

MERCHANT SHIPPING (DIVING SAFETY) REGULATIONS 2005

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MERCHANT SHIPPING ACT 2002

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The Minister of Tourism and Transport, in exercise of the powers conferred by section 96(2) of the Merchant Shipping Act 2002, makes the following regulations:

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Citation

1 These Regulations may be cited as the Merchant Shipping (Diving Safety) Regulations 2005.

Interpretation

2 (1) In these Regulations —

"Approved Codes of Practice" refers to the following publications—

- (a) "Commercial Diving Projects Offshore" ISBN 0 7176 1494 8;
- (b) "Commercial Diving Projects Inland/Inshore" ISBN 0 7176 1495 6;
- (c) "Media Diving Projects" ISBN 0 7176 1497 2;
- (d) "Scientific and Archaeological Diving Projects" ISBN 0 7176 1498 0;
- (e) "Recreational Diving Projects" ISBN 0 7176 1496 4.

"approved qualification" means —

- (a) a recognized qualification to the standard set by the authority governing the territorial waters in which the diving project is carried out; or
- (b) in international waters, a standard recognized by the U.K. Health and Safety Executive or equivalent;

"casualty" means any casualty or other incident which involves loss or danger to the life of any person engaged in a diving project;

"competent person" means a person who has sufficient training and experience or knowledge and qualities, to enable him to properly perform the duties imposed under the relevant provisions in these Regulations;

"craft" means a ship, hovercraft, or floating structure, including any fishing vessel or work boat, which is used for or in connection with a diving project;

"diving contractor" in relation to a diving project means, subject to regulation 7, a person who —

- (a) is the employer of one or more persons taking part in the diving project as a diver who is at work; or
- (b) dives in the diving project as a self-employed diver;

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"diving operation" means an activity within a diving project in which at least one person takes part or will take part as a diver and which can be safely supervised by one person;

"diving plant and equipment" means any plant and equipment used or intended to be used as part of a diving project and includes —

- (a) fixed or mobile plant and equipment forming part of a Bermuda ship or other craft's own plant and equipment; and
- (b) mobile plant and equipment provided and brought on board for a diving project;

"diving project" means any activity in which at least one person takes part or will take part as a diver and extends from the time when that person, or the first time such person, commences to prepare to dive until that person, or the last time such person, has left the water, chamber or other environment in which the dive, or any part of the dive, took place and has completed any requisite decompression procedures including, where it may be reasonably anticipated that it will be needed, any therapeutic recompression;

"diving project plan" means a plan prepared pursuant to regulation 9;

"diving services" means services which are provided, for profit or gain, by the master or owner of a craft, to a person taking part in a diving project as a diver, (including the supply of submersible equipment for personal use by a diver or the supply of compressed gas (excluding therapeutic oxygen) for all forms of breathing apparatus, (but excluding the provision of tuition or of transportation services); and for the purposes of this definition "tuition" includes information on local conditions and "transportation services" means the provision of a craft for the purposes of conveying its occupants to or from a diving operation or providing a platform for a diving operation;

"diving supervisor" means a person appointed, in accordance with regulation 10, to supervise a diving operation;

"Merchant Shipping Notice" means a Notice described as such and issued by the Minister of Transport and includes any document amending or replacing such Notice;

"self-contained underwater breathing apparatus" means diving plant and equipment in which a supply of breathing mixture is carried by the diver independently of any other source.

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(2) For the purposes of these Regulations a person "dives" if he enters —

- (a) water or any other liquid; or
- (b) a chamber in which he is subject to pressure greater than 100 millibars above atmospheric pressure;

and in order to survive in such an environment he breathes in air or other gas at a pressure greater than atmospheric pressure and references to "a dive", "dive" and "diver" shall be construed accordingly.

(3) Where a Bermuda ship or other craft is managed by a person other than her owner (whether on behalf of the owner or some other person, or on his own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person.

Application

3 (1) These Regulations apply to a diving project, within Bermuda waters —

- (a) which takes place from a craft the master or owner of which is the diving contractor for the diving project; and
- (b) to which the Marine Board (Diving) Regulations 1997 do not apply.

(2) These Regulations also apply —

- (a) in international waters, to a diving project launched or operated from a Bermuda ship, which relates to an offshore installation or pipeline and in relation to which there is a diving contractor; and
- (b) in international waters, to any diving project launched or operated from a Bermuda ship, other than one which relates to an offshore installation or pipeline in relation to which there is a diving contractor.

(3) Where in relation to a diving project in Bermuda waters —

- (a) there is no person falling within the definition "diving contractor"; and
- (b) the diving project takes place from a craft, and the master or owner of the craft is providing diving services to persons on board the craft,

regulations 5(2) and 6(2) of these Regulations shall apply.

Duty to ensure compliance with the Regulations

4 Every person who to any extent is responsible for, has control over or is engaged in any diving project to which these Regulations apply

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or whose acts or omissions could adversely affect the health and safety of persons engaged in any such project, shall take such measures as is reasonable for a person in his position to take to ensure that these Regulations are complied with.

Duties of owner of craft

5 (1) The owner of a craft from which a diving project is, or will be, undertaken shall ensure —

- (a) that all plant and equipment, other than diving plant and equipment, necessary for the safe conduct of the diving project are available, suitable and sufficient for that purpose;
- (b) that the plant and equipment made available in accordance with sub-paragraph (a) are maintained in a safe working condition;
- (c) so far as reasonably practicable, that the diving contractor, diving supervisor and divers undertake their duties under these Regulations.

(2) The owner of a craft from which any diving project is to be undertaken who provides diving plant and equipment shall ensure that such plant and equipment are suitable for the safe conduct of the diving project and are maintained in a safe working condition.

Duties of master of craft

6 (1) The master of a craft from which a diving project is, or will be, undertaken shall —

- (a) ensure, so far as reasonably practicable, that no operations or activities which might adversely affect the health and safety of any person engaged in the diving project are undertaken from or on the craft during the period of the diving project;
- (b) take such measures as are reasonable to ensure that there is a safe place on board the craft from which the diving project may be undertaken;
- (c) take such measures as are reasonable to ensure that the craft is positioned in a safe location for the duration of the diving project, bearing in mind the weather conditions, tides and condition of the sea-bed and, if using a dynamic positioning system, all other relevant factors;
- (d) take such measures as are reasonable to ensure that all plant and equipment, other than diving plant and equipment, necessary for the safe conduct of the diving project are sufficient and available for that purpose;

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- (e) take such measures as are reasonable to ensure that the plant and equipment made available pursuant to subparagraph (d) are maintained in a safe working condition; and
- (f) before the diving project is commenced, and at appropriate intervals during it, consult the diving supervisor about the said project or activities and any other matters which may affect the safety of the diving project.

(2) The master of a craft from which any diving project is to be undertaken who provides diving plant and equipment shall ensure that such plant and equipment are suitable for the safe conduct of the diving project and are maintained in a safe working condition.

Dividing contractor

7 Where there is more than one person falling within the definition of "dividing contractor" those persons shall, before commencing the diving project, jointly and in writing appoint one of them to act as the diving contractor for the purpose of these Regulations.

Duties of diving contractor

8 (1) The diving contractor shall ensure, so far as is reasonably practicable, that a diving project in respect of which he is a diving contractor is planned, managed and conducted in a manner which protects the health and safety of all persons taking part in the project.

(2) The diving contractor shall ensure —

- (a) that there are sufficient competent persons to carry out safely and without risk to health both the diving project and any action (including giving first aid) which may be necessary in a reasonably foreseeable emergency connected with the diving project;
- (b) that suitable and sufficient diving plant and equipment are available whenever needed to carry out safely and without risk to health both the diving project and any action (including the giving of first aid) which may be necessary in a reasonably foreseeable emergency connected with the diving project;
- (c) that the plant and equipment made available under subparagraph (b) are maintained in a safe working condition;
- (d) so far as is reasonably practicable, that any person taking part in the diving project complies with the requirements imposed on him by these Regulations and

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the provisions of the diving project plan applicable to him; and

- (e) that a record in accordance with the requirements of Merchant Shipping Notice 1762 (M) + (F) is kept for each diving operation which forms part of the diving project and shall retain the record in his possession or control for at least two years after the date of the last entry in it.

Diving project plan

9 (1) The diving contractor shall before commencing the diving project ensure that a diving project plan is prepared for the project and that the plan is updated as necessary during the project.

(2) The diving project plan shall be based on an assessment of the risks to the health and safety of any person taking part in the diving project or of other persons who may be affected thereby and shall contain such information and instructions as are necessary to give advice to, and regulate the behaviour of, any persons taking part in the diving project so as to ensure, so far as is reasonably practicable, their health and safety and that of other persons who may be affected thereby.

(3) Notwithstanding paragraph (2), the diving project plan shall—

- (a) contain a record of the assessment, information and instructions carried out by the diving contractor pursuant to regulation 9(2);
- (b) identify each diving operation to be undertaken as part of the diving project;
- (c) contain an assessment of the availability of emergency support services, referring (as appropriate) to one or more of the Approved Codes of Practice; and
- (d) incorporate an assessment of risk in accordance with the requirements under the Merchant Shipping (Health and Safety at Work) Regulations 2004.

Diving supervisor

10 (1) Subject to paragraph (2), a diving contractor shall appoint a person to be the diving supervisor in respect of a diving operation.

(2) Where a diving contractor —

- (a) is a competent person; and
- (b) has recorded in writing, before the commencement of the diving operation, that he intends to act as diving supervisor,

he may act as the diving supervisor for that diving operation.

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(3) A diving contractor who appoints a person as a diving supervisor shall —

- (a) before the commencement of the diving operation, make the appointment, and record it in writing;
- (b) before the commencement of the diving operation, supply the person appointed with a copy of any part of the diving project plan which relates to that diving operation; and
- (c) as soon as possible after the appointment, provide the person appointed with a written copy of his appointment.

(4) A diving contractor shall not appoint a person as a diving supervisor unless that person is a competent person.

Duties of diving supervisor

11 (1) In respect of a diving operation for which he has been appointed the diving supervisor shall —

- (a) before the diving operation commences, ensure that each person taking part is aware of the contents of the diving project plan which relate to that operation;
- (b) before the diving operation commences, and at appropriate intervals during it, consult with the master of the craft from which the diving project is, or will be, undertaken; and
- (c) during the course of the diving operation ensure that it is undertaken, so far as is reasonably practicable —
 - (i) without risk to the health and safety of any person taking part in the operation or of other persons who may be affected thereby;
 - (ii) in accordance with the requirements imposed on him by these Regulations; and
 - (iii) where this would not conflict with either subparagraph (i) or (ii), in accordance with the diving project plan; and
- (d) during the course of the diving operation keep a record of that operation.

(2) Subject to paragraph (3), a diving supervisor may dive during a diving operation in respect of which he is appointed if —

- (a) he is guiding persons engaged in, or training persons to carry out or teach, recreational diving; or

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- (b) the dive is for educational purposes and takes place in a tank or pool artificially constructed for the purpose of swimming or diving,

and the persons taking part in the dive, including the diving supervisor, use only self-contained underwater breathing apparatus.

(3) A diving supervisor may only dive as referred to in paragraph (2) if —

- (a) he can do so without risk to the health and safety of any other person taking part in the diving operation or of any other person who may be affected thereby; and
- (b) the diving project plan which relates to the diving operation specifically provides for the supervisor to dive.

Power of master and diving supervisor to give directions

12 (1) A diving supervisor may, while supervising a diving operation in respect of which he is appointed, give such reasonable directions to any person —

- (a) taking part in that operation; or
- (b) on board the craft from which the diving operation is taking place, as are necessary in order to ensure the safety of the divers taking part in the diving operation.

(2) The master of a craft from which a diving operation takes place may give the diving supervisor and any person taking part in the diving operation such reasonable directions as are necessary in order to ensure the safety of the craft.

(3) A person to whom a direction is given under this regulation shall comply with that direction.

Competence and fitness of divers

13 (1) No person shall dive in a diving operation unless —

- (a) he is able to carry out safely and without risk to his health any activity which he may reasonably expect to carry out while taking part in the diving operation;
- (b) subject to paragraph (3), he has an approved qualification; and
- (c) subject to paragraph (4), he has a certificate of medical fitness to dive which is issued and is valid in accordance with regulation 15.

(2) No person shall dive in a diving operation if he knows of anything (including illness or medical condition) which makes him unfit to dive.

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- (3) Paragraph (1)(b) shall not apply to a diver who is diving —
- (a) as a recreational activity, unless his work normally involves work as a diver;
 - (b) as part of training which, if successfully completed, would lead to the issue of an approved qualification;
 - (c) for educational purposes in a tank or pool artificially constructed for the purpose of swimming or diving and who is using only self-contained underwater breathing apparatus, unless his work normally involves work as a diver;
 - (d) only by virtue of entering a chamber in order to provide emergency medical treatment; or
 - (e) as an actor or performer taking part in a live performance or the recording of a performance, unless his work normally involves work as a diver.

(4) Paragraph (1)(c) shall not apply to a diver who is diving as a recreational activity, unless his work normally involves work as a diver.

Duties of persons taking part in a diving project

14 (1) Every person taking part in a diving project shall comply with any provisions applicable to him which are contained in the diving project plan and which do not conflict with directions given to him pursuant to regulation 12.

- (2) Subject to paragraph (3), a diver shall —
- (a) maintain a daily record of his diving; and
 - (b) keep that daily record in his possession or control for at least two years after the date of the last entry on it.

(3) Paragraph (2) shall not apply to a diver whose work does not normally involve work as a diver and who is diving —

- (a) as a recreational activity; or
- (b) for educational purposes in a tank or pool artificially constructed for the purpose of swimming or diving and who is using only self-contained underwater breathing apparatus.

Certificate of medical fitness to dive

15 (1) A certificate of medical fitness to dive is a certificate, issued by a medical examiner of divers, which certifies that the person named therein is fit to dive and which states —

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- (a) the period (which shall not exceed 12 months) during which the medical examiner of divers issuing the certificate considers the person named therein will remain fit to dive;
- (b) any limitations as to the nature of category of diving to which it relates; and
- (c) any conditions to which it is subject.

- (2) A certificate of medical fitness to dive shall not be valid if —
- (a) the diver is not in compliance with any extant limitation or condition stated therein; or
 - (b) it has been revoked on medical grounds by any medical examiner of divers.

(3) In this regulation "medical examiner of divers" means in relation to the certification of a person diving from a Bermuda ship inside or outside Bermuda waters, a medical practitioner who is qualified to examine divers for the purpose of issuing a certificate of medical fitness to dive.

Exemption

16 (1) Subject to paragraph (2), the Minister may direct in writing that any —

- (a) person or class of persons;
- (b) diving project or class of diving projects;
- (c) diving operation or class of diving operations; or
- (d) plant and equipment or class of plant and equipment,

shall be exempt from any requirement imposed by any provision of these Regulations, and any such exemption may be granted subject to conditions and limitations (including conditions and limitations as to the duration of the exemption) and may be revoked at any time.

(2) The Minister shall not grant any such exemption unless, having regard to the circumstances of the case, and in particular to —

- (a) the conditions and limitations, if any, to be attached to the exemption; and
- (b) any other requirements imposed by or under any enactment which apply to the case,

he is satisfied that the health and safety of persons who are likely to be affected by the exemption will not be prejudiced as a consequence.

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Inquiries and investigations into marine accidents

17 Part XI of the Merchant Shipping Act 2002 shall apply in relation to accidents in the course of a diving project involving any submersible or supporting apparatus which is not a ship as they apply to ships as if references in those provisions, on whatever terms, to a ship or a ship's boat or activities connected therewith included references to submersible or supporting apparatus or activities connected therewith.

Special reports of casualties

18 Without prejudice to regulation 17, where a casualty occurs, the Minister may, at any time, direct an inspector to make a special report with respect to that casualty, and the Minister may cause any such report to be made public at such time and in such manner as he thinks fit.

Offences

19 (1) A person who contravenes a provision of these Regulations commits an offence and is liable —

(a) on summary conviction, to a fine not exceeding \$10,000.00; or

(b) on conviction on indictment, to a fine not exceeding \$17,000.00, or to imprisonment for a term not exceeding two years or to both.

(2) It shall be a defence for a person charged with an offence under these Regulations to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Proceedings

20 (1) In any proceedings for an offence under these Regulations an averment in any process of the fact that anything was done or situated within Bermuda waters shall, until the contrary is proved, be sufficient evidence of that fact as stated in the averment.

(2) Proceedings for an offence under these Regulations may be taken, and the offence be treated for all incidental purposes as having been committed, in any place in Bermuda.

Made this 21st day of January, 2005

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Minister of Tourism and Transport