she has failed, within a reasonable time of being requested to do so in writing by her employer, to produce for the employer's inspection a certificate from a registered medical practitioner or a registered midwife showing that she is pregnant;

(b) once the employer knows that she is no longer a new or expectant mother;

or

(c) if the employer cannot establish whether she remains a new or expectant mother.

Health surveillance

11 Workers shall be provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment undertaken in accordance with regulation 7.

Capabilities and training

12 (1) In entrusting tasks to workers, account shall be taken of their capabilities as regards health and safety.

(2) Workers shall be provided with adequate and appropriate health and safety training and instruction—

(a) before being assigned to shipboard duties;

(b) on their being exposed to new or increased risks because of—

(i) being transferred or given a change of responsibilities;

(ii) the introduction of new equipment or a change to equipment already in use;

(iii) the introduction of new technology; or

(iv) the introduction of new shipboard practices, a new system of work or a change to a system of work already in use.

(3) The training referred to in paragraph (2) shall—

(a) be repeated periodically where appropriate;

(b) be adapted to take account of any new or changed risks to the health or safety of the workers concerned; and

(c) take place during the working hours of the worker concerned.

(4) Every person carrying on the activity of an employment agency whose employee is to carry out work aboard a ship to which these Regulations apply shall be provided by the Company with information on—

(a) any special occupational qualifications required by workers to carry out their work safely;
the specific features of the jobs to be filled by those workers (in so far as those features are likely to affect their health and safety); and

(c) any health surveillance required to be provided to workers under these or other relevant regulations;

and the employment agency concerned shall ensure that the information so provided is given to the said workers.

PART III

DUTIES OF THE COMPANY

Co-ordination

13 Where there are workers on board a Bermuda ship not employed by the company, the company shall—

(a) consult every other employer of those workers regarding the arrangements for health and safety required under regulation 5(2)(c);

(b) co-ordinate arrangements for the protection of all workers and the prevention of risk to their health and safety; and

(c) ensure that all workers are informed of the significant and relevant findings of the risk assessment carried out under regulation 7, and of the arrangements for their protection referred to in sub-paragraph (b).

Reporting of occupational diseases

13A (1) This regulation applies where—

(a) an employer receives a written report from a medical practitioner which indicates that a seafarer, having worked on a ship, has (or has had) an occupational disease listed in the table in the Bermuda Shipping Notice 2013-023; and

(b) that seafarer was involved in an activity, listed in the table as corresponding to the occupational disease, when working on the ship.

(2) In accordance with subsection (1), an employer must—

(a) have regard to the International Labour Organization guidance concerning the protection of workers’s personal data specified in Bermuda Shipping Notice 2013-023;

(b) complete the form set out in the Bermuda Shipping Notice 2013-023 in respect of the seafarer; and

(c) send the completed form to the address specified in the Bermuda Shipping Notice 2013-023.

(3) In this Regulation—
“medical practitioner” means—

(a) in the case of a medical practitioner based in Bermuda, a medical practitioner who—

(i) is registered under the Bermuda Health Council Act 2004 and holds a licence to practice medicine in Bermuda; or

(ii) is an approved medical practitioner, appointed by the Minister.

(b) in the case of a medical practitioner based in the United Kingdom, a medical practitioner who—

(i) is registered under the United Kingdom’s Medical Act 1983 (as amended from time to time); and

(ii) holds a licence to practice medicine in the United Kingdom.

(c) in the case of a medical practitioner not based in Bermuda or in the United Kingdom, a medical practitioner who—

(i) is a qualified medical practitioner in a country which is approved by the Minister; and

(ii) is listed in Bermuda Shipping Notice 2012-007;

(iii) is authorised by the respective country to issue medical certificates; and

(iv) is listed in that country’s medical register as an approved medical practitioner.

[Regulation 13A inserted by BR 119 / 2013 reg. 2 effective 30 June 2014]

PART IV

SPECIAL RESPONSIBILITY FOR HEALTH AND SAFETY AND CONSULTATION WITH WORKERS

Protective and preventive services

14 (1) One or more competent persons shall be appointed by the employer in order to provide such protective and preventive services for the undertaking as are necessary to enable him to comply with the requirements of these Regulations.

(2) Where there is no competent person available within the undertaking, the employer shall employ an external person who is a competent person.

(3) If he is a competent person, the employer may appoint himself to undertake the responsibilities specified in paragraph (1).

(4) The number of persons appointed under paragraph (1) shall be sufficient in number to carry out the requirements of these Regulations, and the appropriate persons shall have the necessary time, resources and means, to carry out their duties.
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Appointment of safety officers
15  (1) This regulation and regulations 16 to 18 apply to sea-going ships in which five or more workers are employed.

           (2) In every ship to which this regulation applies, the company shall appoint a safety committee and a competent person as a safety officer.

           (3) The Minister may grant exemptions from paragraphs (1) and (2) for classes of cases or individual cases on such terms (if any) as he may specify in the exemption and may, subject to giving reasonable notice, alter or cancel any such exemption.

[Regulation 15 amended by BR 50 / 2011 reg. 2 effective 28 September 2011]

Duties of safety officers
16  (1) Subject to paragraph (2), the safety officer shall use his best endeavours to—

           (a) improve the standard of safety consciousness among the crew and ensure that the Code and safety instructions, rules and guidance for the ship relating to health and safety are complied with;

           (b) investigate, so far as is reasonably practicable—

                 (i) every accident involving death, major or serious injury and every dangerous occurrence as defined in the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1986;

                 (ii) all potential hazards to health and safety; and

                 (iii) all reasonable complaints by workers about health and safety;

           and make recommendations to the master to prevent the recurrence of such an accident or to remove any hazard, provided that the duty to investigate shall not extend to accidents arising from a casualty to the ship;

           (c) ensure that health and safety inspections of each accessible part of the ship are carried out at least once every three months and more frequently if there have been substantial changes in the conditions of work;

           (d) make representations and, where appropriate, recommendations to the master, about any deficiency in the ship in respect of—

                 (i) any legislative requirement relating to health and safety;

                 (ii) any relevant Merchant Shipping Notice; or

                 (iii) any provision of the Code;

           and also suggest whether those representations and recommendations should be passed by the master on to the employer or other person who has control of the matter;

           (e) maintain a record of every accident involving death, major or serious injury and every dangerous occurrence, and make it available on request to any
elected representative, to the master and to any person authorised by the 
Minister;

(f) stop any work which he observes in progress and reasonably believes may 
cause a serious accident, and immediately inform the master or the 
master’s deputy who shall decide when work can safely be resumed.

(2) Nothing in this regulation shall require a safety officer to take any action at a 
time when emergency action to safeguard life or the ship is being taken.

Election of safety representatives and safety committees

17 (1) In every ship to which this regulation applies and where there is no existing 
agreement the company shall make rules for the election and appointment of safety 
representatives.

(2) In every election for a safety representative the candidate receiving most votes 
shall be elected, provided that no safety representative shall be appointed who has less than 
two years’ consecutive sea service since attaining the age of 18, which in the case of a safety 
representative on board a tanker shall include at least six months’ service in such a ship.

(3) The appointment of a safety representative shall terminate—

(a) on that person ceasing to be employed in the ship; or 

(b) from the date on which that person resigns from that position or on which 
another duly elected person is elected in his place.

(4) In all ships where a safety representative is elected, the company shall appoint 
a safety committee which shall include the master as chairman, the safety officer and every 
safety representative, and may also include any other person appointed under regulation 
14(1).

(5) The appointment of every person under regulations 14(1), 15(2) or paragraph 
(1) and the appointment of any of those persons onto a safety committee shall be recorded 
in writing.

Powers of safety representatives and safety committees

18 Safety representatives and safety committees may—

(a) participate, subject to the concurrence of the safety officer, in any of the 
investigations or inspections carried out by the safety officer under 
regulation 16, or after notification to the master or his deputy, undertake 
similar investigations or inspections themselves, whether or not such 
investigations or inspections have already been carried out by the safety 
officer;

(b) make representations to the employer on potential hazards and dangerous 
occurrents at the workplace which affect, or could affect, workers on the 
ship;

(c) make representations to the master and the employer on general matters 
affecting the health and safety of workers on the ship and, in particular,
on such matters as those on which the employer carries out consultation under regulation 20;

(d) request the safety officer to carry out any occupational health and safety inspection they consider necessary and to report the findings to them.

Duties of the company and master
19  (1) The company and master, in co-ordination with the employer, shall facilitate the work of any person appointed under regulations 14(1), 15(2) or 17(1) in carrying out their health and safety functions, and in particular to—

(a) provide for use by them a copy of the Code (where appropriate), and access to any necessary information, documents and similar material including relevant legislation and Merchant Shipping Notices;

(b) provide them with relevant information about—

(i) the risks and measures for protection identified under regulation 7;

(ii) factors known, or suspected, by them to affect the health and safety of the workers on board the ship; and

(iii) arrangements for fire-fighting, first aid and other emergency procedures;

(c) ensure that those persons have the necessary resources and means to carry out their functions and duties;

(d) allow any of those persons such absence from ship duties without loss of pay as may be necessary to enable them to fulfill their functions, or to undertake any necessary training in health and safety matters;

(e) receive at any reasonable time, representations about health and safety from the safety officer, safety representatives or the safety committee, discuss their representations with them and implement any agreed measures as soon as may be reasonable and practicable.

(2) Where no safety officer is appointed under regulation 15, the Company shall maintain a record of every accident involving death, major or serious injury, and every dangerous occurrence and make it available on request to any worker and any person duly authorised by the Minister.

Consultation with workers
20  (1) Workers or their elected representatives shall be consulted in advance and in good time by the employer, and in the case of sub-paragraphs (c) and (d) where applicable, by the Company, on all matters relating to their health and safety, and in particular on—

(a) the arrangements for appointing a competent person under regulation 14 to provide protective and preventive services for the undertaking;

(b) the findings of the risk assessment;
arrangements for health and safety training under regulation 12;
(d) the introduction of new technology.

(2) Employers shall allow workers or their elected representatives to make representations about health and safety, and shall implement any agreed measures as soon as may be reasonable and practicable.

(3) Workers or their elected representatives shall be given access by the employer and, where applicable by the company, to any relevant information about—
(a) health and safety matters from inspection agencies and health and safety authorities; and
(b) every accident involving death, major or serious injury, and every dangerous occurrence.

(4) Elected representatives shall be given adequate time off work without loss of pay in order to exercise their rights and functions under this regulation, and shall be provided with appropriate training.

(5) Workers or their elected representatives shall not be placed at a disadvantage (whether economic or otherwise) because of their activities under this regulation.

PART V
GENERAL DUTIES OF WORKERS

General duties of workers
21 (1) Every worker aboard a ship to which these Regulations apply shall—
(a) take reasonable care for the health and safety of himself and of any other person aboard the ship who may be affected by his acts or omissions; and
(b) as regards any duty or requirement imposed on the company, his employer or any other person by these Regulations and the Act or any regulation or rule made thereunder, with regard to health and safety, to co-operate with that person so far as is necessary to enable that duty or requirement to be performed or complied with.

(2) No worker shall—
(a) use any machinery, equipment, dangerous substance, transport equipment, means of production or safety device provided by his employer or the company other than in accordance with any relevant training or instructions which have been received or provided by the employer or the company in compliance with these Regulations; or
(b) disconnect, change or remove or otherwise interfere with any safety device provided by the employer or the company.

(3) Every worker shall immediately inform the master or the safety officer or another competent person appointed under regulation 14(1) of any matter which may
reasonably be considered to represent a deficiency in the Company’s protection arrangements for the health and safety of persons on board the ship.

(4) Every worker shall immediately inform his employer, the safety officer or other competent person—

(a) of any work situation which he reasonably considers to represent a serious and immediate danger to health and safety; and

(b) of any matter which he reasonably considers to represent a deficiency in the employer’s protection arrangements for health and safety.

PART VI
PROHIBITIONS, PENALTIES, OFFENCES, INSPECTIONS AND DETentions

Prohibition on levy
22 No charge in respect of anything done or provided in pursuance of any specific requirement of these Regulations shall be levied or permitted to be levied on any worker.

Duty not to interfere with or misuse certain things
23 No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health and safety aboard a Bermuda ship in pursuance of these Regulations or the Act or any regulation or rule made thereunder.

Penalties
24 (1) Any contravention of regulation 5 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding $10,000.00 or, on conviction on indictment, by a fine not exceeding $20,000.00 or by imprisonment for a term not exceeding two years or both.

(2) Any contravention of regulation 14 shall be an offence punishable on summary conviction by a fine not exceeding $10,000.00.

(3) Any contravention of regulation 6, 7, 16, 17, 20 or 21 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding $7500.00.

(4) Any contravention of regulation 8, 9, 11, 12, 13, 13A, 22 or 23 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding $2000.00.

(5) Any company which—

(a) fails to appoint a safety officer in accordance with regulation 15; or

(b) fails to carry out any of the duties specified in regulation 19;
commits an offence punishable on summary conviction by a fine not exceeding $10,000.00.
(6) Any master who fails to carry out any of the duties specified in regulation 19 commits an offence punishable on summary conviction by a fine not exceeding $2000.00.

[Regulation 24 paragraph (4) amended by BR 119 / 2013 reg. 3 effective 30 June 2014]

Offences by body corporate
25 (1) Where a body corporate is found guilty of an offence under any of these Regulations and that offence 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 deemed to have committed 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, the preceding paragraph shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Onus of proving what is reasonably practicable
26 In any proceedings for an offence under any of these Regulations consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the complainant to prove that it was reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

Inspection and detention of a Bermuda ship
27 A relevant inspector may inspect any Bermuda ship and if he is satisfied that there has been a failure to comply in relation to that ship with the requirements of these Regulations may detain the ship until the health and safety of all workers and other persons aboard the ship are secured, but shall not in the exercise of these powers detain or delay the ship unreasonably.

Inspection, detention etc. of ships registered outside Bermuda
28 (1) A relevant inspector may inspect any ship which is not a Bermuda ship when the ship is in a Bermuda port, and if satisfied that the ship does not conform to the standards required of Bermuda ships by these Regulations, may—

(a) send a report to the government of the country in which the ship is registered, and a copy of the report to the Director General of the International Maritime Organisation; and

(b) where conditions on board are clearly hazardous to health and safety—

(i) take such measures as are necessary to rectify those conditions; or

(ii) detain the ship;

provided that the measures specified in sub-paragraphs (a) and (b) may be taken only when the ship has called at a Bermuda port in the normal course of business for operational reasons.
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(2) If either of the measures specified in paragraph (1)(b) are taken, the relevant inspector shall immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(3) The relevant inspector shall not in exercise of his power under this regulation detain or delay the ship unreasonably.

Enforcement of detention

29 Where a ship is liable to be detained under these Regulations, section 242 of the Act (which relates to the detention of the ship) shall apply as if for the words “this Act”, wherever they appear, there were substituted “the Merchant Shipping (Health and Safety at Work) Regulations 2004”.

Compensation

30 Sections 104 and 105 of the Act (Arbitration and Compensation) shall apply in relation to a detention notice or order under these Regulations as they apply to a detention notice under section 103(4) of the Act, and in such application, “relevant inspector” means a person making an inspection under these Regulations.

Revocation

31 The Merchant Shipping (Health and Safety: General Duties) Regulations 1991 are revoked.
SCHEDULE

(Regulation 13A)

Government of Bermuda
Department of Maritime Administration

BERMUDA SHIPPING NOTICE

Reporting of Occupational Diseases, as required by the Merchant Shipping (Health and Safety at Work) (Amendment) Regulations 2013

This notice is intended for Ship Owners, Managers, Masters, Medical, Safety, Deck and Engineering Officers and all seafarers on Merchant Ships.

PLEASE NOTE:
Where this document provides guidance on the law it should not be regarded as definitive. The way the law applies to any particular case can vary according to circumstances – for example, from vessel to vessel and you should consider seeking independent legal advice if you are unsure of your legal position.

Summary
This notice should be read in conjunction with:
Merchant Shipping Act 2002 as amended
Merchant Shipping (Health and Safety at Work) (Amendment) Regulations 2013

- The Merchant Shipping (Health and Safety at Work) (Amendment) Regulations 2013 introduce a requirement for employers to report occupational diseases which are identified in seafarers serving on Bermuda ships.
- The requirement to report arises only where a written report has been provided by a registered medical practitioner diagnosing a specific disease and confirming that the seafarer has been employed in a relevant work activity.
- The procedure is based on that applying to employers on land under the Occupational safety and health Regulations 2009, but reports should be sent to the, Department of Maritime Administration, Bermuda.
- The Shipping Notice details the reporting requirements and includes at Annex 1 the list of reportable diseases and work related activities.
- The form for reporting a disease is at Annex 2.

1. Introduction

1.1 The Merchant Shipping (Health and Safety at Work)(Amendment) Regulations 2013 ("the amending regulations") introduce a legal requirement for employers of Seafarers on Bermuda registered merchant vessels to report any case involving any of the occupational diseases specified in the Annex 1 to this Notice and whose work involved on the activities also specified in this Annex. A case is reportable only if the employer has received a written statement prepared by a registered medical practitioner diagnosing the disease as one specified in the Schedule.
1.2 The requirement to report occupational diseases does not apply to pleasure vessels, fishing vessels, warships or naval auxiliaries or ships of traditional build.

2. The System of Reporting

2.1 The diseases which are reportable are listed in Annex 1 to this Notice, which also states the type of work activity which may give rise to exposure to the disease and is accepted as a recognized risk. An employer must report a listed disease when:

- It has been diagnosed in writing by a doctor;
- The seafarer is currently employed in an associated work activity

A report of a case will not necessarily signify that it is caused by work; it will mean that the seafarer affected works on a job where in general the disease is likely to have an occupational origin.

2.2 Employers have to report cases of diseases only if they have received a written diagnosis from a doctor. A self-employed person need only be informed by a doctor that they are suffering from a listed disease to make it reportable.

2.3 Within Bermuda, registered medical practitioners are already required to report occupational diseases for land based workers in line with the Occupational Safety and Health Regulation, 2009 (BR 55/2009). The amending regulations apply the same system to seafarers on Bermuda ships, except that, the reports must be made to the Department of Maritime Administration. Reports must be received from Bermuda Doctors who are registered and hold a license to practice in Bermuda.

2.4 Reports from Bermuda Approved Doctors, appointed by the Minister, as well as overseas doctors will also be accepted, provided that the doctor is registered and has a license to practice under the regulations applying in their own country.

3. Submission of Disease Reports

3.1 When an employer receives a report from a doctor identifying a reportable occupational disease, they are required to complete the form at Annex 2 and send the original, together with a copy of the doctor’s report (original to be retained by the company) to the Department of Maritime Administration at the address below. Reports must be handled with due consideration of confidentiality, in accordance with ILO Code of Practice on Protection of Workers’ Personal Data (http://www.ilo.org/safework/info/standards-and-instruments/codes/WCMS_107797/lang--en/index.htm).

3.2 A copy of the report is to be held on file by the employer for a period of 40 years following the submission of the report. Electronic copies are permitted. Records may be called upon by for inspection by the Minister.

3.3 The Department of Maritime Administration will confirm receipt within 5 days, and will do so in writing to the person detailed in Part A of the report form.
3.4 The Department of Maritime Administration will retain the reports for statistical purposes and in order to take any appropriate follow up action, such as the issue of guidance or safety alerts, in relation to any particular occupation diseases identified.

More Information

Department of Maritime Administration
3rd Floor, Global House
43 Church Street
Hamilton, HM12
Bermuda
Tel: +1 441 295 7251
Fax: +1 441 295 3718
e-mail: registry.bermudashipping@gov.bm
web-site: www.bermudashipping.bm
REPORTABLE DISEASES

NOTE: List as set out in HSE’s Reporting of Injuries, Diseases and Dangerous Occurrences Regulations.

Occupational Diseases

1. Where, in relation to a seafarer, the responsible person receives a diagnosis of –
   a) Carpel Tunnel Syndrome, where the person’s work involves regular use of percussive or vibrating tools;
   b) Cramp in the hand or forearm, where the person’s work involves prolonged periods of repetitive movement of the fingers, hand or arm;
   c) Occupational dermatitis, where the person’s work involves significant or regular exposure to a known skin sensitizer or irritant;
   d) Hand or Arm Vibration Syndrome, where the person’s work involves regular use of percussive or vibrating tools, or the holding of materials which are subject to percussive processes, or processes causing vibration;
   e) Occupational Asthma, where the person’s work involves significant or regular exposure to a known respiratory sensitizer; or
   f) Tendonitis or tenosynovitis in the hand or forearm, where the person’s work is physically demanding and involves frequent, repetitive movements,

The person responsible must follow the reporting procedure in this notice.

Exposure to carcinogens, mutagens and biological agents

2. Where in relation to a person at work, the responsible person receives a diagnosis of –
   a) Any cancer attributed to an occupational exposure to a known human carcinogen or mutagen (including ionizing radiation); or
   b) Any disease attributed to an occupational exposure to a biological agent,

The responsible person must follow the reporting procedure in this notice.
ANNEX 2

OCCUPATIONAL DISEASE REPORT FORM
FOR BERMUDA REGISTERED MERCHANT SHIPS

The Merchant Shipping (Health and Safety at Work) (Amendment) Regulations 2013 require employers of seafarers on Bermuda registered ships to complete and submit this form to the Maritime Administration when seafarers are diagnosed by a medical practitioner with an occupational disease, and where the seafarers have been engaged in the corresponding type of work specified for that disease also in Annex 1 of this Shipping Notice.

[One form should be submitted for each disease]

Please submit the completed form to:  
Department of Maritime Administration  
3rd Floor, Global house  
43 Church Street  
Hamilton, HM12  
Bermuda  
registry.bermudashipping@gov.bm  
Fax: +1 441 295 3718  
e-mail:

The form must be completed by the employer or a responsible person.

Completing and signing this form does not constitute an admission of guilt or liability of any kind, either by the person making the report or any other person.

PART A
About You

1. What is your full name?  

2. What is your job title?

3. What is your telephone number?

About your organization

4. What is the organisation’s name?

5. What is the land based address and postcode?

6. What is the name of the vessel on which the seafarer is currently working?

7. Does the affected person usually work aboard this vessel?  

YES  NO
8. What type of vessel is it?
   (Reference list below)
   a) Passenger / Cruise / Ferry
   b) Container / Cargo
   c) Tanker
   d) Offshore / Supply / Offshore support
   e) Research
   f) Standby
   g) Tug / Support / Maintenance
   h) Yacht
   i) Other – Please specify

9. Where does it operate from and to?

**PART C**

The disease you are reporting

1. Please give:
   The name of the disease, and the type of work it is associated with and quote the RIDDOR reference number (see Annex 1 of Shipping Notice 2013-XXX)

2. What is the date on the statement from the doctor who first diagnosed or confirmed the disease (dd/mm/yyyy)

3. What is the name and address of the Doctor?
MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS 2004

PART D
Describing the work that led to the disease

Please describe any work done by the affected person which might have resulted in the disease. Give as much detail as you can for instance if the disease is thought to have been caused by exposure to an agent at work (e.g. a specific chemical) please say what the agent is, consider also the environmental conditions, the part played by people, the name and type of machinery involved and any other information which is relevant.

Give you description here: (use a second sheet of paper if necessary)

PART E

Your Signature

Date: (dd/mm/yyyy)

If returning by post/fax, please ensure this form is signed, alternatively, if returning by e-mail, please type your name in the signature box.

For Official Use
Ref No:
Entered By:

[Schedule inserted by BR 119 / 2013 regulation 2 effective 30 June 2014]

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Made this 20th day of July 2004

Minister of Transport

[Amended by:
   BR 50 / 2011
   BR 119 / 2013]