



BERMUDA

MERCHANT SHIPPING (PREVENTION OF OIL POLLUTION) AMENDMENT
REGULATIONS 2019

BR 16 / 2019

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 122 of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Prevention of Oil Pollution) Amendment Regulations 2019.

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Amends Regulation 1

2 Regulation 1 of the Merchant Shipping (Prevention of Oil Pollution) Regulations 2010, in these Regulations referred to as (“the principal Regulations”) is amended—

- (a) in paragraph (1) by deleting “(1)”;
- (b) by renumbering paragraph (2) as Regulation 1A, with the headnote, “Interpretation”;
- (c) by inserting the following definitions in their proper alphabetical positions—
 - “harbour master” includes a dock master, pier master and any person designated as such by the Director of Marine and Ports Services, for the purpose of enforcing these Regulations;
 - “offshore installation” means any mobile or fixed drilling or production platform or any other platform used in connection with the exploration, exploitation or associated offshore processing of sea bed mineral resources;”;
- (d) in the definition of “ship”, by inserting the words “, except in relation to Regulations 11 to 16,” next after the word “but”; and
- (e) by deleting paragraph (3).

Amends Regulation 10

3 Regulation 10 of the principal Regulations is amended in paragraph (3)—

- (a) by deleting “regulation 11” and substituting “Regulations 11 to 11B”; and
- (b) by deleting “that regulation” and substituting “those Regulations”.

Amends Regulation 11

4 Regulation 11 of the principal Regulations is amended in sub-paragraph (b) by inserting the following words next after the word “discharge”, where it first occurs—

“, other than a discharge from an excepted ship,”.

Inserts Regulations 11A, 11B and 11C

5 The principal Regulations are amended by inserting the following Regulations next after Regulation 11—

“Exceptions for damage to a ship or its equipment in internal or territorial waters

11A Regulations 12, 13 and 16 shall not apply to any discharge from an excepted ship into a part of the sea which is within Bermuda or its territorial waters, of oil or oily mixture which results from damage to a ship or its equipment if—

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- (a) the damage was not caused by a person connected with the excepted ship's business, acting—
 - (i) with intent;
 - (ii) recklessly; or
 - (iii) with serious negligence;
- (b) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and
- (c) neither the owner nor the master of the excepted ship acted—
 - (i) with intent to cause damage; or
 - (ii) recklessly and with knowledge that damage would probably result.

Exceptions for damage to a ship or its equipment in other waters

11B (1) Regulations 12, 13 and 16 shall not apply to any discharge from a Bermuda excepted ship into a part of the sea, other than Bermuda or its territorial waters, of oil or oily mixture which results from damage to a ship or its equipment if—

- (a) the damage was not caused by a person connected with Bermuda excepted ship's business, acting—
 - (i) with intent;
 - (ii) recklessly; or
 - (iii) with serious negligence;
- (b) all reasonable precautions were taken after the damage or discovery of the discharge, to prevent or minimise the discharge; and
- (c) neither the owner nor the master of the Bermuda excepted ship acted—
 - (i) with intent to cause damage; or
 - (ii) recklessly and with knowledge that damage would probably result.

(2) Regulations 12, 13 and 16 shall not apply to any discharge from a non-Bermuda excepted ship into a part of the sea other than Bermuda or its territorial waters, of oil or oily mixture which results from damage to a ship or its equipment if—

- (a) all reasonable precautions were taken after the damage, or discovery of the discharge, to prevent or minimise the discharge; and

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- (b) neither the owner nor the master of the non-Bermuda excepted ship acted—
 - (i) with intent to cause damage; or
 - (ii) recklessly and with knowledge that damage would probably result.

Definitions for the purposes of Regulations 11 to 11B

11C In Regulations 11 to 11B—

- (a) “Bermuda excepted ship” means an excepted ship which is a Bermuda ship;
- (b) “excepted ship” means a seagoing vessel of any type operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles and floating craft but does not include a structure which is a fixed or floating platform;
- (c) “non-Bermuda excepted ship” means an excepted ship which is not a Bermuda excepted ship; and
- (d) reference to a person connected with a ship’s business includes, in particular—
 - (i) a seafarer on the ship;
 - (ii) the master;
 - (iii) the owner;
 - (iv) an owner of cargo carried on the ship; and
 - (v) a classification society which has issued a class certificate showing that the ship conforms to the class standards stipulated by that society.”.

Amends Regulation 12

6 Regulation 12 of the principal Regulations is amended—

- (a) in paragraph (1)(a) by deleting “regulation 11” and substituting “Regulations 11 to 11B”;
- (b) in paragraph (1)(b) by deleting “regulation 11” and substituting “Regulations 11 to 11B”;
- (c) by deleting paragraph (6); and
- (d) by deleting paragraph (7) and substituting the following paragraph—

“(7) Paragraphs (2) and (3) do not apply to a discharge from an offshore installation which occurs landward of the line which for the time being is the baseline for measuring the breadth of the territorial waters of Bermuda.”.

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Amends Regulation 13

7 Regulation 13 of the principal Regulations is amended—

- (a) in paragraph (1) by deleting “regulation 11” and substituting “Regulations 11 to 11B”; and
- (b) by deleting paragraphs (6) and (7).

Amends Regulation 16

8 Regulation 16 of the principal Regulations is amended in paragraph (2) by deleting “regulation 11” and substituting “Regulations 11 to 11B”.

Amends Regulation 22

9 Regulation 22 of the principal Regulations is amended in paragraph (2)(a) by deleting “regulation 11” and substituting “Regulations 11 to 11B”.

Amends Regulation 32

10 Regulation 32 of the principal Regulations is amended by deleting paragraph (3)(a).

Insertion of Regulation 35A

11 The principal Regulations are amended by inserting the following Regulation next after Regulation 35—

“Powers of harbour masters

35A (1) In any case where a ship is liable to be detained under Regulation 35(2) (a)(i), in relation to a suspected contravention occurring in the waters over which a harbour master exercises jurisdiction, that harbour master may also detain that ship.

(2) In such a case section 219(1) to (5) and (8) of the Act shall have effect in relation to that ship as if—

- (a) the reference to competent authority in subsection (2) includes a reference to the harbour authority; and
- (b) the persons in relation to whom subsection (4) applies, include the harbour master or any person acting on behalf of the harbour master.

(3) Where a ship, other than a Bermuda ship, is detained under paragraph (1), the harbour master shall immediately notify the Minister, who shall immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly, or the appropriate maritime authorities of that State.

(4) Regulation 37(3) to (10) apply in relation to a detention under paragraph (1), as if for “the Minister”, wherever it occurs, there were substituted “the harbour master”.

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Amends Regulation 36

12 Regulation 36 of the principal Regulations is amended by deleting paragraph (2).

Inserts Regulation 36A

13 The principal Regulations are amended by inserting the following Regulation next after Regulation 36—

“Penalties for contravening Regulations 12, 13 and 16

36A (1) Subject to paragraph (3), if any ship fails to comply with any requirement of Regulation 12, 13 or 16, the owner and the master each commit an offence and section 130(3) of the Act shall apply as it applies to an offence under that section, so that the owner and the master shall each be liable on summary conviction to a fine not exceeding \$500,000 or on conviction on indictment, to a fine.

(2) Subject to paragraph (3), if any oil or oily mixture is discharged from a ship in contravention of any requirement of Regulation 12, 13 or 16, any person who causes or contributes to that discharge commits an offence and section 130(3) of the Act shall apply, as it applies to an offence under that section, and such person shall be liable on summary conviction, to a fine not exceeding \$500,000 or on conviction on indictment, to an unlimited fine.

(3) Where a Bermuda excepted ship fails to comply with any requirement of Regulation 12, 13 or 16 because of a discharge into a part of the sea other than Bermuda or its territorial waters, of oil or oily mixture which results from damage to a ship or its equipment, the owner, the master or a crew member acting under the master’s responsibility shall not be deemed to have committed an offence under this Regulation in respect of that failure if—

- (a) all reasonable precautions were taken after the damage or discovery of the discharge, to prevent or minimise the discharge; and
- (b) neither the owner nor the master acted—
 - (i) with intent to cause damage; or
 - (ii) recklessly and with knowledge that damage would probably result.

(4) In this Regulation, “Bermuda excepted ship” has the meaning given in Regulation 11C.”.

Amends Regulation 37

14 Regulation 37 of the principal Regulations is amended—

- (a) in paragraph (3)(b) by deleting “master or owner” and substituting “defendant”;
- (b) in paragraph (3)(c)(ii) by deleting “, by or on behalf of the master or owner”;

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- (c) in paragraph (3)(d) by deleting “master or owner” and substituting “defendant”;
- (d) in paragraph (4)(b) by deleting “master or owner” and substituting “defendant”;
- (e) in paragraph (5) by deleting “master or owner” wherever it occurs and substituting “defendant”;
- (f) in paragraph (6)(b) by deleting “master or owner” wherever it occurs and substituting “defendant”;
- (g) in paragraph (6)(b)(iii) by deleting “master or owner’s” and substituting “defendant’s”;
- (h) in paragraph (6)(b)(iv) by deleting “master or owner’s” and substituting “defendant’s”; and
- (i) in paragraph (7) by deleting “owner or master” and substituting “defendant”.

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]