

BERMUDA STATUTORY INSTRUMENT

BR 15/1990

**MERCHANT SHIPPING (HATCHES AND LIFTING PLANT)
REGULATIONS 1990**

*[made under section 22 of the Merchant Shipping Act 1979 [title 31 item 16]
and brought into operation on 1 April 1990]*

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The Minister, after consulting with the persons referred to in section 22(7) of the Merchant Shipping Act 1979 [*title 31 item 16*], in

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exercise of powers conferred on him by section 22(1)(a) and (b), (3), (4), (5) and (6) of that Act, hereby makes the following Regulations:

Citation and commencement

1 These Regulations may be cited as the Merchant Shipping (Hatches and Lifting Plant) Regulations 1990 and shall come into operation on 1 April 1990.

Interpretation

2 In these Regulations, unless the context otherwise requires—

"Code" means the Code of Safe Working Practices for Merchant Seamen published in 1978 by Her Majesty's Stationery Office and any document amending or replacing it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

"competent person" means a person over the age of eighteen possessing the knowledge and experience required for the performance of thorough examinations and tests of ships' lifting plant;

"employer" means the person for the time being employing the master;

"fishing vessel" means a vessel for the time being employed in fishing but does not include a vessel used otherwise than for profit;

"freight container" means a container as defined in regulation 2 of the Freight Containers (Safety Convention) Regulations 1986;

"hatch covering" includes hatch covers, beams and attached fixtures and fittings;

"lifting appliance" means any ship's stationary or mobile appliance (and every part thereof including attachments used for anchoring, fixing or supporting that appliance but not including vehicle coupling arrangements) which is used on a ship for the purpose of suspending, raising or lowering loads or moving them from one position to another whilst suspended and includes ship's lift trucks and similar vehicles; it does not include —

- (a) pipes, or gangways; or
- (b) screw, belt, bucket or other conveyors; used for the continuous movement of cargo or people but does not include the lifting appliances used to suspend, raise, lower or move any of these items;

(c) survival craft or rescue boat launching and recovery appliances or arrangements; or

(d) pilot hoists;

"lifting gear" means any gear by means of which a load can be attached to a lifting appliance and which does not form an integral part of that appliance or load but does not include pallets, one-trip slings and pre-slung cargo slings, and freight containers;

"lifting plant" includes any lifting appliance or lifting gear;

"master" includes any person in charge of a vessel during the absence of the master but excludes a watchman;

"Merchant Shipping Notice" means a Notice described as such issued by the Secretary of State;

"one-trip sling" means a sling which has not previously been used for lifting any other load and is fitted to the load at the commencement of the journey and intended to be disposed of at the destination of that journey;

"pleasure craft" means a vessel primarily used for sport or recreation.

[Marginal note missing from Gazette]

3 (1) Subject to paragraph (2)—

(a) these Regulations except regulation 14 apply to Bermuda ships; and

(b) regulations 1, 2, 3, 14 and 15 apply to ships other than Bermuda ships while they are in a Bermuda port.

(2) These Regulations do not apply to —

(a) fishing vessels;

(b) pleasure craft; or

(c) ships on which there is for the time being no master or crew or watchman.

(2)[sic] The Minister may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms, if any, as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

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Hatches

4 (1) Every employer, master and person carrying out the obligations contained in this regulation shall take full account of the principles and guidance in chapter 18 of the Code.

(2) The employer and the master shall ensure that any hatch covering used on a ship is of sound construction and material, of adequate strength for the purpose for which it is used, free from patent defect and properly maintained.

(3) The master shall ensure that—

- (a) a hatch covering is not used unless it can be removed and replaced, whether manually or with mechanical power, without endangering any person, and
- (b) information showing the correct replacement position is clearly marked, except in so far as hatch coverings are interchangeable or incapable of being incorrectly replaced.

(4) The master shall ensure that a hatch is not used unless the hatch covering has been completely removed, or if not completely removed, is properly secured.

(5) Except in the event of an emergency endangering health or safety, no person shall operate a hatch covering which is power-operated or a ship's ramp or a retractable car-deck unless authorised to do so by a responsible ship's officer.

Full account to be taken of principles, etc.

5 Every employer, master and any person in carrying out the obligations contained in regulations 6 to 10 (inclusive) shall take full account of the principles and guidance in chapter 17 of the Code.

Lifting plant to be of good design, etc.

6 (1) The employer and the master shall ensure that any ship's lifting plant is of good design, of sound construction and material, of adequate strength for the purpose for which it is used, free from patent defect, properly installed or assembled and properly maintained.

(2) The master shall ensure that any pallet or similar piece of equipment for supporting loads or lifting attachment which forms an integral part of the load or one-trip sling or pre-slung cargo sling is not used on a ship unless it is of good construction, of adequate strength for the purposes for which it is used and free from patent defect.

(3) The employer and the master shall ensure that lifting plant is not used other than in a safe and proper manner.

(4) Without prejudice to the generality of paragraph (3), the employer and the master shall ensure that except for the purpose of carrying out a test under regulation 7, the lifting plant is not loaded in excess of its safe working load.

(5) No person shall operate any lifting plant unless he is trained and competent to do so and has been authorised by a responsible ship's officer.

Lifting plant to be suitably tested

7 (1) The employer and the master shall ensure that no lifting plant is used —

(a) after manufacture or installation, or

(b) after any repair or modification which is likely to alter the safe working load or affect the lifting plant's strength or stability,

without first being suitably tested by a competent person except in the case of a rope sling which has been manufactured from rope which has been tested by a competent person and spliced in a safe manner.

(2) After 1st January 1993 the employer and the master shall ensure that a lifting appliance is not used unless it has been suitably tested by a competent person within the preceding five years.

Lifting plant to be thoroughly examined

8 The employer and the master shall ensure that any lifting plant is not used unless it has been thoroughly examined by a competent person—

(a) at least once in the preceding twelve month period; and

(b) following a test in accordance with regulation 7.

Lighting [sic] appliance to be clearly and legibly marked

9 (1) The employer and the master shall ensure that each lifting appliance is clearly and legibly marked with its safe working load and a means of identification.

(2) The employer and the master shall ensure that any crane that is carried on the ship and whose safe working load varies with its operating radius is fitted with an accurate indicator, clearly visible to the driver, showing the radius of the load lifting attachment at any time and the safe working load corresponding to that radius.

(3) The employer and the master shall ensure that each item of lifting gear is clearly and legibly marked with its safe working load and a means of identification, except where such marking is not reasonable

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practicable, but in such a case a safe working load shall be readily ascertainable by any user.

(4) The employer and the master shall ensure that each item of lifting gear which weighs a significant proportion of the safe working load of any lifting appliance with which it is intended to be used is, in addition to the requirement in paragraph (3), clearly marked with its weight.

Certificate or report to be obtained

10 (1) The employer and the master shall ensure that a certificate or report in a form approved by the Minister is obtained from within twenty-eight days following any test under regulation 7 or examination under regulation 8 and is kept in a safe place on board ship for a period of at least two years from receipt of the certificate or report of the next following test or examination.

(2) Any approval given in pursuance of this regulation shall be in writing and shall specify the date on which it takes effect and the conditions, if any, on which it is given.

Offences and penalties

11 (1) An employer who contravenes regulation 4(1), 4(2), 5, 6(1), 6(3), 6(4), 7, 8, 9 or 10 is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or on conviction on indictment to imprisonment for two years or a fine of two thousand dollars, or both.

(2) A master who contravenes regulation 4(1), (2), (3) or (4), 5, 6(1), (2), (3), or (4), 7, 8, 9 or 10 is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars.

(3) Any person who contravenes regulation 4(1), 4(5), 5 or 6(5) is guilty of an offence and is liable on summary conviction to a fine of four hundred dollars.

(4) It shall be a defence for a person charged in respect of a contravention of any of these Regulations, 4(1), including a person charged by virtue of regulation 12, to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Act or default of some other person

12 Where an offence under any of these Regulations is committed, or would have been committed except for the operation of regulation 11(4), by any person due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Inspection and detention of a Bermuda ship

13 Any person duly authorised by the Minister may inspect any ship to which these Regulations apply and if he is satisfied that there has been a failure to comply in relation to that ship with the requirements of these Regulations he may detain the ship until the health and safety of all employees and other persons aboard ship is secured, but shall not in the exercise of these powers detain or delay the ship unreasonably.

Inspection, detention and other measures in respect of ships registered outside Bermuda

14 (1) Any person duly authorised by the Minister may inspect any ship which is not a Bermuda ship when the ship is in a Bermuda port, and if he is satisfied that the ship does not conform to the standards required of Bermuda ships by these Regulations he may —

- (a) send a report to the government of the country in which the ship is registered, and a copy thereof to the Director-General of the International Labour Office; and
- (b) where conditions on board are clearly hazardous to safety or health—
 - (i) take such measures as are necessary to rectify those conditions;
 - (ii) detain the ship:

Provided that the measures specified in sub-paragraphs (a) and (b) may be taken only when the ship has called at a Bermuda port in the normal course of business or for operational reasons.

(2) If he takes either of the measures specified in paragraph (1)(b) the person duly authorised shall forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(3) The person duly authorised shall not in the exercise of his powers under this regulation unreasonably detain or delay the ship.

Compensation and enforcement of detention

15 Section 460(1) and section 692(1) to (3) and (5) of the Merchant Shipping Act 1894 of the United Kingdom (which relate respectively to liability for costs and compensation for the detention of a ship and enforcing the detention of a ship) shall have effect in relation to a ship detained under these Regulations subject to the following modifications;

- (a) in section 460(1) the following words shall be omitted:

"by reason of the condition of the ship or the act or default of the owner"

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"provisional"

"as an unsafe ship"

"and survey"

"or survey"; and

- (b) for the words "this Part of this Act" in section 460(1) and "this Act" wherever they appear in section 692(1) to (3), there shall be substituted the words "the Merchant Shipping (Safe Movement on Board Ship) Regulations 1990.".