



BERMUDA

MERCHANT SHIPPING (SHIP-TO-SHIP TRANSFERS) REGULATIONS 2019

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 254(5) of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2019.

Interpretation

2 In these Regulations—

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“application” means an application for an oil transfer licence submitted by a harbour authority, to the Minister, under Regulation 5;

“bunkering operation” means the transfer between ships, of a substance consisting wholly or mainly of oil, for consumption by the engines of the ship receiving the substance;

“cargo transfer” means the transfer between two ships, of a substance consisting wholly or mainly of oil which is transported by either or both ships for reward, but does not include—

- (a) a bunkering operation; or
- (b) a transfer of—
 - (i) cargo residues; or
 - (ii) ship-generated waste;

“consolidation operation” means a cargo transfer carried out—

- (a) in harbour authority waters;
- (b) between two ships which normally carry out bunkering operations in the harbour authority waters in which the operation takes place;
- (c) with the prior consent of the harbour authority which regulates or manages the waters in which the operation takes place; and
- (d) for the purpose of rationalising cargo capacity, “consultation bodies” means any authority or other body the Minister considers likely to have an interest in an application (whether by virtue of having specific environmental responsibilities under any enactment or otherwise);

“harbour authority” has the meaning given to it in section 2(1) of the Act;

“harbour authority waters” means waters regulated or managed by a harbour authority;

“licence decision” means the decision of the Minister whether to grant an oil transfer licence or an amended oil transfer licence and the terms on which to do so;

“lightening operation” means a cargo transfer carried out—

- (a) in harbour authority waters;
- (b) with the prior consent of a harbour authority which regulates or manages the waters in which the operation takes place; and
- (c) in order to reduce the draught of a ship transferring the cargo, to move to enable it to move to shallower waters in a harbour authority area;

“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;

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“oil” has the meaning given to it in section 149 of the Merchant Shipping Act 2002;

“oil transfer licence” means a licence granted to a harbour authority by the Minister, enabling the harbour authority to authorise cargo transfers—

- (a) of a substance or substances specified in the licence;
- (b) in a specified location or locations; and
- (c) subject to any conditions specified in the licence.

Prohibited transfers

3 (1) A cargo transfer or bunkering operation must not be carried out in Bermuda waters unless the ships carrying out the transfer are within—

- (a) harbour authority waters; or
- (b) the permitted area, and a permit has been obtained from the Minister, in accordance with the procedure set out in a Merchant Shipping Notice.

(2) A cargo transfer must not be carried out in harbour authority waters, except in accordance with an authorisation of the harbour authority which regulates or manages the waters in which the cargo transfer is carried out.

(3) Paragraph (1)(a) does not apply to a bunkering operation between a ship and its rescue boat or tender.

(4) Paragraphs (1) and (2) do not apply to a cargo transfer or bunkering operation—

- (a) between a ship and an offshore installation; or
- (b) to or from a warship, naval auxiliary ship or other ship owned or operated by a State and used solely, for the time being, on government non-commercial service.

(5) Paragraph (2) does not apply to a cargo transfer which is—

- (a) a lightening operation; or
- (b) a consolidation operation.

(6) In this Regulation—

“rescue boat” means a ship designed or used to rescue persons in distress and to marshal life rafts.

Authorisation of cargo transfers

4 (1) A harbour authority may only authorise a cargo transfer which is within the scope permitted by an oil transfer licence.

(2) The authorisation of a cargo transfer by a harbour authority is valid only if given—

- (a) on receipt of a written application for authorisation;

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- (b) in advance of the cargo transfer; and
- (c) in writing.

Oil transfer licences

5 A harbour authority may in accordance with the procedure in Schedule 1, apply to the Minister, for an oil transfer licence.

Ship-to-ship transfer operations plans and notification of cargo transfers in the Pollution Control Zone

6 (1) A cargo transfer to or from a ship with a gross tonnage of 150 tons or more must not be carried out in Bermuda waters or in the Pollution Control Zone unless a ship-to-ship transfer operations plan has been approved by the ship's flag State.

(2) A cargo transfer to or from such a ship must not be carried out in the Pollution Control Zone unless the Minister has been notified in accordance with the procedure specified in a Merchant Shipping Notice.

(3) A cargo transfer to or from such a ship in Bermuda waters or in the Pollution Control Zone must be carried out in compliance with its ship-to-ship transfer operations plan.

(4) In this Regulation—

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

“Pollution Control Zone” means the area of sea defined in the Merchant Shipping (Prevention of Pollution) (Limits) Regulations 2004;

“ship-to-ship transfer operations plan” means a document which—

- (a) is in the working language of the ship to which it relates; and
- (b) sets out how cargo transfer operations should be conducted, based on best practice guidelines identified by the International Maritime Organization.

(5) For the purposes of this Regulation, gross tonnage is to be determined in accordance with Schedule 2.

Exemptions

7 (1) The Minister may exempt a cargo transfer or bunkering operation from Regulation 3(1).

(2) The Minister may make any such exemption subject to such conditions as the Minister considers appropriate.

Offences

8 (1) If a cargo transfer or bunkering operation is carried out in contravention of these Regulations, the owner, the manager and the master of each ship carrying out the cargo transfer or bunkering operation commits an offence.

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(2) A harbour authority which—

- (a) authorises a cargo transfer without an oil transfer licence;
- (b) fails to take reasonable steps to prevent a cargo transfer which is neither—
 - (i) authorised under an oil transfer licence; nor
 - (ii) exempted under Regulation 3(5); or
- (c) knowingly or recklessly provides false information in an application, commits an offence.

(3) A person who knowingly or recklessly provides false information to the Minister in relation to an application for an exemption under Regulation 7, commits an offence.

(4) A person found guilty of an offence under this Regulation is liable on summary conviction to a fine not exceeding \$50,000 and on conviction on indictment, to a fine not exceeding \$80,000.

(5) Where a person is charged with an offence under paragraph (1), (2)(a) or (2)(b), it is a defence for the person charged to prove that the cargo transfer or bunkering operation was for one or more of the following purposes—

- (a) securing the safety of any ship;
- (b) preventing damage to any ship or cargo;
- (c) saving life; or
- (d) preventing pollution,

unless the court is satisfied that the cargo transfer or bunkering operation was not necessary for any of those purposes and was not a reasonable step to take, in the circumstances.

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SCHEDULE 1

(Regulation 5)

PROCEDURE FOR GRANT OF OIL TRANSFER LICENCE

Application

- 1 (1) The application must contain—
- (a) a chart or map (or both) sufficient to identify the locations of the proposed cargo transfers to be carried out under the oil transfer licence and the extent of any onshore infrastructure alterations which the cargo transfers would involve;
 - (b) a description of the proposed cargo transfers, including—
 - (i) the types of substances to be transferred;
 - (ii) the maximum quantities of each substance to be transferred in any single operation and within any specified time period;
 - (iii) the maximum quantities of each substance to be transferred in any single operation or within any specified time period;
 - (iv) the frequency of transfers; and
 - (v) the types of ship to be used to carry out the transfers; and
 - (c) an environmental statement in respect of the cargo transfers which—
 - (i) is in writing; and
 - (ii) contains the information specified in paragraph 2.
- (2) The harbour authority must comply with any reasonable request made by the Minister, as to—
- (a) the format in which the harbour authority must provide the material referred to in sub-paragraph (1); and
 - (b) the number of copies of the material in that format, that the harbour authority must provide to the Minister.
- (3) Until this has been done, the Minister need not deal further with, or exercise any functions under these Regulations, in relation to the application.

Environmental statement

- 2 (1) The environmental statement must contain—
- (a) a description of any aspects of the environment likely to be significantly affected by the proposed cargo transfers, including—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;

- (iii) material assets and the cultural heritage; and
 - (iv) the interaction between any two or more of the things mentioned in sub-sub-paragraph (a)(i) to (iii);
 - (b) a description, complying with sub-paragraph (2), of any significant effects the proposed cargo transfers are likely to have on the environment resulting from—
 - (i) the nature of the activities to be carried out and the manner in which they are to be carried out;
 - (ii) the use of natural resources;
 - (iii) the emission of pollutants;
 - (iv) the creation of nuisances; or
 - (v) the elimination of waste;
 - (c) a description of the forecasting methods used by the harbour authority to assess any effects that the proposed cargo transfers are likely to have on the environment;
 - (d) a description of the measures envisaged to prevent or reduce, and where possible offset, any significant effects of the proposed cargo transfers on the environment, including, if appropriate, any changes proposed to the harbour authority's oil pollution emergency plan maintained in accordance with Regulation 4 of the Merchant Shipping (Oil Pollution Preparedness, Response and Co-operation) Regulations 2019;
 - (e) if applicable, an outline of the main alternatives to the proposed cargo transfers studied by the harbour authority and an indication of the main reasons for its choice, taking into account, the environmental effects of those alternatives and the proposed cargo transfers;
 - (f) a non-technical summary of the information provided under sub-sub-paragraphs (a) to (e); and
 - (g) a description of any difficulties, such as technical deficiencies or lack of knowledge, encountered in compiling any information specified in sub-sub-paragraphs (a) to (e).
- (2) The description referred to in sub-paragraph (1)(b) must cover—
- (a) direct and indirect effects;
 - (b) secondary effects;
 - (c) cumulative effects;
 - (d) short-term, medium-term and long-term effects;
 - (e) permanent and temporary effects; and
 - (f) positive and negative effects.

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Provision of further information

- 3 (1) Where the Minister reasonably considers that—
- (a) further information is required for the proper consideration of the likely environmental effects of the proposed cargo transfers; and
 - (b) the harbour authority is or should be able to provide such information,
- the Minister must notify the harbour authority in writing, of the matters on which further information is required.
- (2) The Minister need not deal further with, or exercise any functions under these Regulations in relation to the application, until any further information required in accordance with sub-paragraph (1) has been provided to the Minister.

Licence decision, notification and publication

- 4 (1) In reaching a licence decision, the Minister must—
- (a) have regard to—
 - (i) the application for the oil transfer licence;
 - (ii) any further information provided by the harbour authority pursuant to a notification under paragraph 3;
 - (iii) any representations received in accordance with the letter referred to in sub-paragraph (2)(b); and
 - (iv) any representations received in accordance with the statement referred to in sub-paragraph (2)(c); and
 - (b) take into account the direct and indirect effects of the proposed cargo transfers on—
 - (i) human beings, fauna and flora;
 - (ii) soil, water, air, climate and the landscape;
 - (iii) material assets and the cultural heritage; and
 - (iv) the interaction between any two or more of the things mentioned in sub-paragraph (b)(i) to (iii).
- (2) The Minister must send written confirmation of the licence decision, to—
- (a) the harbour authority;
 - (b) any consultation body which responded to the consultation, in accordance with the letter referred to in sub-paragraph (1)(a)(iii); and
 - (c) any person from whom the Minister received representations in accordance with the statement referred to in sub-paragraph (1)(a)(iv).
- (3) The written confirmation must include—

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- (a) if the licence decision involves granting the oil transfer licence, a description of any measures that must be taken in consequence of the grant, to avoid or reduce, and where possible, offset any environmental effects of the cargo transfers; and
 - (b) such maximum duration of the oil transfer licence, if any, as the Minister considers appropriate.
- (4) The Minister must ensure, as soon as possible after written confirmation is sent to the harbour authority pursuant to sub-paragraph (2)(a), that the licence decision is publicised in such manner as the Minister considers appropriate.

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SCHEDULE 2

(Regulation 6)

MODE OF DETERMINATION OF GROSS TONNAGE

Gross Tonnage

1 (1) The “gross tonnage” of a Bermuda ship is to be determined in accordance with paragraph 2.

(2) The “gross tonnage” of a ship other than a Bermuda ship is to be determined in accordance with paragraph 3.

(3) In this Schedule—

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

“length” has the same meaning as in the 2008 Regulations; and

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

Bermuda ships

2 (1) 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.

(2) 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.

(3) In the case of a 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

3 (1) 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.

(2) 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

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

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(3) 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).

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]