



BERMUDA

MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT
WORK) (ARTIFICIAL OPTICAL RADIATION) REGULATIONS 2019

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19 Prohibition on charging of workers

The Minister responsible for Maritime Administration in exercise of his powers conferred by section 93 of the Merchant Shipping Act 2002, and after consulting with the persons referred to in section 94(3) of that Act, 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) (Artificial Optical Radiation) Regulations 2019.

Interpretation

2 (1) In these Regulations—

“artificial” in relation to optical radiation means from a source other than the sun;

“Bermuda ship” means a ship which—

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

“Bermuda waters” means the sea or other waters within the seaward limits of the territorial sea of the Bermuda;

“CIE” means the International Commission on Illumination;

“competent persons” has the meaning given in Regulation 2 (Interpretation) of the General Duties Regulations;

“employer” means a person by whom a worker is employed on a ship under a contract of employment;

“exposure” means exposure at work to artificial sources of optical radiation and “exposed” is to be interpreted accordingly;

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

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

“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;

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“IEC” means the International Electrotechnical Commission;

“infrared radiation” means optical radiation of wavelength range exceeding 780 nm and not exceeding 1 mm, divided into IRA (exceeding 780 and not exceeding 1400 nm), IRB (exceeding 1400 and not exceeding 3000 nm) and IRC (exceeding 3000 nm and not exceeding 1 mm);

“irradiance” means the radiant power incident per unit area upon a surface expressed in watts per square metre ($W m^{-2}$);

“laser” (light amplification by stimulated emission of radiation) means any device which can be made to produce or amplify electromagnetic radiation in the optical radiation wavelength range primarily by the process of controlled stimulated emission;

“laser radiation” means optical radiation from a laser;

“level of exposure” means the combination of irradiance, radiant exposure and radiance to which a worker is exposed;

“measure” means, in respect of a Regulation 6 assessment, either to measure or calculate, or measure and calculate as appropriate, and “measurement” is to be interpreted accordingly;

“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;

“non-coherent radiation” means any optical radiation other than laser radiation;

“optical radiation” means any electromagnetic radiation in the wavelength range exceeding 100 nm and not exceeding 1 mm, across the spectrum of optical radiation from ultraviolet radiation through visible radiation to infrared radiation;

“radiance” means the radiant flux or power output per unit solid angle per unit area, expressed in watts per square metre per steradian ($W m^{-2} sr^{-1}$);

“radiant exposure” means the time integral of the irradiance, expressed in joules per square metre ($J m^{-2}$);

“Regulation 6 assessment” has the meaning given by Regulation 6(8);

“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;

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

“ultraviolet radiation” is optical radiation of wavelength range exceeding 100 nm and not exceeding 400 nm, divided into UVA (exceeding 315 and not exceeding

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400 nm), UVB (exceeding 280 and not exceeding 315 nm) and UVC (exceeding 100 and not exceeding 280 nm);

“visible radiation” means optical radiation of wavelength range exceeding 380 nm and not exceeding 780 nm.

(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.

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) “a 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 which contains a statement to that effect.

Application

4 (1) Without prejudice to Regulation 5 (general duties) of the General Duties Regulations, and subject to paragraphs (2) to (4), these Regulations apply in relation to activities in which workers are subject or are potentially subject to exposure, giving rise to risks to their health and safety, which take place on Bermuda ships.

(2) Where—

- (a) a ship is being used in the course of public service activities or activities for the purposes of the civil protection services; and
- (b) characteristics peculiar to those activities inevitably conflict with a provision of these Regulations,

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that provision does not apply in relation to activities on that ship to the extent of that conflict.

(3) To the extent that a provision of these Regulations does not apply in relation to activities on 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 the workers who are subject or are potentially subject to exposure on the ship.

(4) This Regulation (other than paragraph (1)) and Regulations 5, 15 and 17 apply in relation to activities on ships other than Bermuda ships, which are for the time being in Bermuda waters, during which workers are subject or are potentially subject to exposure, giving rise to risks to their health and safety.

(5) In paragraph (2)—

“civil protection service” includes the fire and rescue and ambulance services and search and rescue services provided by any other person; and

“public service activities” includes the activities of the Bermuda Regiment, Customs, immigration officers, police officers and the security and intelligence services.

Application of related legislation

5 The General Duties Regulations continue to apply to activities to which these Regulations apply, without prejudice to any more stringent or specific provisions contained in these Regulations.

PART 2

DUTIES OF EMPLOYERS AND OTHERS

Assessment of health risks

6 (1) Where work is to be carried out which could expose any worker to levels of artificial optical radiation that create a reasonably foreseeable risk of an adverse health effect on that worker, the employer must, in carrying out the risk assessment required by Regulation 7 (risk assessment) of the General Duties Regulation—

- (a) assess and, if necessary, measure the levels of exposure to which workers are likely to be exposed, so that the measures needed to limit exposure below the exposure limit values can be identified and put into effect; and
- (b) preserve the data obtained from the assessment, including those obtained from the measurement of the levels of exposure referred to in sub-paragraph (a), so as to permit their consultation at a later stage.

(2) In carrying out the assessment and measurement in accordance with paragraph (1)(a), the employer must follow the following standards or recommendations—

- (a) for laser radiation, the standards of the IEC; or

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- (b) for non-coherent radiation, the standards of the IEC and the recommendations of the CIE.
- (3) Where there is a risk of exposure which is not covered by the standards and recommendations set out in paragraph (2), and appropriate standards or recommendations are not available, the assessment and measurement may be carried out using any available national or international science-based guidelines.
- (4) The assessment in accordance with paragraph (1)(a) may take account of data provided by the manufacturers of equipment which is a source of optical radiation.
- (5) The employer must ensure that the assessment and measurement referred to in paragraph (1)(a)—
 - (a) are planned and carried out at suitable intervals and by competent persons, appointed in accordance with Regulation 14 (protective and preventive services) of the General Duties Regulations, subject to consultation with workers in accordance with Regulation 20 (consultation with workers) of those Regulations;
 - (b) are updated, if there have been significant changes which may affect workers' exposure or if the results of health surveillance show this to be necessary; and
 - (c) give particular attention to—
 - (i) the level, wavelength range and duration of exposure;
 - (ii) the exposure limit values;
 - (iii) any effects concerning the health and safety of workers belonging to particularly sensitive risk groups;
 - (iv) any possible effects on workers' health and safety resulting from workplace interactions between optical radiation and photosensitising chemical substances;
 - (v) any indirect effects such as temporary blinding, explosion or fire;
 - (vi) the existence of alternative equipment designed to reduce the levels of exposure;
 - (vii) appropriate information obtained from health surveillance, including, as far as possible, published information;
 - (viii) multiple sources of exposure;
 - (ix) a classification applied to a laser as defined in accordance with the relevant IEC standard and, in relation to any artificial source likely to cause damage similar to that of a laser of class 3B or 4, any similar classification; and
 - (x) information provided by the manufacturers of optical radiation sources and associated work equipment.

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(6) Before the commencement of any activity with the potential to involve exposure, the employer must be in possession of a record in a suitable medium of the risk assessment, if any, required to be carried out in accordance with this Regulation.

(7) The risk assessment may include a justification by the employer, that the nature and extent of the risks related to optical radiation make a more detailed risk assessment unnecessary.

(8) An assessment carried out in accordance with this Regulation, whether for the first time or by way of renewal, is in these Regulations called a Regulation 6 assessment and is to be used by the employer to identify which measures must be taken in accordance with Regulation 7.

General principles for prevention of risks

7 (1) So far as is reasonably practicable, taking account of technical progress and of the availability of measures to control the risk at source, the employer must eliminate or reduce to a minimum the risk to the health and safety of workers arising from exposure, using the principles for prevention of risk set out in the General Duties Regulations.

(2) Where the Regulation 6 assessment indicates any possibility that the exposure limit values may be exceeded, the employer must devise and implement an action plan comprising, as appropriate, technical and organisational measures designed to prevent, so far as is reasonably practicable, the exposure exceeding the limit values, taking into account in particular—

- (a) alternative working methods that reduce the risk from optical radiation;
- (b) the choice of alternative equipment emitting less optical radiation, taking account of the work to be done;
- (c) technical measures to reduce the emission of optical radiation including, where necessary, the use of interlocks, shielding or similar health protection mechanisms;
- (d) appropriate maintenance programmes for work equipment, workplaces and workstation systems;
- (e) the design and layout of workplaces and workstations;
- (f) limitation of the duration and level of exposure;
- (g) the availability of appropriate personal protective equipment;
- (h) the instructions of the manufacturer of equipment which is a source of optical radiation; and
- (i) the requirements of workers belonging to particularly sensitive risk groups.

(3) Where the Regulation 6 assessment indicates the possibility that workers could be subject to exposure exceeding the exposure limit values, the employer must—

- (a) place appropriate signs in the workplace, which identify the areas where the exposure limit values may be exceeded; and

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- (b) where this is technically possible, limit access to the areas where the exposure limit values may be exceeded.
- (4) If, despite the measures taken by the employer in accordance with this Regulation, the exposure limit values are exceeded, the employer must—
- (a) take immediate action to reduce exposure below the exposure limit values;
 - (b) identify the reasons why the exposure limit values have been exceeded; and
 - (c) adapt the protection and prevention measures accordingly in order to prevent the exposure limit values being exceeded again.

Information and training for workers

8 Without prejudice to the provisions of the General Duties Regulations covering information and training for workers, the employer must ensure that workers who are likely to be subject to exposure, or their representatives, receive appropriate information and training, concerning in particular—

- (a) measures to reduce exposure taken in accordance with Regulation 7;
- (b) the exposure limit values and associated potential risks;
- (c) the results of the Regulation 6 assessment, with an explanation of their significance and potential risks;
- (d) how to detect adverse health effects of exposure and report them;
- (e) the circumstances in which workers are entitled to health surveillance;
- (f) safe working practices to minimise risks from exposure; and
- (g) proper use of appropriate personal protective equipment.

Health surveillance

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

(2) The arrangements referred to in paragraph (1) must be sufficient to enable a worker to undergo, if appropriate, relevant health surveillance before exposure and at regular intervals thereafter.

(3) The employer must ensure that the health authority carrying out health surveillance of workers has access to the results of the Regulation 6 assessment, where those results may be relevant to the health surveillance.

(4) The employer must ensure that a medical examination is made immediately available to any worker who—

- (a) has, to the employer's knowledge, been subject to exposure in excess of the exposure limit values; or

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- (b) is found, as a result of health surveillance, to have an identifiable disease or adverse health effect, which is considered by a health authority to be the result of exposure.
- (5) Where a medical examination made available under paragraph (4), is carried out in respect of a worker, the health authority must give that worker—
 - (a) the result of the medical examination which relates to that worker; and
 - (b) information and advice regarding—
 - (i) any health surveillance which that worker should undergo following the end of exposure; and
 - (ii) any protective or preventive measures to be taken in respect of that individual worker.
- (6) A health authority which carries out a medical examination—
 - (a) must inform the employer, of any significant findings of the health surveillance, to the extent that this is consistent with confidentiality; and
 - (b) may advise that any other worker who has been similarly exposed should be offered a medical examination.
- (7) On being informed of the findings of the health surveillance in accordance with subparagraph (6)(a), the employer must—
 - (a) review the Regulation 6 assessment and the measures taken to eliminate or reduce risks pursuant to Regulation 7;
 - (b) take into account the advice of the health authority in implementing any measures to eliminate or reduce risk in accordance with Regulation 7; and
 - (c) arrange, in respect of any worker who has been similarly exposed—
 - (i) continued health surveillance; and
 - (ii) a review of that worker's health status.
- (8) The employer must—
 - (a) ensure that for each worker who undergoes health surveillance, an individual health record containing a summary of the results of the health surveillance is made and kept up to date;
 - (b) keep all health records in a form suitable for consultation at a later date, taking into account any confidentiality;
 - (c) supply copies of those health records, to a relevant health authority and the Minister, on request; and
 - (d) on reasonable notice being given, allow a worker access to that worker's individual health record.

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(9) In this Regulation “health authority” means a doctor, occupational health professional or other authority suitably qualified to undertake the requirements of this Regulation.

Consultation with and participation of workers

10 The employer must consult workers or their representatives about matters covered by these Regulations in accordance with Regulation 20 (consultation of workers) of the General Duties Regulations.

Duties of other persons

11 (1) Where a person on whom a duty is imposed by any of the preceding provisions of these Regulations 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 information and training provided to that worker, under Regulation 8.

PART 3

ENFORCEMENT

Offences and penalties

12 (1) Any person who fails to comply with Regulation 6, 7 or 9 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 or to both.

(2) Any person who fails to comply with Regulation 10 commits an offence and is liable on summary conviction, to a fine not exceeding \$5,000.

(3) Any person who fails to comply with Regulation 8 or 19 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 11(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.

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

(7) Where the affairs of a body corporate are managed by its members, paragraph (6) 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

13 In any proceedings under these Regulations consisting of a failure to comply with a duty or a requirement to do something so far as is reasonably practicable, it is for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy that duty or requirement.

Detention of a Bermuda ship

14 (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 the preceding provisions 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 must 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 the preceding provisions of these Regulations, and that failure has ceased, a person having power to detain the ship must, 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;

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- (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
 - (e) 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 must 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 must 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 must 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

15 (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 the preceding provisions of 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 the preceding provisions of these Regulations are not met in relation to a ship which is not a Bermuda ship but is in Bermuda waters, that surveyor of ships may—

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- (a) send a report to the government of the State whose flag the ship is entitled to fly, and a copy of it 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.
- (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 purpose 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 must immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.
- (6) A ship must 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

16 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

- 17 (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 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 these Regulations;
 - (b) specifies 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) requires 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.

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Right of appeal and compensation

18 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.

Prohibition on charging of workers

19 No charge in respect of anything done or provided in accordance with any requirement of these Regulations may 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]