



BERMUDA

MERCHANT SHIPPING (PREVENTION OF POLLUTION BY SEWAGE AND
GARBAGE FROM SHIPS) REGULATIONS 2015

BR 44 / 2015

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The Minister responsible for Maritime Administration, in exercise of the power conferred by section 122 of the Merchant Shipping Act 2002, makes the following Regulations:

PART I GENERAL

Citation

1 These Regulations may be cited as the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2015.

Interpretation

2 (1) In these Regulations—

“the 1995 Regulations” *[Deleted by BR 104 / 2019 reg. 2]*

“Act” or the “2002 Act” means the Merchant Shipping Act 2002;

“additional survey” has the meaning given in regulation 10;

“Annex IV” means Annex IV to the Convention, being the Annex IV adopted by the Marine Environment Protection Committee of the IMO by resolution MEPC.115(51) on 1st April 2004, and includes—

- (a) all the amendments to that Annex adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made; and
- (b) any subsequent amendment to that Annex which is considered by the Minister to be relevant from time to time to include—
 - (i) MEPC.265(68); (to make use of environment-related provisions of the Polar Code mandatory);
 - (ii) MEPC.274(69); (Baltic Sea Special Area and form of ISPP Certificate);

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- (iii) MEPC.275(69); (Establishment of the date on which Regulation 11.3 of MARPOL Annex IV in respect of the Baltic Sea Special Area shall take effect); and
- (iv) MEPC.284(70); (Amendments to the 2012 guidelines on implementation of effluent standards and performance tests for sewage treatment plants);

“Annex V” means Annex V to the Convention, being the Annex V constituting part of attachment 1 to the final act of the International Conference on Maritime Pollution signed in London on 2nd November 1973, and includes—

- (a) all the amendments to that Annex adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made; and
- (b) any subsequent amendment to that Annex which is considered by the Minister to be relevant from time to time to include—
 - (i) MEPC.265(68) (To make use of environment-related provisions of the Polar Code mandatory); and
 - (ii) MEPC.277(70) (HME substances and Form of Garbage Record Book);

“Antarctic area” means the sea area south of latitude 60° S;

“Arctic waters” means those waters which are located north of a line from the latitude 58°00'.0 N and longitude 042°00'.0 W to latitude 64°37'.0 N, longitude 035°27'.0 W and thence by a rhumb line to latitude 67°03'.9 N, longitude 026°33'.4 W and thence by a rhumb line to the latitude 70°49'.56 N and longitude 008°59'.61 W (Sørkapp, Jan Mayen) and by the southern shore of Jan Mayen to 73°31'.6 N and 019°01'.0 E by the Island of Bjørnøya, and thence by a great circle line to the latitude 68°38'.29 N and longitude 043°23'.08 E (Cap Kanin Nos) and hence by the northern shore of the Asian Continent eastward to the Bering Strait and thence from the Bering Strait westward to latitude 60° N as far as Il'pyrskiy and following the 60th North parallel eastward as far as and including Etolin Strait and thence by the northern shore of the North American continent as far south as latitude 60° N and thence eastward along parallel of latitude 60° N, to longitude 056°37'.1 W and thence to the latitude 58°00'.0 N, longitude 042°00'.0 W;

“certified” in relation to a ship, means the maximum number of persons that the ship is permitted to carry;

“Certifying Authority” means the Minister or an organisation which has an agreement with the Minister on common rules and standards for ship inspection and for the relevant activities of maritime administration;

“Contracting Government” means the Government of a State which has consented to be bound by the Convention, and for which Annex IV to that Convention is in force;

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“controlled waters” means the waters specified by the Merchant Shipping (Prevention of Pollution)(Limits) Regulations 2004 as areas within which the jurisdiction and rights of Bermuda are exercisable;

“Convention” means the International Convention for the Prevention of Pollution from Ships 1973 (including its protocols, annexes and appendices thereto) as amended by the Protocols of 1978 and 1997 and includes—

- (a) all the amendments to that Convention adopted by the Marine Environment Protection Committee of the IMO before the date on which these Regulations are made; and
- (b) any subsequent amendment to that Convention which is considered by the Minister to be relevant from time to time;

“date of expiry”, in relation to a Sewage Certificate held in respect of a ship, means the last day of the period specified in that Sewage Certificate as the period for which that Certificate is valid;

“EC Regulation” *[Deleted by BR 104 / 2019 reg. 2]*

“exclusive economic zone”, in relation to a foreign State, means the area beyond and adjacent to the territorial sea of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured;

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

“ground or comminuted to the required standard”, in relation to general garbage or food wastes, means ground or comminuted sufficiently finely so as to be capable of passing through a screen with openings no greater than 25 millimetres;

“GT” means gross tonnage, and the gross tonnage of a ship is to be determined for the purposes of these Regulations in accordance with Schedule 1;

“harbour master” has the same meaning as in section 149 of the 2002 Act;

“holding tank” means a tank used for the collection and storage of sewage;

“IMO” means the International Maritime Organization;

“infrastructure”, in relation to a ship, means the structure, equipment, systems, fittings, arrangements and material of that ship, which are the subject of requirements in Annex IV;

“initial survey” has the meaning given in regulation 7(3);

“international voyage” means a voyage from a country to which the Convention applies to a port outside that country, or conversely;

“master” includes every person (except a pilot) having command of a ship;

“MCA” *[Deleted by BR 104 / 2019 reg. 2]*

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“MEPC” means the IMO Marine Environment Pollution Committee;

“Merchant Shipping Notice” means a Notice described as such and issued by the Chief Marine Surveyor or the equivalent UK Merchant Shipping Notice, as applicable;

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

“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;

“operational wastes” means all maintenance wastes, cargo associated wastes and cargo residues except residues or wastes from—

- (a) oil or oily mixtures;
- (b) noxious liquid substances;
- (c) non-polluting liquid substances; or
- (d) harmful substances in packaged form;

“passenger” means any person carried on a ship, except—

- (a) a person employed or engaged in any capacity on the business of the ship;
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that the master, the owner or the charterer (if any) could have prevented or forestalled; or
- (c) a child under the age of one;

“passenger ship” means a ship licensed to carry more than twelve passengers;

“plastics” includes synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products which may contain toxic or heavy metal residues;

“Polar Code” means the International code for ships operating in polar waters, consisting of an introduction, part I-A and parts I-B, as adopted by resolutions MSC.385(94) and MEPC.264(68);

“Polar waters” means Arctic waters or Antarctic waters or both;

“relevant date” means the relevant date determined by the IMO for the special area in question, pursuant to Regulation 13.2 of Annex IV (reception facilities for passenger ships in special areas);

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“relevant platform” means a fixed or floating platform which is used in connection with the exploration, exploitation or associated offshore processing of seabed mineral resources;

“renewal survey” has the meaning given in regulation 8(3);

“sea” includes any estuary or arm of the sea;

“Sewage Certificate” means an International Sewage Pollution Prevention Certificate referred to in Regulation 5 of Annex IV;

“ship” means a vessel of any type whatsoever, including a hydrofoil boat, an air-cushion vehicle, a submersible, a floating craft and a fixed or floating platform, which is operating in the marine environment;

“ship in dedicated trades” means ships trading to set ports in a dedicated trading pattern which may include a special area;

“short international voyage” means an international voyage which—

- (a) does not exceed 1000 nautical miles between the last port of call and 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 country 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 the intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner nor the charterer (if any) of the ship could have prevented or forestalled;

“STCW” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers 1978, as amended in 1995 by resolution 1 of the STCW Conference convened at the IMO’s headquarters from 26th June to 7th July 1995 and as may be amended from time to time; and

“surveyor” means a surveyor of ships, or any other person appointed by a Certifying Authority (other than the Minister) to be a surveyor, and “survey” means a survey carried out by a surveyor.

(2) For the purposes of these Regulations—

- (a) subject to paragraph (3), a “discharge”, in relation to sewage, means any release howsoever caused from a ship, and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying, and cognate expressions are to be construed accordingly;
- (b) “garbage” means all kinds of victual, domestic and operational wastes generated during the normal operation of a ship and liable to be disposed of continuously or periodically, but does not include fresh fish and parts thereof, sewage, or any other substance the disposal of which is prohibited or otherwise controlled under an Annex to the Convention other than Annex V; and

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- (c) “sewage” means—
- (i) drainage and other wastes from any form of toilets and urinals;
 - (ii) drainage from medical premises (including, for example, a dispensary or sick bay) via wash basins, wash tubs and scuppers located in such premises;
 - (iii) drainage from spaces containing living animals; or
 - (iv) other waste waters when mixed with any drainage referred to in sub-paragraph (i), (ii) or (iii).
- (3) A “discharge” does not include—
- (a) dumping within the meaning of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, signed at London on 13th November 1972, as amended by the 1996 Protocol; or
 - (b) the release of sewage for the purposes of legitimate scientific research into pollution abatement or control.
- (4) For the purposes of these Regulations, an “old ship” means a ship whose date of construction is before 2nd October 1983, and the date of construction of a ship is the date on which the keel of the ship is laid or on which the ship is at a stage of construction at which—
- (a) construction identifiable with a specific ship has begun; and
 - (b) assembly of that ship has incorporated at least 50 tonnes of structural material or one per cent of the estimated mass of all structural material, whichever is less.
- (5) For the purposes of these Regulations, “Bermuda ship” means a ship as defined in section 16(3) of the Merchant Shipping Act 2002.
- (6) In the application of these Regulations to—
- (a) an air-cushion vehicle, a reference to the master of a ship includes a reference to the captain of that air-cushion vehicle; and
 - (b) a platform, a reference to the master of a ship includes a reference to the manager of that platform.

[Regulation 2 paragraph (1) definitions “the 1995 Regulations”, “EC Regulation” and “MCA” deleted by BR 104 / 2019 reg. 2 effective 17 October 2019; Regulation 2 paragraph (1) definitions “Annex IV”, “Annex V”, “Certifying Authority” and “Merchant Shipping Notice” deleted and substituted by BR 104 / 2019 reg. 2 effective 17 October 2019; Regulation 2 paragraph (1) definitions “Arctic waters”, “MEPC”, “Polar Code” and “Polar waters” inserted by BR 104 / 2019 reg. 2 effective 17 October 2019; Regulation 2 paragraph (5) deleted and substituted by BR 104 / 2019 reg. 2 effective 17 October 2019; Regulation 2 paragraph (1) definitions “passenger”, “passenger ship”, “relevant date” and “ship in dedicated trades” inserted by BR 145 / 2020 reg. 2 effective 29 December 2020]

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Meaning of “Special Area” in Parts III and IV

2A For the purposes of Parts III and IV, a “Special Area” means a sea area where, for recognised technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by sewage is required and includes the areas listed in Regulation 1(6) of Annex IV.

[Regulation 2A inserted by BR 145 / 2020 reg. 3 effective 29 December 2020]

Meaning of “Special Area” in Part V

3 For the purposes of Part V, a “Special Area” means a sea area where, for recognised technical reasons in relation to its oceanographical and ecological condition and to the particular character of its traffic, the adoption of special mandatory methods for the prevention of sea pollution by garbage is required, and shall include those areas listed in Annex V of the Convention.

Meaning of “from nearest land”

4 In these Regulations, “from the nearest land” means—

- (a) in relation to all land other than that part of the north-eastern coast of Australia referred to in sub-paragraph (b), from the baseline from which the territorial sea of the territory in question is established in accordance with international law;
- (b) in relation to the north-eastern coast of Australia, 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; and
 - (i) thence to a point latitude 10°00' S, longitude 142°00' E;
 - (ii) thence to a point latitude 09°10' S, longitude 143°52'E;
 - (iii) thence to a point latitude 09°00' S, longitude 144°30' E;
 - (iv) thence to a point latitude 10°41' S, longitude 145°00' E;
 - (v) thence to a point latitude 13°00' S, longitude 145°00' E;
 - (vi) thence to a point latitude 15°00' S, longitude 146°00' E;
 - (vii) thence to a point latitude 17°30' S, longitude 147°00' E;
 - (viii) thence to a point latitude 21°00' S, longitude 152°55' E;
 - (ix) thence to a point latitude 24°30' S, longitude 154°00' E;
 - (x) thence to a point on the coast of Australia in latitude 24°42' S, longitude 153°15' E; and

and “nearest land” is to be construed accordingly.

Ambulatory reference

5 (1) In these Regulations, any reference to Annex is to be construed—

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- (a) as a reference to that Annex as modified from time to time; and
 - (b) if that Annex is replaced by another instrument, as a reference to that instrument.
- (2) For the purposes of paragraph (1), Annex IV or VI are modified if omissions, additions or other alterations to the text take effect in accordance with Article 16 of the Convention (supplementary provisions made under Article 16 of the Convention).
- (3) A modification to or a replacement of Annex IV or VI by virtue of paragraph (1) has effect at the time such modification or replacement comes into force in accordance with Article 16(2)(f) and (g) of the Convention.
- (4) No modification or replacement of a reference to an Annex by virtue of paragraph (1) affects any right or liability arising before the date on which the modification or replacement has effect.

[Regulation 5 revoked and substituted by BR 104 / 2019 reg. 3 effective 17 October 2019]

Application

- 6 (1) Subject to paragraphs (16) to (20), the provisions of these Regulations shall apply in the following manner.
- (2) Regulations 7 to 12, 14, 15, 16(1) to (5), 17, 18(1) and (2) and 31A apply to a Bermuda ship, wherever it may be, which is engaged in international voyages and is—
- (a) of 400 GT or above; or
 - (b) certified to carry more than 15 persons.
- (3) Regulations 13 and 19(1) apply to a ship which is—
- (a) not a Bermuda ship;
 - (b) registered in, or is not registered but is entitled to fly the flag of a country whose Government is a Contracting Government;
 - (c) engaged in international voyages;
 - (d) of 400 GT or above, or certified to carry more than 15 persons; and
 - (e) in Bermuda waters; or
 - (f) in controlled waters.
- (4) Regulation 16(6) applies to a ship which is—
- (a) not a Bermuda ship;
 - (b) engaged in international voyages;
 - (c) of 400 GT or above, or certified to carry more than 15 persons; and
 - (d) is—
 - (i) in a port in Bermuda;

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- (ii) at an offshore terminal in Bermuda waters or controlled waters; or
 - (iii) a floating platform in Bermuda waters or controlled waters, other than a floating platform which is in transit.
- (5) Regulation 18(3) and (4) applies in relation to a ship which is—
 - (a) a Bermuda ship, wherever it may be, which is engaged in international voyages and is—
 - (i) of 400 GT or above;
 - (ii) certified to carry more than 15 persons; or
 - (b) not a Bermuda ship, but is—
 - (i) engaged in international voyages;
 - (ii) of 400 GT or above, or certified to carry more than 15 persons; and
 - (iii) in Bermuda waters, or any other waters which are controlled waters.
- (6) Regulation 19(2) applies to a ship which satisfies all the criteria set out in paragraph (3) except for the criterion in paragraph (3)(b).
- (7) Regulation 20 applies to a ship which is a Bermuda ship but which does not satisfy all the other criteria set out in paragraph (2).
- (8) Regulations 21 to 25 apply to a ship which is—
 - (a) a Bermuda ship, wherever it may be, which is engaged in international voyages and is—
 - (i) of 400 GT or above; or
 - (ii) certified to carry more than 15 persons;
 - (b) not a Bermuda ship, but is—
 - (i) engaged in international voyages;
 - (ii) of 400 GT or above, or certified to carry more than 15 persons; and
 - (iii) in Bermuda waters, or any other waters which are controlled waters.
- (9) Regulations 26 to 28 apply to a ship which is—
 - (a) a Bermuda ship wherever it may be; or
 - (b) a ship other than a Bermuda ship, but which is in—
 - (i) Bermuda waters, controlled waters; or
 - (ii) any other waters which are sea.
- (10) Regulation 29 applies to a ship which is referred to in paragraph (9)(a) or (b) and is—

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- (a) a relevant platform; or
 - (b) alongside or within 500 metres of such a platform.
- (11) Regulation 30 applies to a Bermuda ship wherever it may be.
- (12) Regulation 31 applies to a ship which is referred to in paragraph (9)(a) or (b) and has a length overall of 12 metres or more.
- (13) In paragraph (12), “length overall” means the extreme length of the hull of the ship measured between the foremost part of the bow and the aftmost part of the stern.
- (14) Regulation 32 applies to a ship which is referred to in paragraph (9)(a) or (b) and is—
- (a) of 400 GT or above; or
 - (b) certified to carry 15 or more persons.
- (15) Regulations 33 and 34 apply to a ship which is referred to in paragraph (9)(a) or (b) and is—
- (a) of 400 GT or above;
 - (b) certified to carry 15 or more persons, and engaged in voyages to ports or offshore terminals under the jurisdiction of a Party to the Convention other than the ship’s flag State; or
 - (c) a relevant platform.
- (16) Regulation 35 applies to a ship which is referred to in paragraph (9)(a) or (b) and is—
- (a) certified to carry 15 or more persons, and engaged on a voyage whose duration is one hour or less; or
 - (b) a relevant platform, while it is engaged in exploration and exploitation of the sea-bed.
- (17) These Regulations do not apply to any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government, non-commercial service.
- (18) Regulation 21(2) does not apply to a ship other than an old ship.
- (19) *[Deleted by BR 145 / 2020 reg. 4]*
- (20) Regulations 26 to 29 do not apply to—
- (a) the disposal of garbage which is necessary for the purpose of—
 - (i) securing the safety of the ship;
 - (ii) securing the safety of those on board the ship; or
 - (iii) saving life at sea;

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- (b) the escape of garbage which results from damage to a ship or its equipment, except to the extent that the escape is due to a failure to take all reasonable precautions before and after the occurrence of the damage, for the purpose of preventing or minimising the escape; or
- (c) the accidental disposal into the sea of synthetic fishing nets or synthetic material incidental to the repair of such nets, except to the extent that the disposal is due to a failure to take all reasonable precautions to prevent the disposal.

[Regulation 6 amended by BR 104 / 2019 reg. 4 effective 17 October 2019; Regulation 6 paragraph (19) deleted by BR 145 / 2020 reg. 4 effective 29 December 2020]

PART II

SEWAGE: SURVEY AND CERTIFICATION OF SHIPS

Requirement for Sewage Certificate: initial survey

- 7 (1) A ship to which this regulation applies shall not—
- (a) be put into service; or
 - (b) (if it is already in service) continue in service,

unless the requirements set out in paragraph (2) are met.

- (2) The requirements are that—
- (a) a survey has been carried out in respect of the ship;
 - (b) at the date of the survey the surveyor be satisfied that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part III; and
 - (c) a Sewage Certificate has been issued in respect of that ship and is still valid.

(3) A survey carried out under paragraph (2) is referred to in these Regulations as an “initial survey”.

Renewal of Sewage Certificate: renewal survey

- 8 (1) A ship to which this regulation applies shall not—
- (a) proceed to sea; or
 - (b) (if it is already at sea) remain at sea,

after the date of expiry of a Sewage Certificate issued in respect of that ship unless the requirements set out in paragraph (2) are met.

- (2) The requirements are that—
- (a) a survey has been carried out in respect of the ship;

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- (b) at the date of the survey the surveyor is satisfied that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part III; and
- (c) in consequence a Sewage Certificate has been issued in respect of that ship and is still valid; or
- (d) the certificate has been extended in accordance with regulation 15(4).

(3) A survey carried out under paragraph (2) is referred to in these Regulations as a “renewal survey”.

Responsibilities of the owner and master of a ship

9 (1) The owner and the master of a ship to which this regulation applies shall ensure that the condition of the ship and its equipment are maintained to conform with the provisions of Parts III and IV so as to ensure that the ship in all respects remains fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) The owner and the master of a ship to which this regulation applies shall ensure that after any survey of the ship required by this Part has been completed, no change, except by way of direct replacement, is made to the infrastructure of that ship covered by the survey without the approval of—

- (a) the Certifying Authority who appointed the surveyor to carry out the survey; or
- (b) the Minister, where the Sewage Certificate was issued by a Contracting Government following a request made pursuant to regulation 12,

as the case may be.

(3) Whenever—

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

which substantially affects the integrity of the ship or the efficiency or completeness of the equipment of the ship required under Part III, the owner and the master of the ship shall ensure that the requirements of paragraph (4) are complied with.

(4) The requirements are that—

- (a) the accident or defect, as the case may be, be reported at the earliest opportunity to the Certifying Authority who issued the Sewage Certificate in respect of the ship; and
- (b) in the case of a ship in a port outside Bermuda, the accident or the defect, as the case may be, be also immediately reported to the appropriate maritime authorities in the country in which the port is situated.

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

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

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

Additional surveys

- 10 (1) This regulation applies to a ship where—
- (a) a repair resulting from an investigation referred to in regulation 9(5) has been made to the ship; or
 - (b) an important repair or renewal has been made to the ship.
- (2) A ship to which this regulation applies shall not—
- (a) proceed to sea; or
 - (b) (it is already at sea) remain at sea,

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

- (3) The requirements are that—
- (a) a survey has been carried out in respect of the ship;
 - (b) at the date of the survey the surveyor be satisfied that—
 - (i) the repair or renewal has been made effectively;
 - (ii) the materials used in, and the workmanship of, the repair or renewal are satisfactory in all respects;
 - (iii) the ship complies in all respects with the requirements of Part III; and
 - (c) the surveyor has issued a survey report expressing the satisfaction required by sub-paragraph (b).

(4) A survey carried out under paragraph (3) is referred to in these Regulations as an “additional survey”.

Issue of Sewage Certificates by a Certifying Authority

- 11 (1) Subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2012, on being notified by a surveyor that the surveyor—
- (a) has carried out an initial survey or a renewal survey in respect of a ship to which this regulation applies; and

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- (b) is satisfied at the date of the survey that the structure, equipment, systems, fittings, arrangements and materials of the ship fully comply with the requirements of Part III,

a Certifying Authority shall issue a Sewage Certificate in respect of that ship.

(2) Where a ship becomes a ship to which this regulation applies on transfer from the flag of another Contracting Government, a Certifying Authority shall issue a Sewage Certificate in respect of that ship where—

- (a) a Sewage Certificate has been issued in respect of the ship and was still valid immediately before the date of the transfer;
- (b) the Certifying Authority has caused a survey to be carried out in respect of the ship; and
- (c) the Certifying Authority is satisfied that—
 - (i) the condition of the ship and its equipment is maintained to conform with the provisions of Annex IV, so as to ensure that the ship is fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment; and
 - (ii) no change, other than a change referred to in paragraph (3), has been made to the structure, equipment, systems, fittings, arrangements or materials of the ship covered by the last survey carried out under Regulation 4.1 of Annex IV without the approval of the Contracting Government in question.

(3) The changes referred to in paragraph (2)(c)(ii) are the direct replacement of equipment and fittings.

(4) A Sewage Certificate issued under this regulation shall be in English and in the form set out in the Appendix to Annex IV.

Issue of Sewage Certificates by another Government in respect of Bermuda ships

12 (1) The Minister may request a Contracting Government—

- (a) to survey a ship to which this regulation applies; and
- (b) to issue, or authorise the issue of, a Sewage Certificate in respect of that ship, if the Contracting Government is satisfied that the ship complies with the requirements of Annex IV.

(2) Where a Sewage Certificate is issued pursuant to paragraph (1)—

- (a) the Minister is to be treated as the Certifying Authority in relation to it; and
- (b) any reference in these Regulations to the Certifying Authority who issued the Certificate is to be treated as a reference to the Minister.

Issue of Sewage Certificates in respect of ships which are not Bermuda ships

13 (1) When requested to do so by a Contracting Government, the Minister—

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- (a) may cause a survey to be carried out in respect of a ship to which this regulation applies; and
 - (b) shall, subject to the payment of any fee due under the Merchant Shipping (Fees) Regulations 2012, issue in respect of that ship a Sewage Certificate if the Minister is satisfied that the requirements of Annex IV are complied with.
- (2) A Sewage Certificate issued pursuant to paragraph (1) is to—
- (a) be in English and in the form set out in the Appendix to Annex IV;
 - (b) contain a statement that it has been so issued; and
 - (c) have the same effect as if it had been issued by the Contracting Government who made the request referred to in paragraph (1) and not by the Minister.
- (3) The Minister shall send as soon as possible to the Contracting Government who made the request referred to in paragraph (1) a copy of—
- (a) the Sewage Certificate issued pursuant to that paragraph; and
 - (b) the survey report.
- (4) The Minister shall not issue a Sewage Certificate in respect of a ship which is—
- (a) registered in a State whose Government is not a Contracting Government; or
 - (b) not registered, but is entitled to fly the flag of a State whose Government is not a Contracting Government.

Duration and validity of Sewage Certificates

14 (1) Subject to the following paragraphs and to regulations 16(3) and 18(1), a Sewage Certificate which is issued in respect of a ship to which this regulation applies is valid for such period as is specified in the certificate, not exceeding five years, beginning with the date of the completion of the relevant initial or renewal survey.

(2) Subject to paragraph (3) and regulation 15(9), where a renewal survey is completed—

- (a) within the final three-month period; or
- (b) after the date of expiry of the latest Sewage Certificate,

the new Sewage Certificate is valid for such period as is specified in the Certificate, beginning with the date of the completion of the renewal survey and ending with a date not exceeding five years from the date of expiry of the latest Sewage Certificate.

(3) A Sewage Certificate issued in respect of a ship ceases to be valid upon whichever is the earliest of the following—

- (a) upon the ship being transferred to the flag of another State;

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- (b) upon a ship proceeding to sea where—
 - (i) a repair or renewal referred to in regulation 10(1) has been made; and
 - (ii) the requirements set out in regulation 10(3) have not been complied with;
- (c) upon a new Sewage Certificate being issued in respect of the ship; or
- (d) upon the date of expiry of the Certificate.

(4) Where a ship is transferred to the flag of another State whose Government is a Contracting Government, and within three months after the date of transfer that Government so requests, the Minister shall send the Government a copy of—

- (a) the Sewage Certificate issued in respect of the ship; and
- (b) if available, the survey report.

(5) In this regulation, the “final three-month period” means the period of three months ending on the date of expiry of the Sewage Certificate in question.

Extension of periods of validity of Sewage Certificates

15 (1) Where the period of the validity of a Sewage Certificate in respect of a ship to which this regulation applies is less than five years, the Certifying Authority who issued the Sewage Certificate may extend its period of validity to a maximum period of five years.

(2) Where—

- (a) a renewal survey has been completed by a surveyor; but
- (b) the new Sewage Certificate cannot be issued or placed on board the ship before the date of expiry of the latest Sewage Certificate,

the surveyor may endorse the latest Sewage Certificate.

(3) Where a Sewage Certificate has been endorsed under paragraph (2), that Certificate is valid for such further period as is specified in the Certificate, not exceeding five months beginning with the original date of expiry of the Certificate.

(4) Where—

- (a) a renewal survey has not been completed before the date of expiry of the latest Sewage Certificate in question; and
- (b) at that date of expiry the ship is not in the port in which the survey is to be carried out,

the Certifying Authority who issued the latest Sewage Certificate may extend the period of validity of that Sewage Certificate for a period not exceeding three months, if it appears to the Certifying Authority that it is proper and reasonable to do so solely for the purpose of allowing the ship to complete its voyage to its port of survey.

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(5) Where the period of validity of a Sewage Certificate has been extended pursuant to paragraph (4), the ship in question shall not leave its port of survey until a new Sewage Certificate has been issued in respect of that ship.

(6) Subject to paragraph (7), the Certifying Authority who issued the latest Sewage Certificate in respect of a ship engaged solely on short international voyages may extend the period of validity of that Sewage Certificate for a period not exceeding one month.

(7) A Certifying Authority shall not extend the period of validity of a Sewage Certificate under paragraph (6) if the period of validity of that Sewage Certificate has already been extended under paragraph (1), (3) or (4).

(8) Subject to paragraph (9) and to regulations 16(3) and 18(1), where a renewal survey has been completed and a new Sewage Certificate has been issued in respect of a ship referred to in paragraph (5) or (6), that new Certificate is valid for such period as is specified in the Certificate, not exceeding five years beginning with the original date of expiry of the previous Sewage Certificate.

(9) Where the period of validity of a Sewage Certificate is extended under paragraph (1), (4) or (6), the Certifying Authority in question shall endorse the Sewage Certificate in accordance with the relevant form set out in the Appendix to Annex IV.

(10) An endorsement issued pursuant to paragraph (2) shall be in the relevant form set out in the Appendix to Annex IV.

(11) In this regulation, "the original date of expiry" means the date on which a Sewage Certificate would have expired but for any extension of its period of validity.

Procedure to be adopted when a ship is deficient

16 (1) This regulation applies where a surveyor determines that—

- (a) the condition of a ship to which paragraphs (1) to (5) of this regulation apply, or its equipment, does not correspond substantially with the particulars of the Sewage Certificate (if any) issued in respect of the ship; or
- (b) a ship, to which paragraphs (1) to (5) of this regulation apply, is not fit to proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) The surveyor shall—

- (a) advise the owner or master of the corrective action which in the opinion of the surveyor is required; and
- (b) where a Sewage Certificate has been issued in respect of the ship and is still valid, notify the Certifying Authority who issued the Certificate—
 - (i) that the surveyor has so advised the owner or master; and
 - (ii) if that corrective action is not taken.

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(3) Where a Sewage Certificate has been issued in respect of the ship and is still valid, the Certifying Authority may suspend the validity of that Certificate until the corrective action has been taken.

(4) Where the Certifying Authority suspends the validity of a Sewage Certificate issued in respect of a ship, it shall immediately give notice of such suspension—

- (a) to the owner of the ship;
- (ab) where the Certifying Authority is not the Minister, to the Minister; and
- (b) where the ship is in a port outside of Bermuda, to the appropriate maritime authorities of the country in which the port is situated.

(5) Where the owner of a ship is given notice of suspension, that owner shall notify the master of the ship in question of the suspension.

(6) Paragraphs (1) and (2) have effect in relation to a ship to which this paragraph applies as they have effect in relation to a ship to which those paragraphs apply, and as if—

- (a) the reference to “the Certifying Authority” were to the Government of the State where the ship is registered (or if the ship is not registered, the Government of the flag State); and
- (b) the reference to a “surveyor” included a reference to a person authorised by that Government to survey the ship.

[Regulation 16 paragraph (4)(ab) inserted by BR 145 / 2020 reg. 5 effective 29 December 2020]

Arbitration

17 (1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a ship to which this regulation applies, the applicant may serve a written notice on the responsible person within 21 days 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) Subject to paragraph (2A), an arbitrator referred to in paragraph (1) shall be appointed by agreement between the applicant and the responsible person.

(2A) In default of agreement between the applicant and the responsible person, the arbitrator is such a person as may be appointed by the appointments committee of the Chartered Institute of Arbitrators Bermuda, following a request made by—

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

(3) No person is to be an arbitrator under this regulation unless that person is—

- (a) a person who holds a certificate to act as—

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- (i) a master or chief mate on a seagoing ship of 3,000 GT or more, in accordance with Regulation II/2 of Chapter 2 of the Annex to 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 III/2 of Chapter 3 of the Annex to the STCW Convention;
 - (b) a person who holds a certificate of competency equivalent to a certificate referred to in sub-paragraph (a);
 - (c) a naval architect;
 - (d) a qualified person;
 - (e) a person with special experience of shipping matters, or of the fishing industry, or of activities carried on in ports; or
 - (f) a member of the Chartered Institute of Arbitrators Bermuda.
- (4) An arbitrator appointed under this regulation has the powers of an inspector conferred by section 220 of the 2002 Act.
- (5) The rules for arbitration set out in Merchant Shipping Notice No. M.1613 apply unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.
- (6) In this regulation—
- (a) “applicant” means a person who makes an application for a survey required by these Regulations;
 - (b) “qualified person” means a barrister and attorney of not less than 10 years call; and
 - (c) “responsible person” means—
 - (i) the Certifying Authority responsible under regulation 11 or 12 for the issue of the Sewage Certificate in connection with which a survey required by these Regulations is carried out; or
 - (ii) in the case of a dispute relating to an additional survey, the Certifying Authority which issued the Sewage Certificate in respect of the ship.

Miscellaneous provisions relating to Sewage Certificates

- 18 (1) The Minister may cancel a Sewage Certificate issued in respect of a ship to which this paragraph applies, where he has reason to believe that—
- (a) the Sewage Certificate was issued on false or erroneous information; or
 - (b) since the completion of any survey required by these Regulations, the structure, equipment or machinery of the ship has sustained damage or is otherwise deficient.

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(2) The Minister may require that a Sewage Certificate, issued in respect of a ship to which this paragraph applies, and which has expired or has been suspended or cancelled, be surrendered within such time and in such manner as the Minister may in writing direct.

(3) In relation to a ship to which this paragraph applies, no person may—

- (a) intentionally alter a Sewage Certificate;
- (b) intentionally make a false Sewage Certificate;
- (c) knowingly or recklessly provide false information in connection with a survey required under these Regulations;
- (d) with intent to deceive, use or lend a Sewage Certificate or permit a Sewage Certificate to be used by another person; or
- (e) fail to surrender a Sewage Certificate when required to do so pursuant to paragraph (2).

(4) The owner and master of a ship, in respect of which a Sewage Certificate has been issued and in relation to which this paragraph applies, shall ensure that the Certificate is readily available on board the ship for examination at all times.

Prohibition on non-Bermuda ships proceeding to sea without a Sewage Certificate

19 (1) A ship to which this paragraph applies shall not proceed to sea from a port in Bermuda unless—

- (a) a Sewage Certificate has been issued pursuant to Annex IV in respect of that ship and is still valid;
- (b) a surveyor of ships is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment; or
- (c) a person having power to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

(2) A ship to which this paragraph applies shall not proceed to sea from a port in Bermuda unless documentation has been issued in respect of that ship which is still valid and shows that—

- (a) a survey has been carried out in respect of the ship as if regulation 7 applied to the ship; and
- (b) a surveyor of ships is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the marine environment, or a person having power to detain the ship has permitted the ship to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard available.

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Survey and certification of ships to which regulations 7,8, and 10 do not apply

20 (1) When requested by the owner of a ship to which this regulation applies, a surveyor may carry out a survey equivalent to one carried out under regulation 7, 8 or 10 in respect of that ship.

(2) In the following paragraphs, a “relevant ship” means a ship to which this regulation applies and in respect of which such a survey is carried out.

(3) The provisions referred to in paragraph (4) have effect—

- (a) in relation to a relevant ship as they have effect in relation to a ship to which regulations 7, 8 and 10 apply;
- (b) in relation to a Sewage Certificate issued in respect of a relevant ship as they have effect in relation to a Sewage Certificate issued in respect of a ship to which those regulations apply;
- (c) as if any reference in those provisions to a ship to which one of those provisions applies included a reference to a relevant ship; and
- (d) as if any reference in those provisions to a Sewage Certificate included a reference to a Sewage Certificate issued in respect of a relevant ship.

(4) The provisions are—

- (a) regulation 9;
- (b) regulation 11;
- (c) regulation 14;
- (d) regulation 15 other than paragraph (5);
- (e) regulation 16 other than paragraph (6); and
- (f) regulation 18.

PART III

SEWAGE: EQUIPMENT OF SHIPS

Sewage systems

21 (1) A ship to which this paragraph applies, other than an old ship or a ship to which paragraph (2A) applies, shall be equipped with at least one of the following—

- (a) a sewage treatment plant which complies with the standards set out in the guidelines for performance for sewage treatment plants adopted by the Marine Environment Protection Committee of the Organization by Resolution MEPC.2(VI) or with any subsequent amendments to those guidelines or in the case of a ship built before 1st August 2005 with standards accepted by the Minister as being equivalent to those standards;

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- (b) a sewage comminuting and disinfecting system which complies with the requirements set out in paragraph (3) in the case of a Bermuda ship, or paragraph (4) in the case of a ship which is not a Bermuda ship; or
 - (c) a holding tank which complies with the requirements set out in paragraph (5) in the case of a Bermuda ship, or paragraph (6) in the case of a ship which is not a Bermuda ship.
- (2) The owner of an old ship shall ensure that the ship is equipped, so far as is practicable, to discharge sewage in accordance with the requirements of Regulation 11 of Annex IV.
- (2A) A passenger ship operating in a Special Area, from the relevant date onwards, shall be equipped with a sewage system specified in Regulation 9.2 of Annex IV.
- (3) In the case of a Bermuda ship, the requirements for a sewage comminuting and disinfecting system are that it meet the standards for such systems set out in Schedule 2 to these Regulations.
- (4) In the case of a ship which is not a Bermuda ship, the requirement for a sewage comminuting and disinfecting system is that it be approved by the Government of the ship's flag State.
- (5) In the case of a Bermuda ship, the requirements for a holding tank are that—
- (a) the construction of the holding tank meet the standard for holding tanks which is set out in Schedule 3 to these Regulations;
 - (b) the capacity of the holding tank be sufficient, having regard to the operation of the ship, the number of persons the ship is certified to carry and any other relevant factors; and
 - (c) the holding tank be capable of indicating visually the amount of its contents.
- (6) In the case of a ship which is not a Bermuda ship, the requirements for a holding tank are that—
- (a) the construction of the holding tank be approved by the Government of the ship's flag State;
 - (b) the capacity of the holding tank be sufficient, having regard to the operation of the ship, the number of persons the ship is certified to carry and any other relevant factors; and
 - (c) the holding tank be capable of indicating visually the amount of its contents.

[Regulation 21 amended by BR 145 / 2020 reg. 6 effective 29 December 2020]

Discharge connections

22 (1) Subject to paragraph (2), the sewage discharge pipeline of a ship to which this regulation applies shall be fitted with a standard discharge connection in accordance with

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the specification for a standard discharge connection set out in Regulation 10 of Annex IV to the Convention.

(2) In the case of a ship in dedicated trades, the sewage discharge pipeline may alternatively be fitted with a quick-connection coupling or other discharge connection, if the Chief Marine Surveyor is satisfied that that discharge connection is at least as effective as the standard discharge connection.

[Regulation 22 paragraph (2) amended by BR 104 / 2019 reg. 5 effective 17 October 2019]

PART IV DISCHARGE OF SEWAGE

Prohibition on the discharge of sewage

23 (1) Subject to paragraph (2), the discharge of sewage from a ship into the sea is prohibited, except—

- (a) in the case of a ship on a voyage outside a Special Area, when the sewage is discharged in accordance with part A of Regulation 11 of Annex IV (discharge of sewage from ships other than passenger ships in all areas and discharge of sewage from passenger ships outside Special Areas);
- (b) in the case of a passenger ship operating in a Special Area from the relevant date onwards, when the sewage is discharged in accordance with part B of Regulation 11 of Annex IV (discharge of sewage from passenger ships within a Special Area); and
- (c) in the case of a Bermuda ship operating in Polar waters, when the sewage is discharged in accordance with chapter 4 of part II-A of the Polar Code (prevention of pollution by sewage from ships).

(2) Paragraph (1) does not apply in the case of—

- (a) a discharge of sewage which is necessary for the purpose of—
 - (i) securing the safety of a ship and those on board the ship; or
 - (ii) saving life at sea;
- (b) a discharge of sewage—
 - (i) which results from damage to a ship or its equipment; and
 - (ii) where all reasonable precautions have been taken before and after the occurrence of the damage, to prevent or minimise the discharge; or
- (c) a discharge of sewage which took place in waters under the jurisdiction of a State other than Bermuda and was in accordance with such less stringent requirements as were imposed by that State.

(3) Where sewage is mixed with waste or waste water covered by an Annex to the Convention other than Annex IV, paragraph (1) applies in addition to any statutory

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prohibition or requirement which relates to that waste or waste water and which implements that other Annex.

[Regulation 23 deleted and substituted by BR 145 / 2020 reg. 7 effective 29 December 2020]

Exception for ship equipped with a sewage treatment plant

24 *[Revoked by BR 145 / 2020 reg. 8]*

[Regulation 24 revoked by BR 145 / 2020 reg. 8 effective 29 December 2020]

Exception for other ships

25 *[Revoked by BR 145 / 2020 reg. 8]*

[Regulation 25 revoked by BR 145 / 2020 reg. 8 effective 29 December 2020]

PART V

DISPOSAL OF GARBAGE

Prohibition on disposal of plastics or mixtures of garbage from a ship

26 (1) The disposal into the sea of any plastics from a ship to which this regulation applies is prohibited.

(2) Where plastics are mixed with garbage of one or more kinds referred to in regulation 27, 28 or 29, the disposal of that mixed garbage into the sea from such a ship is prohibited.

(3) Subject to paragraph (4), where—

- (a) garbage of a kind referred to in regulation 27, 28 or 29 is mixed with garbage of a different kind referred to in any of those regulations; and
- (b) the disposal into the sea of one or more of those kinds of garbage is prohibited under any of those regulations,

the disposal into the sea of that mixed garbage is prohibited.

(4) Where—

- (a) garbage of a kind referred to in regulation 27, 28 or 29 is mixed with garbage of a different kind referred to in any of those regulations;
- (b) the disposal into the sea of those kinds of garbage is prohibited by those regulations unless certain requirements are complied with; and
- (c) those requirements differ according to the kind of garbage,

the disposal into the sea of that mixed garbage is prohibited unless the more stringent requirements are complied with.

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Prohibition on disposal of garbage other than plastics from a ship outside a Special Area

27 (1) This regulation is subject to regulation 29.

(2) The disposal of dunnage, lining and packing materials which will float, from a ship to which this regulation applies into the sea outside a Special Area is prohibited unless—

(a) the distance from the ship to the nearest land is 25 nautical miles or more; and

(b) the disposal is made as far from the nearest land as is practicable.

(3) The disposal of general garbage, which has been ground or comminuted to the required standard, from such a ship into the sea outside a Special Area is prohibited unless—

(a) the distance from the ship to the nearest land is three nautical miles or more; and

(b) the disposal is made as far from the nearest land as is practicable.

(4) The disposal of general garbage, other than that referred to in paragraph (3), from such a ship into the sea outside a Special Area is prohibited unless—

(a) the distance from the ship to the nearest land is 12 nautical miles or more; and

(b) the disposal is made as far from the nearest land as is practicable.

(5) In this regulation, “general garbage” means garbage other than—

(a) plastics; and

(b) dunnage, lining and packing materials which will float.

Prohibition on disposal of garbage from a ship within a Special Area

28 (1) The disposal of garbage, other than food wastes, from a ship to which this regulation applies into the sea within a Special Area is prohibited.

(2) Subject to paragraph (3), the disposal of food wastes from such a ship into the sea within a Special Area is prohibited unless—

(a) the distance from the ship to the nearest land is 12 nautical miles or more; and

(b) the disposal is made as far from the nearest land as is practicable.

(3) If the Wider Caribbean Region is a Special Area, the disposal of food wastes, which have been ground or comminuted to the required standard, from a ship into the sea within that Region is prohibited unless—

(a) the distance from the ship to the nearest land is three nautical miles or more; and

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- (b) the disposal is made as far from the nearest land as is practicable.

Prohibition on disposal of garbage from a relevant platform or from a ship alongside a relevant platform

29 (1) The disposal of garbage, other than the food wastes referred to in paragraph (2), into the sea from a ship to which this regulation applies is prohibited.

(2) The disposal of food wastes, which have been ground or comminuted to the required standard, into the sea from a ship to which this regulation applies is prohibited, if the distance from the relevant platform in question to the nearest land is 12 nautical miles or less.

Restriction on Bermuda ships entering the Antarctic area

30 A ship to which this regulation applies shall not enter the Antarctic area unless it has—

- (a) sufficient capacity for the retention on board of all garbage while operating in that area; and
- (b) concluded arrangements for the discharge of retained garbage at a reception facility after it has left that area.

Placards on ships

31 (1) A ship to which this regulation applies shall display placards which notify the crew and any passengers of the requirements for the disposal of garbage contained in regulations 26 to 28 and 30.

- (2) The placards shall be written—
- (a) in the working language of the ship's personnel; and
 - (b) if the ship is engaged on voyages to ports or offshore terminals under the jurisdiction of a Party to the Convention other than its flag State, also in English, French or Spanish.

PART VA

Polar Code

31A (1) This Regulation applies to a Bermuda ship operating in polar waters.

(2) The owner or master of a ship to which this Regulation applies must ensure that the construction and operation of the ship, in addition to any other applicable requirements of Annex IV and Annex V, complies with the following provisions of the Polar Code—

- (a) the environment related provisions of the introduction;
- (b) chapter 4 of Part II-A (prevention of pollution by sewage from ships); and
- (c) chapter 5 of Part II-A (prevention of pollution by garbage from ships).

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(3) In ensuring compliance with paragraphs (2)(b) and (2)(c), consideration must be given to the guidance in Part II-B of the Polar Code.

[Regulation 31A inserted by BR 104 / 2019 reg. 6 effective 17 October 2019]

PART VI

GARBAGE MANAGEMENT PLANS AND RECORD BOOKS

Garbage management plan

32 (1) Every ship to which this regulation applies shall carry a garbage management plan which complies with paragraph (2).

(2) The garbage management plan shall—

- (a) be written in the working language of the crew;
- (b) provide procedures for the collection, storage, processing and disposal of garbage, including procedures for the use of equipment on board;
- (c) designate the person in charge of carrying out the plan; and
- (d) be in accordance with the guidelines developed by the IMO and adopted by the Marine Environment Protection Committee of the Organization by resolution MEPC.71(38).

(3) The master of a ship shall ensure that the crew of the ship follow the garbage management plan relating to the ship.

Garbage record books

33 (1) Every ship to which this regulation applies shall keep on board a garbage record book which complies with paragraph (2).

(2) The garbage record book shall be in the form specified in the Appendix to Annex V of the Convention and may form part of the official logbook (if any) of the ship.

(3) The garbage record book shall be kept in a place where it is available for inspection at any reasonable time.

(4) The owner of a ship shall preserve the garbage record book for that ship for a period of two years from the date of the final entry made in it.

Entries in garbage record books

34 (1) In relation to a ship to which this regulation applies, the officer in charge of a discharge operation or an incineration shall make and sign an entry in the garbage record book in respect of that discharge or incineration, as the case may be, on the date of the discharge or on the date on which the incineration is completed.

(2) An entry in the garbage record book shall include—

- (a) the date and time at which the discharge or incineration occurred;

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- (b) the position of the ship at the time at which the discharge or incineration occurred;
- (c) a description of, and the estimated amount of, the garbage discharged or incinerated; and
- (d) the signature of the officer in charge of the discharge or incineration.

(3) In the event of a disposal, an escape, or an accidental disposal referred to in regulation 6(20), an entry shall be made in the garbage record book recording the circumstances of, and the reasons for, the disposal, escape or accidental disposal, as the case may be.

(4) In the case of a Bermuda ship or a relevant platform which is in Bermuda waters or controlled waters, the entry in the garbage record book shall be in English.

(5) In the case of a ship which is neither a Bermuda ship nor a relevant platform in Bermuda waters or controlled waters, the entry in the garbage record book shall be written in English, French or Spanish.

(6) Where the entries are also made in an official language of the flag State, then if there is a discrepancy in, or a dispute concerning, the different language entries in the garbage record book, the official language of the flag State prevails.

(7) The master of a ship shall sign each completed page of the garbage record book relating to the ship.

Exemptions from regulations 33 and 34

35 The Minister may grant an exemption in writing from one or more of the requirements of regulations 33 and 34 in respect of a ship to which these Regulations apply.

PART VII

INSPECTIONS, DETENTIONS AND OFFENCES

Inspections, Detentions and Offences

36 (1) In so far as sections 219 and 220 of the 2002 Act (powers to inspect ships and their equipment, and powers of inspectors in relation to premises and ships) apply in relation to a ship to which any of these Regulations apply, for the purposes of checking compliance with these Regulations those sections have effect subject to the modifications prescribed in paragraphs (2), (3), (4), and (5).

(2) The power in those sections to inspect a ship and its equipment, any part of the ship, any articles on board and any document carried in the ship, is limited to—

- (a) verifying whether a Sewage Certificate has been issued in respect of the ship and is still valid;
- (b) verifying whether documentation referred to in regulation 19(2) (“appropriate documentation”) has been issued in respect of the ship and is still valid;

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- (c) investigating any operation regulated by these Regulations, if there are clear grounds for believing that the master or the crew are not familiar with essential shipboard procedures relating to the prevention of pollution by sewage or garbage, as the case may be;
- (d) verifying whether the ship has discharged any sewage or disposed of any garbage in violation of these Regulations; or
- (e) inspecting the garbage record book kept aboard the ship,

except where there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of the Sewage Certificate or other appropriate documentation referred to in sub-paragraph (a) or (b).

(3) The power in those sections to go on board a ship may only be exercised if the ship in question is—

- (a) in a port in Bermuda, in so far as the power is exercised to investigate an operation relating to garbage; or
- (b) in any other case—
 - (i) in a port in Bermuda;
 - (ii) at an offshore terminal in Bermuda waters or controlled waters; or
 - (iii) a floating platform in Bermuda waters or controlled waters, other than a floating platform which is in transit.

(4) Where the ship is inspected for the purposes of paragraph (2)(d) and is not a Bermuda ship, the person exercising the powers of inspection shall ensure that the report of the inspection is sent to—

- (a) the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State; and
- (b) any other Party to the Convention who requested the inspection.

(5) Where the garbage record book is inspected under paragraph (2)(e), the person exercising the power of inspection may—

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

(6) That certified copy is to be admissible in any judicial proceedings as evidence of the facts stated in it.

Investigations of alleged violations by Bermuda ships

37 Upon receiving evidence that a Bermuda ship has discharged any sewage or disposed of any garbage in violation of these Regulations, the Minister shall—

- (a) cause the matter to be investigated;

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- (b) inform the IMO of the action taken; and
- (c) where another State has reported the violation, inform that State of the action taken.

General provisions on detention

38 (1) Subject to paragraph (2), where a determination is made of the kind mentioned in regulation 16(1) in relation to a ship, or a surveyor of ships has clear grounds for believing that—

- (a) a Sewage 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;
- (b) documentation referred to in regulation 19(2) (“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;
- (c) the condition of a ship or its equipment does not correspond substantially with the particulars of that Certificate or other appropriate documentation;
- (d) the master or crew is not familiar with essential shipboard procedures relating to the prevention of pollution by sewage;
- (e) the master or crew is not familiar with essential shipboard procedures relating to the prevention of pollution by garbage; or
- (f) an offence under regulation 42(1) is being committed in respect of a ship,

the ship is liable to be detained until a surveyor of ships is satisfied that it can proceed to sea without presenting an unreasonable threat of harm to the marine environment.

(2) A person having power to detain a ship may permit a ship which is liable to be detained under paragraph (1) to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(3) Where a surveyor of ships has clear grounds for believing that an offence under regulation 42(1)(e) or (f) has been committed in respect of a ship, the ship is liable to be detained.

(4) The power under this regulation to detain a ship may only be exercised if the ship in question is—

- (a) a port in Bermuda, in the case of paragraph (1)(e); or
- (b) in any other case, is—
 - (i) in a port in Bermuda;
 - (ii) at an offshore terminal in Bermuda waters or controlled waters; or
 - (iii) a floating platform in Bermuda waters or controlled waters, other than a floating platform which is in transit.

(5) Section 242 of the 2002 Act (enforcing detention of a ship) applies where a ship is liable to be detained under the preceding provisions of this regulation as if—

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- (a) references to the detention of a ship under the 2002 Act were references to the detention of the ship in question under the preceding provisions of this regulation; and
 - (b) subsection (7) and (8) were omitted.
- (6) Where a ship is liable to be detained under the preceding provisions of this regulation, the person detaining the ship shall serve on the master of the ship a detention notice which—
- (a) states the grounds for the detention; and
 - (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 242(1) of the 2002 Act.
- (7) Where a ship other than a Bermuda ship is detained, the Minister shall immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.
- (8) Where a ship is detained under paragraph (3), a person having power to detain the ship shall, at the request of the owner, master, demise charterer or manager, immediately release the ship—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
 - (c) if either—
 - (i) the sum of \$45,000 is paid to the Minister by way of security; or
 - (ii) security which, in the opinion of the Minister, is satisfactory and is for an amount not less than \$45,000 is given to the Minister,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 that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
 - (e) where the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.
- (9) The Minister shall repay any sum paid in pursuance of paragraph (8)(c) or release any security so given—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the sum is paid; or

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- (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.

(10) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (8)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 42(1)(e) or (f), the sum so paid or the amount made available under the security shall 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 shall be repaid to the first-mentioned person.

(11) Section 144 of the 2002 Act (interpretation of section 143) applies for the purposes of paragraphs (8) to (10), but as if—

- (a) references to the master or owner of the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 130 were references to an offence under regulation 42(1)(e) or (f).

Power of the harbour master to detain

39 (1) Where the harbour master of a harbour in Bermuda has clear grounds for believing that an offence has been committed—

- (a) under regulation 42(1)(e) or (f) by the discharge from a ship of sewage into the waters of the harbour; or
- (b) under regulation 42(1)(e) or (f) by the disposal from a ship of garbage into the waters of the harbour,

the harbour master may detain the ship.

(2) Section 143(2) and (3) of the 2002 Act (harbour master's power of detention of ships for certain offences) applies to a detention under paragraph (1) as it applies to a detention under section 143(1) of the 2002 Act.

(3) Where a ship is liable to be detained under this regulation, the harbour master detaining the ship shall serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by the harbour authority.

(4) Where a ship is detained under paragraph (1), the harbour master shall immediately release the ship—

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- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the ship is detained;
 - (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted;
 - (c) if either—
 - (i) the sum of \$45,000 is paid to the harbour authority by way of security; or
 - (ii) security which, in the opinion of the harbour authority, is satisfactory and is for an amount not less than \$45,000 is given to the harbour authority, 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 that regulation, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
 - (e) where the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such court or tribunal is posted.
- (5) The harbour authority shall repay any sum paid in pursuance of paragraph (4) (c) or release any security so given—
- (a) if no proceedings for an offence under regulation 42(1)(e) or (f) are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for that offence, having been instituted within that period, are concluded without the owner, manager, demise charterer or master being convicted.
- (6) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (4)(c) and the owner, manager, demise charterer or master is convicted of an offence under regulation 42(1)(e) or (f), the sum so paid or the amount made available under the security shall 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 shall be repaid to the first-mentioned person.
- (7) Section 144 of the 2002 Act (interpretation of section 143) applies for the purposes of paragraphs (4) to (6) as if—

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- (a) references to the master or owner or the ship were references to the owner, manager, demise charterer or master; and
- (b) references to an offence under section 130 of the 2002 Act were references to an offence under regulation 42(1)(e) or (f).

Duty of harbour master to report deficient ships

40 If the harbour master of a harbour in Bermuda has reason to believe that a ship is about to enter or leave the harbour and does not comply with the requirements of these Regulations, the harbour master shall immediately report the matter to the Minister.

Right of appeal and compensation

41 Regulation 14 of the Merchant Shipping (Port State Control) Regulations 2019 (right of appeal and compensation) applies in relation to the exercise of the power of detention under these Regulations as they apply in relation to the exercise of that power under those Regulations, subject to the modification that, references to “inspector” are to be taken as references to the authority detaining the ship, or the harbour master, as the case may be.

[Regulation 41 revoked and substituted by BR 104 / 2019 reg. 7 effective 17 October 2019]

Offences

- 42 (1) Any contravention of—
- (a) regulation 7(1), 8(1), 9(1), (2) or (3), 10(2), 15(5), 18(4) or 19(1) or (2) is an offence by the owner and the master of the ship;
 - (b) regulation 16(5) is an offence by the owner of the ship;
 - (c) regulation 18(3) is an offence by the person in question;
 - (d) regulation 21(1) or (2) or 22 is an offence by the owner of the ship;
 - (e) regulation 23(1), 26, 27, 28, or 29, in the case of a relevant platform, is an offence by the owner and manager of the platform;
 - (f) regulation 23(1), 26, 27, 28, 29 or 31A(2) in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship;
 - (g) regulation 30, 31, 32(1), 33(1) or (3), or 34(3), (4) or (5), in the case of a relevant platform, is an offence by the owner and manager of the platform;
 - (h) regulation 30, 31, 32(1), 33(1) or (3), or 34(3), (4) or (5), in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship;
 - (i) regulation 32(3) or 34(7) in the case of a relevant platform, is an offence by the manager of the platform;
 - (j) regulation 32(3) or 34(7) in the case of a ship other than a relevant platform, is an offence by the master of the ship;

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- (k) regulation 33(4) is an offence by the owner of the ship;
 - (l) regulation 34(1) or (2) in the case of a relevant platform, is an offence by the owner and manager of the platform, and the officer in charge of the discharge operation or incineration; or
 - (m) regulation 34(1) or (2) in the case of a ship other than a relevant platform, is an offence by the owner, manager, demise charterer and master of the ship, and the officer in charge of the discharge operation or incineration.
- (2) Subject to paragraph (3), an offence under paragraph (1) is punishable—
- (a) on summary conviction by a fine not exceeding \$10,000; or
 - (b) on conviction on indictment by a fine not exceeding \$30,000.
- (3) A contravention referred to in paragraph (1)(e) or (f) is specified for the purposes of article 6 of the United Kingdom's Merchant Shipping (Prevention of Pollution by Sewage and Garbage) Order 2006 (which applies to section 130(3) of the 2002 Act (penalties for certain pollution offences) subject to a modification).
- (4) Where an offence under this regulation is committed, or would be committed save for the operation of regulation 47(1), by any person owing to the act or default of some other person, that other person is also guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

[Regulation 42 paragraph (1)(f) amended by BR 104 / 2019 reg. 8 effective 17 October 2019]

Service of documents on foreign companies

43 Section 142(3) of the 2002 Act (service of documents on foreign companies required or authorised by any statutory provision in connection with proceedings for an offence under section 130 of the 2002 Act) applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under section 130, as if—

- (a) the reference to section 130 were to these Regulations;
- (b) in the case of an offence in respect of a ship other than a relevant platform, the reference to the owner were to the owner, manager or demise charterer; and
- (c) in the case of an offence in respect of a relevant platform, the reference to—
 - (i) the owner of the ship were to the owner of the platform; or
 - (ii) the master of the ship were to the manager of the platform.

Enforcement and application of fines

44 Section 145 of the 2002 Act (enforcement and application of fines) applies to any fine for an offence under regulation 42(1)(e) to (m), as if—

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- (a) in subsection (1) of that section the reference to proceedings against the owner or master of a ship for an offence under Chapter III were a reference to proceedings against the owner, master, demise charterer, manager or officer in charge of the discharge operation or incineration for an offence under regulation 42(1)(e) to (m); and
- (b) in subsection (2) of that section, the reference to an offence under section 130 were a reference to an offence under regulation 42(1)(e) or (f).

Restrictions on jurisdiction over offences outside of Bermuda limits

45 (1) Where there has been an offence under regulation 42(1)(e) or (f) in respect of a ship which is not a Bermuda ship in the internal waters, territorial sea or exclusive economic zone of a foreign State, proceedings in respect of that offence shall not be instituted in Bermuda unless—

- (a) that foreign State, the flag State of the ship in question or a State polluted or threatened with pollution as a result of the offence requests that such proceedings be taken; or
- (b) the offence has caused or is likely to cause pollution in controlled waters or Bermuda waters.

(2) Where such proceedings have been instituted but not concluded, they shall be suspended upon the request of the foreign State in question and the Minister shall send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the foreign State.

(3) In this regulation, “foreign State” means a country other than Bermuda.

Suspension of proceedings at flag state request

46 (1) This regulation applies to proceedings instituted but not concluded in Bermuda in respect of a contravention of a provision in Part IV, V or VI committed outside Bermuda waters by a ship other than a Bermuda ship.

(2) Subject to paragraph (3), any proceedings shall be suspended if the court is satisfied that the flag State of the ship in question has instituted proceedings corresponding to the proceedings in Bermuda in respect of the contravention of that provision within six months of the institution of the proceedings by Bermuda.

(3) Paragraph (2) does not apply where—

- (a) the contravention of these Regulations resulted in serious pollution of Bermuda; or
- (b) the Minister certifies that the flag State in question has repeatedly disregarded its obligations to enforce effectively the requirements of the Convention in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings shall be terminated.

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Defences

47 (1) In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that he took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

(2) Without prejudice to paragraph (1), in any proceedings in respect of a ship for an offence under regulation 42(1)(e) or (f), it is a defence for the person charged to prove that—

- (a) the ship was not a Bermuda ship;
- (b) the discharge or disposal took place in waters which were neither controlled waters nor Bermuda waters; and
- (c) the ship was in a port in Bermuda 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 master or owner or any charterer or manager of the ship.

(3) Without prejudice to paragraph (1), in any proceedings for an offence under regulation 42(1)(e) or (f) in relation to a discharge of sewage, it is a defence for the person charged to prove that—

- (a) the discharge took place in waters under the jurisdiction of a State or country other than Bermuda; and
- (b) the discharge was in accordance with such less stringent requirements as were imposed by that State or country.

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SCHEDULE 1

(Regulation 2(1))

GROSS TONNAGE

Gross Tonnage Generally

1 The “gross tonnage” of a Bermuda ship is to be determined in accordance with paragraphs 3 to 5, and the “gross tonnage” of a ship other than a Bermuda ship is to be determined in accordance with paragraphs 6 to 8.

2 In this Schedule—

“the 2008 Regulations” means the Merchant Shipping (Tonnage) Regulations 2008;

“length” and “length overall” (except in the expression “length overall”) have the same meaning as in the 2008 Regulations; and

“the Tonnage Convention” means the International Convention on Tonnage Measurement of Ships 1969.

Gross Tonnage— Bermuda ships

3 In the case of a ship of 24 metres in length or over for which the Minister permits the continuing use of a gross tonnage pursuant to regulation 12(1) of the 2008 Regulations, the “gross tonnage” is the smaller of—

(a) the largest gross tonnage permitted for that ship pursuant to regulation 12(1) of the 2008 Regulations; and

(b) the gross tonnage of the ship determined in accordance with regulation 6 of the 2008 Regulations.

4 In the case of any other ship of 24 metres in length or over, the “gross tonnage” is the gross tonnage of the ship determined in accordance with regulation 6 of the 2008 Regulations.

5 In the case of any other ship of less than 24 metres in length, the “gross tonnage” is the tonnage of the ship determined in accordance with regulation 14(2) of the 2008 Regulations.

Ships other than Bermuda ships

6 Subject to paragraph 7, in the case of a ship which has a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is that gross tonnage.

7 Where a ship has a gross tonnage determined in accordance with the Tonnage Convention but the State whose flag the ship flies or is entitled to fly permits the use of some other gross tonnage, the “gross tonnage” of the ship is the smaller of—

(a) the largest gross tonnage permitted by the flag State to be used for that ship; and

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(b) the gross tonnage determined in accordance with the Tonnage Convention.

8 In the case of a ship which does not have a gross tonnage determined in accordance with the Tonnage Convention, the “gross tonnage” is the gross tonnage or equivalent measure determined in accordance with the law of the State whose flag the ship flies or is entitled to fly (and where the ship has more than one such gross tonnage or equivalent measure, the “gross tonnage” is to be taken to be the largest of them).

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SCHEDULE 2

(Regulation 21(3))

STANDARDS FOR SEWAGE COMMINUTING AND DISINFECTING SYSTEMS

Standards for Sewage Comminuting and Disinfecting Systems

A sewage comminuting and disinfection system meets the requirements of regulation 21(3) if its output meets the following standards—

- (a) the faecal coliform bacteria do not exceed 1,000 per 100 cubic centimetres most probable number;
- (b) the chlorine residual level is no more than 0.5 mg/litre (by test) post maceration;
- (c) a sample of 1 litre passed through a US Sieve Number 12 (with openings of 1.68 mm) provides a weight of material retained on the screen after it has been dried to a constant weight in an oven at 103 degrees C that does not exceed 10% of the total suspended solids and is not more than 50mg; and
- (d) temporary storage of sewage is by a holding which meets the standards set out in Schedule 3.

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SCHEDULE 3

(Regulation 21(5))

STANDARDS FOR HOLDING TANKS

Standards for Holding Tanks

A holding tank meets the requirements of regulation 21(5) if it is constructed so that it prevents leakage under all normal operating conditions of the ship and in all likely weather conditions until it can be discharged in accordance with the Regulations.

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SCHEDULE 4

(Paragraph 25(3))

STANDARDS FOR RATE OF SEWAGE DISCHARGE

Standards for the rate of sewage discharge

1 (1) A rate of discharge for sewage meets the requirements of regulation 25(3) and is approved by the Minister for the discharge of untreated sewage that has been stored in holding tanks—

- (a) when the maximum discharge rate calculated as an average over any 24 hour period does not exceed $DR(\max) = 0.00926.V.D.B$; and
- (b) when—
 - (i) $DR(\max)$ is the maximum Discharge Rate in cubic metres per hour;
 - (ii) the ship's average speed in knots over the period considered;
 - (iii) D is the vessel's draft in metres; and
 - (iv) B is the vessel's breadth in metres.

(2) The rate does not exceed the maximum rate by more than 20% when measured over any hour.

Made this 17th day of June 2015

Minister of Tourism Development and Transport

[Amended by:

BR 104 / 2019

BR 145 / 2020]