



BERMUDA

MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT
WORK) (CHEMICAL AGENTS) REGULATIONS 2019

BR 29 / 2019

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The Minister responsible for Maritime Administration, after consulting the persons referred to in section 94(3) of the Merchant Shipping Act 2002, and in exercise of his powers conferred by sections 93 and 94 of the Merchant Shipping Act 2002, makes the following Regulations:

PART 1
GENERAL

Citation

- 1 These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2019.

Interpretation

- 2 (1) In these Regulations—
 - “Bermuda ship” means a ship which is—
 - (a) a Bermuda ship within the meaning of section 16(3) of the Act;
 - (b) a Government ship; or
 - (c) a hovercraft;
 - “binding biological limit value” in relation to a chemical agent means the binding biological limit value established for that agent;
 - “binding occupational exposure limit value” in relation to a chemical agent means any binding occupational exposure limit value established for that agent;
 - “chemical agent” means any chemical element or compound, on its own or admixed, as it occurs in the natural state or as produced, used or released, including release as waste, by any work activity, whether or not produced intentionally, and whether or not placed on the market;
 - “document EH40” means a document by that name published by the UK Health and Safety Executive, from time to time, relating to workforce exposure limits;
 - “employer” means a person by whom a worker is employed on a ship under a contract of employment;
 - “exposure” means exposure at work, to chemical agents;

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“General Duties Regulations” means the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 2004;

“Government ship” has the meaning given by section 4(3) of the Act;

“hazardous chemical agent” means—

- (a) any chemical agent which meets the criteria for classification as a dangerous substance, other than those substances which only meet the criteria for classification as dangerous for the environment;
- (b) any chemical agent which meets the criteria for classification as a dangerous preparation, other than those preparations which only meet the criteria for classification as dangerous for the environment; or
- (c) any chemical agent which, whilst not meeting the criteria for classification as dangerous in accordance with subparagraph (a) or (b) may, because of its physico-chemical, chemical or toxicological properties, and the way in which it is used or is present on a ship, present a risk to the health and safety of workers, including any chemical agent assigned an occupational exposure limit value;

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

“health surveillance” means the assessment of an individual worker, to determine the state of health of that individual, as related to exposure to specific chemical agents at work;

“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;

“national occupational exposure limit value” means where more stringent, any workplace exposure limit established for that agent in document EH40;

“occupational exposure limit value” in relation to a chemical agent means the binding occupational exposure limit value or the national occupational exposure limit value established for that agent, whichever is the more stringent;

“Regulation 6(2) assessment” has the meaning given by Regulation 6(7);

“representative” in relation to workers, means any person lawfully elected, chosen or designated to represent the workers in regard to issues about the health and safety of workers at work;

“ship” includes hovercraft;

“substance” means any natural or artificial substance whether in solid or in liquid form or in the form of a gas or vapour and includes micro-organisms;

“surveyor of ships” has the meaning given by section 217 of the Act.

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(2) In these Regulations any reference to document EH40 means this document as amended from time to time.

(3) Subject to paragraph (1) and Regulation 3, words and expressions used in these Regulations have the same meaning as in document EH40.

(4) In the application of these Regulations to a hovercraft, a reference to the master of a ship includes a reference to the captain of that hovercraft.

Meaning of “worker”

3 (1) In these Regulations, “worker” means a person employed under a contract of employment, and includes a trainee or apprentice other than a person who is training in a vessel which is being used—

- (a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship; or
- (b) to provide instruction in navigation and seamanship for yachtsmen, and which is operating under a relevant code.

(2) In paragraph (1), “relevant code” means—

- (a) the Large Commercial Yacht Code as set out in a Merchant Shipping Notice issued by the Chief Marine Surveyor or the equivalent UK Merchant Shipping Notice, as applicable;
- (b) the Code of Practice for the Safety of Small Commercial Sailing Vessels;
- (c) the Code of Practice for the Safety of Small Commercial Motor Vessels; or
- (d) the Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point.

(3) In paragraph (2), each reference to a Code includes a reference to any document containing an amendment or replacement of that Code, which is considered by the Minister to be relevant from time to time and is specified in a Merchant Shipping Notice.

Application

4 (1) Notwithstanding Regulation 5 of the General Duties Regulations, and subject to paragraphs (2) to (4), these Regulations apply in relation to—

- (a) hazardous chemical agents that are or may be present on Bermuda ships, giving rise to risks or the likelihood of risks to the health and safety of workers on those ships whether as a result of that presence or as a result of any work activity involving such agents; and
- (b) Bermuda ships on which such agents are or may be present.

(2) Where—

- (a) a ship is being used in the course of public service activities or activities for the purpose of the civil protection services; and

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- (b) characteristics peculiar to those activities inevitably conflict with a provision of these Regulations, that provision does not apply in relation to that ship to the extent of that conflict.

(3) To the extent that a provision of these Regulations does not apply in relation to a ship because of paragraph (2), there is in relation to that ship a duty on the employer to ensure, so far as is reasonably practicable, the health and safety of workers who are or who are likely to be exposed to risks from chemical agents as a result of their work.

(4) This Regulation (other than paragraph (1)) and Regulations 5, 19 and 21 apply, where hazardous chemical agents are present or may be present on ships other than Bermuda ships which are for the time being in Bermuda waters, giving rise to risks or the likelihood of risks to the health and safety of workers on those ships, whether as a result of that presence or as a result of any work activity involving such agents.

(5) In paragraph (2)—

- (a) “civil protection services” includes the fire and rescue and ambulance services and search and rescue services provided by any other person; and
- (b) “public service activities” include the activities of the Bermuda Regiment, Customs, immigration officers, police officers and the security and intelligence services.

Application of related legislation

5 (1) The General Duties Regulations continue to apply to activities to which these Regulations apply; where these Regulations contain more stringent or specific provisions, then these Regulations apply.

(2) These Regulations apply without prejudice to—

- (a) any more stringent or specific provision contained in the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2019; or
- (b) any more stringent or specific provision relating to the transport of hazardous chemical agents by water contained in the IMDG Code, the IBC Code, or the IGC Code.

(3) In paragraph (2)(b) the “IBC Code”, the “IGC Code” and the “IMDG Code” mean those Codes as amended, to the extent that any such amendment makes more stringent or specific provision concerning those requirements, is considered by the Minister to be relevant from time to time, and is specified in a Merchant Shipping Notice.

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PART 2

DUTIES OF EMPLOYERS AND OTHERS

Assessment of health risks

6 (1) In carrying out the assessment required by Regulation 7 of the General Duties Regulations, the employer shall first determine whether hazardous chemical agents are present.

(2) If the employer determines that hazardous chemical agents are present, the employer shall then assess any risk to the health and safety of workers arising from the presence of those agents, taking into consideration—

- (a) their hazardous properties;
- (b) information on health and safety provided by the supplier;
- (c) the level, type and duration of exposure;
- (d) the circumstances of work involving such agents, including their amount;
- (e) the occupational exposure limit values and binding biological limit values relevant to those agents;
- (f) the effect of preventive measures taken or to be taken; and
- (g) where available, the conclusions to be drawn from any health surveillance already undertaken.

(3) The employer shall obtain additional information which is needed for the Regulation 6(2) assessment from the supplier of each chemical agent concerned or other readily available sources and, where appropriate, that information shall comprise the specific assessment concerning the risk to users.

(4) The Regulation 6(2) assessment—

- (a) shall identify the measures taken in accordance with Regulations 7 and 8;
- (b) shall be documented in a suitable form;
- (c) may include a justification by the employer that the nature and extent of the risks related to chemical agents make a further detailed risk assessment unnecessary;
- (d) shall be kept up-to-date, particularly if there have been significant changes which could render it out-of-date, or when the results of health surveillance show it to be necessary;
- (e) shall cover activities such as maintenance, in respect of which it is foreseeable that there is a potential for significant exposure, or which may result in deleterious effects to health and safety for other reasons, even after the taking of all technical measures; and

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- (f) in the case of activities involving exposure to several hazardous chemical agents, shall include an assessment on the basis of the risk presented by all such chemical agents in combination.

(5) In the case of a new activity involving hazardous chemical agents, the employer shall ensure that work does not start until a further Regulation 6(2) assessment of the risk of that activity has been made and any preventive measures identified, have been implemented.

(6) The employer shall take into account the results of the procedures referred to in Regulation 8(7) and (8), in carrying out the obligations imposed, or resulting from this Regulation.

(7) An assessment carried out in accordance with paragraph (2), whether for the first time or by way of renewal, is in these Regulations called a Regulation 6(2) assessment.

General principles for prevention of risks

7 (1) In carrying out the duty of an employer under Regulation 5 of the General Duties Regulations, the employer shall eliminate or reduce to a minimum, risk to the health and safety of workers at work involving hazardous chemical agents—

- (a) through the design and organisation of systems of work on the ship;
- (b) by taking the measures specified in paragraph (2); and
- (c) by taking into account the results of health surveillance undertaken under Regulation 12.

(2) The measures referred to in paragraph (1)(b) are—

- (a) the provision of suitable equipment for work with chemical agents and maintenance procedures which ensure the health and safety of workers at work;
- (b) reducing to a minimum, the number of workers exposed or likely to be exposed;
- (c) reducing to a minimum, the duration and intensity of exposure;
- (d) appropriate hygiene measures;
- (e) reducing the quantity of chemical agents present on the ship, to the minimum required for the type of work concerned; and
- (f) suitable working procedures, including arrangements for the safe handling, storage and transport on the ship, of hazardous chemical agents and of waste, containing such agents.

Specific protection and prevention measures

8 (1) This Regulation does not apply, where the results of the Regulation 6(2) assessment reveal only a slight risk to the health and safety of workers and the measures taken in accordance with Regulation 7 are sufficient to reduce that risk.

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(2) The employer shall ensure that the risk from a hazardous chemical agent to the health and safety of workers at work is eliminated or reduced to a minimum, by taking the measures specified in paragraphs (3) to (5).

(3) The employer shall, wherever practicable, avoid the use of a hazardous chemical agent, by replacing it with a chemical agent or a substance or a process which is not hazardous or less hazardous to workers' health and safety.

(4) Where the nature of the activity in which a hazardous chemical agent is used does not permit the risk to be eliminated in accordance with paragraph (3), having regard to the Regulation 6(2) assessment, the employer shall ensure that the risk is reduced to a minimum by the application, of protection and prevention measures, consistent with the Regulation 6(2) assessment.

(5) In order of priority, the protection and prevention measures shall include—

- (a) design of appropriate work processes and engineering controls and use of adequate equipment and materials so as to avoid or minimise the release of hazardous chemical agents which may present a risk to workers' health and safety at the place of work, within the ship;
- (b) application of collective protection measures at the source of the risk, such as adequate ventilation and appropriate organisational measures; and
- (c) where exposure cannot be prevented by other means, application of individual protection measures, including personal protective equipment.

(6) The measures referred to in paragraphs (3), (4) and (5) shall be accompanied by health surveillance in accordance with Regulation 12, if that is appropriate to the nature of the risk.

(7) Unless the employer clearly demonstrates by other means of evaluation that, in accordance with paragraphs (3), (4) and (5), adequate protection and prevention have been achieved, the employer shall carry out such measurements of chemical agents which may present a risk to workers' health and safety on a ship as are necessary, in particular, in relation to the occupational exposure limit values.

(8) Such measurements shall be carried out regularly and in any event when any change occurs in the conditions which may affect workers' exposure to chemical agents.

(9) In any event, where an occupational exposure limit value has been exceeded, the employer shall immediately take steps, taking into account the nature of that limit, to remedy the situation by carrying out preventive and protective measures.

(10) On the basis of a Regulation 6(2) assessment and of the general principles for the prevention of risks referred to in Regulation 7, the employer shall take technical and organisational measures appropriate to the nature of the operation including storage, handling and segregation of incompatible chemical agents, providing protection for workers against hazards arising from the physico-chemical properties of chemical agents.

(11) In order of priority, the technical and organisational measures shall include measures to—

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- (a) prevent the presence of hazardous concentrations of inflammable substances or hazardous quantities of chemically unstable substances, where the operation of the ship so permits;
- (b) avoid the presence of ignition sources which could give rise to fires or explosions, or avoid adverse conditions which could cause chemically unstable substances or mixtures of substances to give rise to harmful physical effects; and
- (c) mitigate the detrimental effects to the health and safety of workers in the event of fire or explosion due to the ignition of inflammable substances, or harmful physical effects arising from chemically unstable substances or mixtures of substances.

(12) The employer shall take measures to provide sufficient control of plant, equipment and machinery or provision of explosion suppression equipment or explosion pressure relief arrangements.

Accidents, incidents and emergencies

9 (1) This Regulation does not apply where the results of the Regulation 6(2) assessment reveal only a slight risk to the health and safety of workers and the measures taken in accordance with Regulation 7, are sufficient to reduce that risk.

(2) The employer shall, in order to protect the health and safety of workers from an accident, incident or emergency, related to the presence of hazardous chemical agents in a ship ("a relevant incident"), establish procedures which can be put into effect when a relevant incident occurs, so that the appropriate action is taken.

(3) Arrangements under paragraph (2) shall include—

- (a) relevant safety drills to be performed at intervals, not less than once every six months; and
- (b) the provision of appropriate first aid facilities.

(4) When a relevant incident occurs, the employer shall—

- (a) immediately take steps to mitigate the effects of the relevant incident and to inform the workers concerned; and
- (b) in order to restore the situation to normal—
 - (i) implement appropriate measures to remedy the situation, as soon as possible; and
 - (ii) permit only those workers who are essential to the carrying out of repairs and other necessary work, to work in the affected area.

(5) The employer shall provide workers who are permitted to work in an area affected by a relevant incident, with appropriate protective clothing, personal protective equipment, specialised safety equipment and plant.

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(6) The employer shall not permit unprotected persons to remain in, or to enter an area affected by a relevant incident.

(7) The employer shall take such measures as are necessary, to provide the warning and other communication systems required—

- (a) to signal an increased risk to health and safety;
- (b) to enable an appropriate response to be made; and
- (c) to enable remedial actions, assistance, escape and rescue operations to be launched immediately, if necessary.

(8) The employer shall ensure that—

- (a) information on emergency arrangements involving hazardous chemical agents, is available;
- (b) the relevant internal and external accident and emergency services have access to this information; and
- (c) the information includes—
 - (i) advance notice of relevant work hazards, hazard identification arrangements, precautions and procedures and precautionary measures sufficient to enable the emergency services to prepare their own response procedures and precautionary measures; and
 - (ii) any available information concerning specific hazards arising, or likely to arise, at the time of a relevant incident, including information on procedures prepared under this Regulation.

Information and training for workers

10 (1) The employer shall ensure that workers or their representatives, or both, are provided with the information described in paragraph (2) and that the information is—

- (a) provided in a manner, which may vary from oral communication, to individual instructions and training supported by information in writing, appropriate to the nature and degree of risk revealed by the Regulation 6(2) assessment; and
- (b) updated to take account of changing circumstances.

(2) The information referred to in paragraph (1), is—

- (a) the data obtained under Regulation 6;
- (b) information on the hazardous chemical agents occurring in a ship, including the identity of those agents, the risks to health and safety, relevant occupational exposure limit values and relevant legislative provisions; and
- (c) training and information on appropriate precautions and actions to be taken in order to safeguard workers on the ship.

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(3) The employer shall ensure that workers or their representatives, or both, are given access to relevant safety data sheets provided by suppliers.

(4) The employer shall ensure that the nature and any associated hazards of the contents of containers and pipes for hazardous chemical agents are clearly identifiable.

(5) The obligation in paragraph (4) is satisfied where containers or pipes are—

- (a) marked in accordance with relevant legislation on the labelling of chemical agents or safety signs at the workplace; or
- (b) the subject of a derogation from being so marked, provided for, in that legislation.

Prohibited activities

11 (1) Subject to paragraph (2), a person shall not produce, manufacture or use chemical agents, on a ship.

(2) Subject to paragraphs (3) and (4), the Minister may grant to a person, an exemption from the prohibitions in paragraph (1), upon application by that person, but only—

- (a) for the sole purpose of scientific research and testing, including analysis;
- (b) for activities intended to eliminate chemical agents that are present, in the form of by-products or waste products; or
- (c) for the production of a chemical agent for use as an intermediate, and for such use.

(3) The Minister shall not grant an exemption under paragraph (2), without first consulting the workers concerned or their representatives.

(4) The Minister shall not grant an exemption under paragraph (2), without having sufficient information to determine—

- (a) the reason for requesting the exemption;
- (b) the quantity of the chemical agent to be used annually;
- (c) the activities and the reaction or processes involved;
- (d) the number of workers who may be involved;
- (e) the precautions envisaged to protect the health and safety of workers concerned; and
- (f) the technical and organisational measures taken to prevent the exposure of workers.

(5) An exemption granted under paragraph (2)—

- (a) is valid only if in writing;

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- (b) is valid only for the period, not exceeding four years, specified in the exemption;
 - (c) may be granted subject to such conditions as the Minister sees fit; and
 - (d) may be withdrawn when the Minister is satisfied, after consulting with the person to whom it is granted, that it is no longer justified.
- (6) A person to whom an exemption under paragraph (2) is granted, shall ensure that—
- (a) no worker is exposed, in consequence of that exemption, to a chemical agent; and
 - (b) where the production of a chemical agent for use as an intermediate, and its first use as such, takes place in a single closed system from which that agent may be removed, only to the extent necessary to monitor the process or service the system.

Health surveillance

12 (1) This Regulation does not apply, where the results of the Regulation 6(2) assessment reveal only a slight risk to the health and safety of workers and the measures taken in accordance with Regulation 7, are sufficient to reduce that risk.

(2) The employer shall ensure that there are arrangements whereby workers for whom a Regulation 6(2) assessment reveals a risk to health and safety, are kept under appropriate health surveillance.

(3) For the purpose of paragraph (2), health surveillance is appropriate for a worker, where—

- (a) the exposure of the worker to a hazardous chemical agent is such that an identifiable disease or adverse health effect may be related to the exposure;
- (b) there is a likelihood that the disease or the adverse health effect may occur under the particular conditions of the worker's work; and
- (c) the technique of investigation is of low risk to workers.

(4) The employer shall ensure that valid techniques for detecting indications of the disease or the adverse health effect referred to in paragraph (3)(a), are available in respect of any chemical agent to which a worker may be exposed on a ship.

(5) Where a binding biological limit value has been established in respect of a hazardous chemical agent, the employer shall not permit a person to work with that agent, unless that person is the subject of health surveillance.

(6) The employer shall inform workers, of the requirement in paragraph (5), before they are assigned a task involving risk of exposure to the chemical agent in question.

(7) In cases where health surveillance is carried out, the employer shall ensure that individual health and exposure records are made and kept up to date.

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(8) The employer shall ensure that every health and exposure record contains a summary of the results of health surveillance carried out and of any monitoring data, representative of the exposure of the worker.

(9) The employer shall ensure that every health and exposure record contains a summary of the results of health surveillance carried out and of any monitoring data, representative of the exposure of the worker.

(10) The employer shall keep all health and exposure records in a form suitable for consultation at a later date, taking into account, any requirements of confidentiality.

(11) The employer shall provide each worker, on request, with access to health and exposure records which concern that worker.

(12) The employer shall supply copies of health and exposure records, to the Minister, on request.

(13) An employer who ceases to trade shall supply the health and exposure records of that employer's workers, to the Minister.

(14) Paragraphs (15) and (16) apply, where, as a result of health surveillance—

- (a) a worker is found to have an identifiable disease or adverse effect which is considered by a doctor or occupational health-care professional, to be the result of exposure at work, to a hazardous chemical agent; or
- (b) a binding biological limit value in respect of a hazardous chemical agent, is found to have been exceeded.

(15) The doctor or other suitably qualified person responsible for the carrying out of a worker's health surveillance shall inform that worker, of the result of that health surveillance and provide the worker with information and advice as to health surveillance, following the end of exposure.

(16) The employer shall—

- (a) review the Regulation 6(2) assessment;
- (b) review the measures provided under Regulations 7 and 8, to eliminate or reduce risks;
- (c) take into account, advice provided by a health-care professional or other suitably qualified person or the Minister, in implementing measures required to eliminate or reduce risk in accordance with Regulation 8;
- (d) consider the possibility of assigning the worker to alternative work; and
- (e) arrange continued health surveillance and provide for a review of the health status of any other worker who has been similarly exposed.

Consultation with workers

13 The employer shall consult workers or their representatives, about matters covered by these Regulations, in accordance with Regulation 20 of the General Duties Regulations.

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Duties of other persons

14 (1) Where a person on whom a duty is imposed by any provision in Regulations 3 to 13, does not have control of the matter to which that provision relates, because responsibility for the operation of the ship falls upon another person, that duty also extends to any other person who has control of that matter.

(2) It is the duty of every worker performing activities to which these Regulations apply, to—

- (a) make full and proper use of all clothing and equipment provided by the employer to that worker, in pursuance of these Regulations; and
- (b) give effect to all instructions and training provided to that worker, under Regulation 10.

PART 3 ENFORCEMENT

Offences and penalties

15 (1) Any person who acts in contravention of, or fails to comply with Regulation 6, 7, 8, 9 or 11(6) or the conditions attached under Regulation 11(5)(c) commits an offence and is liable—

- (a) on summary conviction, to a fine not exceeding \$10,000; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine not exceeding \$10,000 or to both.

(2) Any person who acts in contravention of, or fails to comply with Regulation 13 commits an offence and is liable on summary conviction, to a fine not exceeding \$5,000.

(3) Any person who acts in contravention of, or fails to comply with Regulation 10, 12 or 23 commits an offence and is liable on summary conviction, to a fine not exceeding \$2,000.

(4) A worker who fails to comply with Regulation 14(2) commits an offence and is liable on summary conviction, to a fine not exceeding \$1,000.

(5) Section 145(1) of the Act (enforcement of fines) applies to any fine imposed for an offence under paragraphs (1) to (3), as if the reference to proceedings against the owner or master of a ship for an offence under Chapter II, were a reference to proceedings against any person, for an offence under those paragraphs.

Offences by body corporate

16 (1) Where a body corporate commits an offence under these Regulations and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity,

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that person, as well as the body corporate commits that offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies, in relation to the acts and defaults of a member, in connection with that member's functions of management, as if that member were a director of the body corporate.

Onus of proving what is reasonably practicable

17 In any proceedings under these Regulations consisting of a failure to comply with the duty in Regulation 4(3) to do something so far as is reasonably practicable, it shall be for the defendant to prove that it was not reasonably practicable to do more than was in fact done, to satisfy that duty.

Detention of a Bermuda ship

18 (1) Where a surveyor of ships is satisfied that there is or has been a failure to comply in relation to any ship, with the requirements of these Regulations, that ship is liable to be detained until a surveyor of ships is satisfied that those requirements are complied with.

(2) A surveyor of ships 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.

(3) A ship shall not be delayed or detained unreasonably under this Regulation.

(4) Where a ship is detained because in relation to it, there has been a failure to comply with the requirements of these Regulations, and that failure has ceased, a person having power to detain the ship shall, at the request of the owner or master, immediately release the ship—

- (a) if no proceedings for an offence arising from the failure in question are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question, being convicted;
- (c) if either—
 - (i) the sum of \$50,000 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 \$50,000, is given to the Minister, by or on behalf of the employer or other person having control of the matter in question;
- (d) where the employer or other person having control of the matter in question, is convicted of an offence arising from the failure in question, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or

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- (e) if 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 Minister shall repay any sum paid in pursuance of paragraph (4)(c) or release any security so given—
- (a) if no proceedings for an offence arising from the failure in question, are instituted within the period of seven days beginning with the day on which the sum is paid; or
 - (b) if proceedings for an offence arising from the failure in question, having been instituted within that period, are concluded without the employer or other person having control of the matter in question, 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 employer or other person having control of the matter in question is convicted of an offence arising from the failure in question, 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 employer or other person having control of the matter in question;
 - (b) next, in payment of any fine imposed by the court; and
 - (c) any balance shall be repaid to the first-mentioned person.
- (7) Section 144 of the Act (interpretation of section 143) applies for the purposes of paragraphs (4) to (6) as if—
- (a) references to the master or owner of the ship were references to the employer or other person having control of the matter in question; and
 - (b) references to an offence under section 130 were references to an offence arising from the failure in question.

Inspection and other measures in respect of ships registered outside Bermuda

19 (1) When a ship which is not a Bermuda ship is in Bermuda waters, a relevant inspector may inspect that ship to ascertain whether the standards required in relation to Bermuda ships by these Regulations, are met in relation to that ship.

(2) Where a surveyor of ships is satisfied that the standards required in relation to Bermuda ships, by these Regulations, are not met in relation to a ship which is not a Bermuda ship, but the ship is in Bermuda waters, that surveyor of ships may—

- (a) send a report to the government of the State whose flag the ship is entitled to fly, and a copy to the Director General of the International Labour Organization; and
- (b) where conditions on board are clearly hazardous to health and safety, take such measures as are necessary to ensure those conditions are rectified.

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(3) A ship to which paragraph (2)(b) applies, is liable to be detained until a surveyor of ships is satisfied, that those conditions are rectified.

(4) A surveyor of ships may permit a ship which is liable to be detained under paragraph (3), to proceed to sea for the purposes of proceeding to the nearest appropriate repair yard.

(5) If any of the measures specified in paragraph (2)(b) or (3) are taken, the surveyor of ships shall immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(6) A ship shall not, in the exercise of the power under this Regulation, be delayed or detained unreasonably.

(7) In paragraph (1), “relevant inspector” means a person mentioned in section 219(1)(a), (b) or (c) of the Act.

Application of powers of inspectors, in relation to Government ships

20 Sections 219 to 227 of the Act, apply to these Regulations, as if they were for all purposes made under section 93 of the Act and accordingly, those sections apply in relation to Government ships.

Enforcement of detention

21 (1) Section 242 of the Act (enforcing detention of ship) applies, where a ship is liable to be detained under these Regulations, as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question, under these Regulations; and
- (b) subsection (7) were omitted.

(2) Where a ship is liable to be detained under these Regulations, the person detaining the ship shall serve on the master of the ship, a detention notice, which shall—

- (a) state that a surveyor of ships is of the opinion that in relation to that ship, there is a failure to comply with the requirements of these Regulations;
- (b) specify the matters which, in the opinion of the surveyor of ships, have the effect that, in relation to that ship, those requirements are not met; and
- (c) require the terms of the notice to be complied with, until the ship is released by any person mentioned in section 242(1) of the Act.

Right of appeal and compensation

22 Regulations 14 and 24 (right of appeal and compensation) of the Merchant Shipping (Port State Control) Regulations 2019 (which, by virtue of Regulation 22 of those Regulations, apply in relation to the exercise of powers of detention contained in safety Regulations), apply in relation to a detention notice served on a Government ship under these Regulations, as if these Regulations were for all purposes made under section 93 of the Act.

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Prohibition on levy

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

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]