

**BERMUDA STATUTORY INSTRUMENT**

**BR 11/1990**

**MERCHANT SHIPPING (SAFE MOVEMENT ON BOARD SHIP)  
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 (Safe Movement on Board Ship) Regulations 1990 and shall come into operation on 1 April 1990.

### **Interpretation**

2 In these Regulations, unless the context otherwise requires—

"BS 5378 Part I" means Standard Number BS 5378 Part I 1980 issued by the British Standards Institution on 31 July 1980 and any document amending or replacing the same which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

"Code" means Chapter 9 of the Code of Safe Working Practice 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;

"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;

"master" includes any person in charge of a ship 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;

"new ship" means a ship the keel of which is laid, or where construction identifiable with the ship begins on or after 1st January 1989, and in the latter case where assembly has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is less;

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

### **Application**

3 (1) Subject to paragraph (2)—

(a) these Regulations except regulation 15 apply to Bermuda ships; and

(b) regulations 1, 2, 3, 15 and 16 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.

(3) 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.

*[Marginal note missing from Gazette]*

4 (1) The employer and the master shall ensure that safe means of access is provided and maintained to any place on the ship to which a person may be expected to go.

(2) The employer and the master in carrying out the obligations contained in this regulation shall take full account of the principles and the guidance in the Code.

#### **Transit areas**

5 The employer and the master shall ensure that all deck surfaces used for transit about the ship, and all passageways, walkways and stairs, are properly maintained and kept free from materials or substances liable to cause a person to slip or fall.

#### **Lighting**

6 The employer and the master shall ensure that those areas of the ship being used for the loading or unloading of cargo or for other work processes or for transit are adequately and appropriately illuminated.

*[Regulation 7 revoked by BR53/2004 effective 23 July 2004]*

#### **Guardrails**

8 (1) Subject to paragraph (2), the employer and the master shall ensure that any opening, open hatchway or dangerous edge into, through, or over which a person may fall is fitted with secure guards or fencing of adequate design and construction, which shall be kept in a good state of repair.

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- (2) The requirements of paragraph (1) do not apply —
- (a) where any opening affords a permanent means of transit about the ship, to the side of the opening used for access;
  - (b) where, and to the extent that, the person upon whom a duty is imposed is able to show that the work process being carried out or about to be carried out makes the provision of such guards or fencing not reasonably practicable.

### **Ladders**

9 The employer and the master shall ensure that all ship's ladders are of good construction and sound material, of adequate strength for the purpose for which they are used, free from patent defect and properly maintained.

### **Movement of vehicles**

- 10 (1) The employer and the master shall ensure that —
- (a) no ship's powered vehicle or powered mobile lifting appliance is driven in the course of a work process except by a competent person who is authorised to do so;
  - (b) danger from use or movement of all such vehicles and mobile lifting appliances is so far as is reasonable practicable prevented;
  - (c) all ship's vehicles and mobile lifting appliances are properly maintained.
- (2) In this regulation "lifting appliance" has the same meaning as in the Merchant Shipping (Hatches and Lifting Plant) Regulations 1990 [*title 31 item 16(ze)*].

### **Access ladders to ship's holds**

11 The owner shall ensure that in a new ship, ladders providing access to the hold comply with the requirement specified in paragraph 6.4 of the Code.

### **Offences and penalties**

12 (1) An employer who contravenes regulation 4, 5, 6, 7, 8(1), 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.

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

(3) An owner who contravenes regulation 11 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.

(4) It shall be a defence for a person charged in respect of a contravention of regulation 4(1), so far as it relates to access by means of a transit area referred to in regulation 5, or regulation 5 to show that the requirements of the relevant regulation were complied with so far as was reasonably practicable.

(5) It shall be a defence for a person charged in respect of a contravention of any of these Regulations, including a person charged by virtue of regulation 13, 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**

13 Where an offence under any of these Regulations is committed, or would have been committed except for the operation of regulation 12(5), 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**

14 Any person duly authorised by the Minister may inspect any Bermuda ship 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**

15 (1) Any person duly authorised by the Minister may inspect any ship other than 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 of health and safety 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

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- (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**

16 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"
  - "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."

[Amended by:

BR 53/2004]