



BERMUDA

MERCHANT SHIPPING (MARINE EQUIPMENT) REGULATIONS 2020

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 93(1) of the Merchant Shipping Act 2002, makes the following Regulations:

PART 1 PRELIMINARY

Citation

1 These Regulations may be cited as the Merchant Shipping (Marine Equipment) Regulations 2020.

Interpretation

2 (1) In these Regulations—

“Agreement” means the Agreement between the United Kingdom of Great Britain and Northern Ireland and the United States of America on the Mutual Recognition of Certificates of Conformity for Marine Equipment dated 14th February 2019;

“applicable international standards” means the design, construction and performance requirements of the international instruments;

“Authority” means the Bermuda Shipping and Maritime Authority (BSMA) established under section 3 of the Bermuda Shipping and Maritime Authority Act 2016;

“Bermuda ship” means a ship which is—

- (a) a Bermuda ship within the meaning of section 16(3) of the Act; or
- (b) a Government ship within the meaning of section 4(3) of the Act;

“conformity mark” means the mark affixed to equipment by the manufacturer in accordance with international Conventions;

“declaration of conformity” means the Certificate of Type Approval certifying that a product fulfils the relevant legislative, regulatory, and administrative requirements of the Authority, REG members, a recognised class society or the United States Coast Guard;

“international Conventions” means the following Conventions, together with their Protocols and Codes of mandatory application, adopted under the auspices of the International Maritime Organization (IMO), and which have entered into force and which lay down specific requirements for the approval by the flag State, of equipment to be placed on board ships—

- (a) the 1972 Convention on International Regulations for Preventing Collisions at Sea (COLREGS);

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(b) the 1973 International Convention for the Prevention of Pollution from Ships (MARPOL 73/78); and

(c) the 1974 International Convention for the Safety of Life at Sea (SOLAS);

“international Instruments” means the international Conventions, together with the resolutions and circulars of the IMO giving effect to those Conventions in their up-to-date version, and the testing standards;

“manufacturer” means any natural or legal person who manufactures marine equipment or has, marine equipment designed or manufactured, and markets that equipment under its name or trademark;

“Marine Equipment Directive” (“MED”) means the Directive 2014/90/Eu of the European Parliament and of the Council of 23 July 2014 on marine equipment.

“notified body” means a Recognised Class Society designated by the Authority, authorised to carry out conformity assessment tasks on behalf of the Authority;

“Recognised Class Society” means a classification society licensed by the Authority to survey and classify ships and structures and issue certificates on the basis of their structure, design and safety standards on behalf of the Government of Bermuda;

“REG members” means the Red Ensign Group of ship registries;

“testing standards” means the testing standards for marine equipment set by—

(a) the International Maritime Organization (IMO);

(b) the International Organization for Standardization (ISO);

(c) the International Electrotechnical Commission (IEC); and

(d) the International Telecommunications Union (ITU).

(2) 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.

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

Application

3 These Regulations apply to any Bermuda ship wherever it may be.

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PART 2

REQUIREMENT FOR EQUIPMENT

Requirements for equipment

4 (1) Subject to paragraph (2), where under international instruments, equipment must be approved by the Authority, that equipment must comply with applicable international standards when it is placed on board a ship.

(2) Equipment fitted must be taken to comply with applicable international standards where it is—

- (a) approved by the Authority, REG members, a recognised class society or the United States Coast Guard in accordance with the Agreement;
- (b) accompanied by a declaration of conformity; and
- (c) affixed with a conformity mark.

(3) In this regulation “equipment” which has been certified under the Marine Equipment Directive (MED) is acceptable to be used on Bermuda registered vessels.

PART 3

APPLICATION OF EXEMPTIONS

Exemptions for technical innovation

5 (1) In exceptional circumstances of technical innovation, the Minister may allow equipment that does not comply with applicable international standards to be placed on board a ship, provided the Minister is satisfied, by trial or otherwise, that such equipment is at least as effective as equipment which complies with those standards.

(2) The Minister must issue a certificate for any equipment placed on board a ship under paragraph (1).

(3) A certificate issued under paragraph (2) must—

- (a) confirm the Minister's approval of the equipment;
- (b) specify any restrictions or conditions on the use of the equipment; and
- (c) be carried with the equipment.

(4) The Minister may withdraw a certificate where a restriction or condition on the use of equipment is breached.

(5) Where a ship registered in a country other than Bermuda, with equipment on board approved by its flag state administration, is transferred to the Bermuda register, the Minister may take any necessary measures which may include carrying out such tests or practical demonstrations that the Minister considers necessary.

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Exemptions for testing or evaluation

6 (1) The Minister may allow equipment that does not comply with applicable international standards to be placed on board a ship to facilitate the testing or evaluation of such equipment, provided the equipment is not relied upon in place of equipment which meets the applicable international standards or used to replace such equipment.

(2) The Minister must issue a certificate for any equipment placed on board a ship under paragraph (1).

(3) A certificate issued under paragraph (2) must—

- (a) confirm the Minister's approval of the equipment;
- (b) specify any restrictions or conditions on the use of the equipment;
- (c) be limited to the shortest period of time necessary to complete the testing; and
- (d) be carried with the equipment.

(4) The Minister may withdraw a certificate where a restriction or condition on the use of equipment is breached.

Exemptions in exceptional circumstances

7 (1) Where equipment carried on a ship must be replaced in a port outside Bermuda and it is not practicable for reasons of time, delay or cost, to replace the equipment with approved equipment, equipment which is not affixed with a conformity mark may be placed on board the ship, provided—

- (a) the equipment is accompanied by documentation issued by a member state of the International Maritime Organization, which is a party to the relevant international Convention, certifying that the equipment complies with the requirements of the relevant international Convention; and
- (b) the Minister is informed immediately, of the nature and characteristics of the replacement equipment.

(2) Where approved equipment is not available on the market, the Minister may issue a certificate to allow other equipment to be placed on board a ship, until such time as approved equipment is available.

(3) When issuing a certificate under paragraph (2), the Minister must ensure that, as far as possible, the equipment complies with applicable international standards.

(4) A certificate must set out—

- (a) the approved equipment being replaced;
- (b) the reasons for which the certificate is issued;
- (c) the design, construction and performance requirements against which the equipment is approved; and
- (d) the testing standards applied, if any,

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when approving the equipment.

(5) The Minister may withdraw a certificate, where an approved equipment is made available on the market.

(6) In this regulation “approved equipment” means equipment approved as complying with applicable international standards and affixed with a conformity mark.

Restricting, suspending or withdrawing conformity approval

8 (1) A notified body may by giving notice to the manufacturer, restrict, suspend or withdraw approval of equipment or a quality system, where a manufacturer fails to meet the Convention standards.

(2) Before issuing a notice under paragraph (1), a notified body must give the manufacturer an opportunity to make written representations.

(3) A notice under paragraph (1) must—

- (a) be in writing;
- (b) specify the date on which it is to take effect; and
- (c) specify the grounds for the decision.

(4) The notified body must send a copy of any notice given under paragraph (1), to the Minister.

PART 4

TRANSFER OF A SHIP

Transfer of a ship

9 (1) Where a ship is transferred to the Bermuda register, a surveyor appointed under section 217 of the Act, by the Minister, shall inspect any relevant equipment, to ensure—

- (a) its condition corresponds to the safety certificates for that equipment; and
- (b) the equipment complies with applicable international standards or is equivalent to equipment that complies with those standards.

(2) Where, following inspection of equipment under paragraph (1), the Minister is not satisfied that the equipment complies with the applicable international standards or is equivalent to equipment that complies with those standards, the Minister must direct the owner in writing, to replace the equipment.

(3) Where, following inspection under paragraph (1), the Minister considers that the equipment does not comply with applicable international standards but is equivalent to equipment that complies with those standards, the Minister must issue a certificate for that equipment, which must—

- (a) confirm the Minister's approval of the equipment;

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- (b) specify any restrictions or conditions on the use of the equipment; and
- (c) be carried with the equipment.

(4) The Minister may withdraw a certificate where a restriction or condition on the use of equipment is breached.

(5) In this regulation “relevant equipment” means any equipment to which regulation 4(1) would have applied at the time the equipment was placed on board the ship, if that ship had been a Bermuda ship at that time.

PART 5 ENFORCEMENT

Offences and penalties

- 10 (1) The owner and master of a ship, each commit an offence, where—
- (a) equipment is placed on a ship otherwise than in compliance with regulation 4; or
 - (b) any of the restrictions or conditions imposed by a certificate issued under regulation 5(3), 6(3) or 9(3) are not complied with.
- (2) It is an offence for a person—
- (a) to affix a conformity mark to equipment which has not been granted conformity approval; or
 - (b) to forge, counterfeit or otherwise alter, deface or remove any conformity mark or identification number affixed to equipment under these Regulations.
- (3) A person found guilty of an offence under this regulation is liable—
- (a) on summary conviction, to a fine not exceeding \$10,000; or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or an unlimited fine, or both.
- (4) Where a body corporate commits an offence under this regulation 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, that person, as well as the body corporate, commits an offence.
- (5) Where the affairs of the body corporate are managed by its members, paragraph (4) 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.
- (6) In any proceedings for an offence under these Regulations, it is a defence for the person charged to show that all reasonable steps had been taken by that person, to ensure compliance with the provision concerned.

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Powers to detain

11 (1) A ship is liable to be detained where a surveyor of ships is satisfied that there is or has been a failure—

- (a) to comply with regulation 4(1); or
- (b) by the owner of a ship to comply with a direction issued under regulation 9(2).

(2) Section 242(1) to (6) and (8) of the Act (enforcing detention of ship) applies to a ship which is liable to be detained under this regulation as if references to detention of a ship under the Act were references to detention of the ship in question under this regulation.

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

- (a) states 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 regulation 4(1) or a direction issued under regulation 9(2);
- (b) details the reasons why the surveyor is of the opinion that the requirements of regulation 4(1) or a direction issued under regulation 9(2) are not met; and
- (c) requires the terms of the notice to be complied with until the ship is released.

(4) Sections 104 and 105 of the Act (which relate to arbitration and compensation in connection with detention of a ship) apply in relation to a detention notice under this regulation, as those sections apply to a detention notice under section 103(4) of the Act with the following modifications—

- (a) the arbitrator must have regard in coming to a decision, to any other matters not specified in the detention notice, which appear to be relevant to whether or not the ship was liable to be detained under paragraph (1); and
- (b) the arbitrator must state in the decision, whether or not there was a valid basis for detention of the ship.

Application of powers of inspectors in relation to Government ships

12 Sections 4 and 5 of the Act apply to these Regulations as if they were for all purposes made under section 219 of the Act and accordingly, those sections apply in relation to Government ships.

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Made this 22nd day of December 2020

Minister of Transport

[Operative Date: 29 December 2020]