



BERMUDA

MERCHANT SHIPPING AND FISHING VESSELS (LIFTING OPERATIONS AND
LIFTING EQUIPMENT) REGULATIONS 2019

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The Minister responsible for Maritime Administration, after consulting the persons referred to in section 94(3) of the Merchant Shipping Act 2002, and in exercise of his powers conferred by section 93 of the Merchant Shipping Act 2002 makes the following Regulations:

PART 1
GENERAL

Citation

1 These Regulations may be cited as the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2019.

Interpretation

2 In these Regulations—

“accessory for lifting” means lifting equipment for attaching loads to machinery for lifting;

“Authority” means the Bermuda Shipping and Maritime Authority (BSMA);

“Bermuda ship” means a ship, which is—

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

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

“the Code” means the Code of Safe Working Practices for Merchant Seamen, including any annexes to it, and any subsequent amendments and revisions to the Code in so far as they—

- (a) relate to all or any of the purposes set out in section 93(1) of the Act;

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(b) are considered by the Minister to be relevant from time to time; and

(c) are specified in a Marine Information Note issued by the Chief Marine Surveyor of the Authority and described as such;

“competent person” means a person possessing the knowledge or experience necessary for the performance of the duties under these Regulations;

“contract of employment” means a contract of employment, whether express or implied, and if express, whether oral or in writing;

“employer” means a person by whom a worker is employed under a contract of employment and (except in Regulation 4(4) and (5) includes a self-employed person to whom the requirements imposed by these Regulations apply by virtue of Regulation 4(5);

“fishing vessel” means a vessel for the time being used for, or in connection with fishing for sea fish other than a vessel used for fishing, otherwise than for profit;

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

“hatch covering” includes hatch covers, beams and attached fixtures and fittings;

“health and safety” includes the occupational health and safety of persons whilst on board the ship and whilst boarding or leaving the ship;

“lifting equipment” means work equipment used for lifting or lowering loads and includes its attachments used for anchoring, fixing or supporting it;

“load” includes a person;

“loose gear” means any gear by means of which a load can be attached to lifting equipment but which does not form an integral part of either the lifting equipment or the load;

“Marine Guidance Note” means a Note described as such and issued by the Chief Marine Surveyor, or the equivalent UK Marine Guidance Note, as applicable;

“operator” means the worker or workers operating the lifting equipment;

“public service vessel” means any vessel operated by and on behalf of a public body while it is carrying out the authorised functions of that body;

“relevant inspector” means a person mentioned in section 219(1) of the Act;

“ship” includes hovercraft;

“thorough examination” means a thorough examination by a competent person, and “thoroughly examined” shall be construed accordingly;

“use” in relation to work equipment, including lifting equipment, means any activity involving work equipment, and includes starting, stopping, programming, setting, transporting, repairing, modifying, maintaining and servicing, including cleaning;

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“work equipment” means any machinery, appliance, apparatus, tool or installation for use at work (whether exclusively or not).

Meaning of “worker”

3 (1) In these Regulations “worker” means any person employed under a contract of employment, including a trainee or apprentice, other than a person who is training in a vessel which is being used either—

- (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 this Regulation “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.

Application

4 (1) These Regulations shall apply to the use of lifting equipment by a worker or by the person mentioned in paragraph (5), on Bermuda ships, except when—

- (a) the lifting equipment is on a public service vessel or a vessel engaged in search and rescue; and
- (b) characteristics of the activity of the vessel inevitably conflict with a provision of these Regulations.

(2) An employer shall as far as is reasonably practicable ensure the health and safety of workers when using the lifting equipment.

(3) These Regulations, other than Regulation 21, apply in relation to ships other than Bermuda ships when they are in Bermuda waters.

(4) The duties imposed by these Regulations on an employer in respect of lifting equipment shall apply in relation to such equipment provided for use or used by a worker who is an employee of his.

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(5) The duties imposed by these Regulations on an employer shall also apply to a self-employed person, in respect of lifting equipment on a ship which he—

- (a) provides and uses himself; or
- (b) provides for use at work by another person (whether self-employed or not).

(6) In respect of his own use of lifting equipment on a ship, whether provided by him or not, a self-employed person shall be treated as a worker and shall ensure that the requirements of these Regulations in relation to a worker are met.

(7) Regulations 6(1), 6(2)(b), 9(1)(c), 9(3), 11, 12(7), 13 and 16 shall not apply in relation to a fishing vessel or Government ship unless, in the case of a Government ship, it is commercially managed, and for these purposes “commercially managed” means the management of which is entrusted by the owner, to some other person pursuant to a contract.

(8) Regulation 12(5)(b) shall not apply to a Government ship unless it is commercially managed as mentioned in paragraph (7).

(9) The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 2004 shall continue to apply and the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2019 shall apply to the provision and use of work equipment for lifting, to which these Regulations apply, but without prejudice to any more stringent or specific provisions contained in these Regulations.

PART 2

DUTIES OF EMPLOYERS

Persons on whom duties are imposed

5 Where a person on whom a duty is imposed by any provision of these Regulations does not have control of the matter to which the provision relates because he does not have responsibility for the operation of the ship, then any duty imposed by that provision shall also extend to any person who has control of that matter.

Strength and stability

6 (1) Every employer, in carrying out the obligations contained in this Regulation, shall comply with the principles and guidance in Chapter 21 of the Code.

(2) The employer shall ensure that—

- (a) lifting equipment is of adequate strength and stability for each load, having regard in particular to the stress induced at its mounting or fixing point; and
- (b) every part of a load that is used in lifting it, as well as anything attached to the load and used for that purpose, is of good construction, of adequate strength for the purpose for which it is to be used and free from patent defect.

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(3) The employer shall ensure that any accessory for lifting is not used on a ship unless it is of good design, of sound construction and material, of adequate strength for the purpose for which it is used and free from patent defect.

(4) In selecting accessories for lifting, the employer shall take into account—

- (a) the loads to be handled;
- (b) the gripping points;
- (c) the loose gear for attaching the load, and for attaching the accessories to the lifting equipment;
- (d) the atmospheric conditions; and
- (e) the mode and configuration of slinging.

(5) The employer shall ensure that accessories for lifting are stored in conditions which will not lead to damage or degradation.

Lifting equipment for lifting persons

7 (1) The employer shall ensure that, except under the conditions required by paragraph (2), no lifting equipment shall be used for lifting persons unless it is designed for the purpose.

(2) If in exceptional circumstances it is necessary to use lifting equipment, which has not been specifically designed to lift persons, the employer shall ensure that—

- (a) the control position of the lifting equipment is manned at all times; and
- (b) persons being lifted have a reliable means of communication, whether direct or indirect, with the operator of the lifting equipment.

(3) The employer shall ensure that lifting equipment which is designed for the lifting of persons is not used for that purpose unless it is so constructed, maintained and operated that a worker may use it or carry out work activities from the carrier, without risk to his health and safety, and in particular—

- (a) that the worker will not be crushed, trapped or struck, in particular through inadvertent contact with objects;
- (b) that the lifting equipment is so designed or has suitable devices to prevent—
 - (i) any carrier falling or, if that cannot be prevented for reasons inherent in the site and height differences, the carrier has an enhanced safety co-efficient suspension rope or chain; or
 - (ii) the risk of any person falling from the carrier; and
- (c) that any person trapped in the carrier in the event of an incident is not thereby exposed to danger and can be freed.

(4) The employer shall ensure that any rope or chain provided under paragraph (3)(b)(i) is inspected by a competent person every working day.

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Positioning and installation

8 The employer shall ensure that permanently installed lifting equipment is not used unless it has been positioned or installed in such a way as to minimise the risk, so far as is reasonably practicable, of any of the following occurrences—

- (a) the equipment or a load striking a worker;
- (b) a load drifting dangerously or falling freely; and
- (c) a load being released unintentionally.

Marking of work equipment used for lifting

9 (1) The employer shall ensure that—

- (a) subject to subparagraph (b), work equipment which is or may be used for lifting is clearly marked to indicate its safe working loads;
- (b) lifting depends on the configuration of the equipment—
 - (i) the work equipment is clearly marked to indicate its safe working load for each configuration of the equipment; or
 - (ii) information which clearly indicates its safe working load for each configuration of the work equipment is kept with the equipment;
- (c) any lifting equipment which 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 operator, showing the radius of the load lifting attachment at any time and the safe working load corresponding to that radius;
- (d) lifting equipment which is designed for lifting persons is appropriately and clearly marked; and
- (e) lifting equipment which is not designed for lifting persons but which may be so used in error is appropriately and clearly marked to the effect that it is not designed for lifting persons.

(2) The employer shall ensure that each accessory for lifting is clearly and legibly marked with its safe working load or is otherwise marked in such a way that it is possible for any user to identify the characteristics necessary for its safe use including, where appropriate, its safe working load.

(3) The employer shall ensure that each accessory for lifting which weighs a significant proportion of the safe working load of any lifting equipment with which it is intended to be used is, in addition to the requirement in paragraph (2), clearly marked with its own weight.

Organisation of lifting operations

10 (1) The employer shall ensure that every lifting operation involving lifting equipment is—

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- (a) properly planned;
- (b) appropriately supervised; and
- (c) carried out in a safe manner.

(2) The employer shall ensure that no lifting operation is begun using equipment which is mobile or can be dismantled unless he is satisfied that the lifting equipment will remain stable during use under all foreseeable conditions and taking account of the nature of the surface on which it stands.

(3) The employer shall ensure that adequate and effective procedures and safety measures are established to secure the safety of workers during lifting operations, in particular—

- (a) that where two or more pieces of work equipment are used for lifting non-guided loads in such a way that their working radii could overlap, they shall include measures for the avoidance of collision between the loads, the work equipment, or of one with the other;
- (b) that where two or more pieces of work equipment for lifting non-guided loads are used simultaneously to lift a single load, there is adequate and effective coordination between the respective operators of the equipment;
- (c) where the lifting equipment cannot maintain its hold on the load in the event of a complete or partial power failure;
- (d) so that, so far as is reasonably practicable, loads are not carried or suspended over areas occupied by workers, and where this is not reasonably practicable, a safe system of work is established, including adequate surveillance, to minimise the risks to workers who may need to be below the load;
- (e) if the operator of lifting equipment cannot observe the full path of the load, either directly or by means of auxiliary devices, a responsible person has appropriate means of communication to guide the operation;
- (f) that, work is organised in such a way that when a worker is attaching or detaching a load by hand, the operation can be carried out safely, in particular, through the worker retaining direct or indirect control of the work equipment;
- (g) measures are taken to prevent the load striking anything or any person; and
- (h) that lifting operations are halted where meteorological conditions deteriorate to the point that they could affect the safe use of the lifting equipment or expose persons to danger,

and that such lifting operations are not carried out unless the procedures and safety measures are applied.

(4) In this Regulation “lifting operation” means an operation concerned with the lifting or lowering of a load.

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Testing

11 (1) The employer shall ensure that no lifting equipment, accessory for lifting or loose gear 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 strength or stability of the equipment,

without being first suitably tested by a competent person.

(2) The employer shall ensure that the ship's lifting equipment is not used unless, it has been suitably tested by a competent person within the preceding five years.

(3) Upon the completion of every test of lifting equipment, accessory for lifting or item of loose gear carried out in accordance with this Regulation, the equipment, accessory or gear shall be thoroughly examined and certified for use by the person carrying out the test.

Thorough examination and inspection

12 (1) The employer shall ensure that, where the safety of lifting equipment depends on the installation conditions, it is inspected by a competent person—

- (a) after installation and before being put into service for the first time; and
- (b) after assembly at a new site or in a new location,

to ensure that it has been installed correctly, in accordance with any manufacturer's instructions, and is both safe to operate and capable of operating safely.

(2) Subject to paragraph (7), the employer shall ensure that where lifting equipment or an accessory for lifting is exposed to conditions causing deterioration which is likely to result in dangerous situations, it is—

- (a) thoroughly examined—
 - (i) in the case of lifting equipment for lifting persons or an accessory for lifting, in accordance with an examination scheme or at least every 6 months; and
 - (ii) in the case of other lifting equipment, in accordance with an examination scheme or at least every 12 months;
- (b) thoroughly examined whenever exceptional circumstances which are liable to jeopardise the safety of the lifting equipment have occurred; and
- (c) if appropriate, inspected by a competent person at suitable intervals,

to ensure that health and safety conditions are maintained and that any deterioration can be detected and remedied in good time.

(3) In paragraph (2)(a), "examination scheme" means a suitable scheme drawn up by a competent person for such thorough examinations of lifting equipment at such intervals as may be appropriate for the purposes described in paragraphs (1) and (2).

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(4) In paragraph (2)(b), “exceptional circumstances” shall include modification work, accidents, natural phenomena and prolonged periods of inactivity.

(5) The employer shall ensure that no lifting equipment—

- (a) is used outside the ship; or
- (b) if obtained from outside the ship, is used on the ship,

unless it is accompanied by physical evidence that the last thorough examination required to be carried out under this Regulation has been carried out.

(6) The employer shall not permit the use of any accessories for lifting, other than those which are subject to paragraph (2)(a), unless they have been thoroughly examined within the 12 months immediately prior to such use.

(7) Where lifting equipment was before the coming into force of these Regulations thoroughly examined or required to be so examined in accordance with Regulation 8 of the Merchant Shipping (Hatches and Lifting Plant) Regulations 1990, the first thorough examination under paragraph (2) shall be made no later than the date by which a thorough examination would have been required or next required, as the case may be, by that Regulation had it remained in force.

(8) In relation to an inspection under this Regulation, “inspection”—

- (a) means such visual or more rigorous inspection by a competent person as is appropriate for the purpose described; and
- (b) where it is appropriate to carry out testing for the purpose, includes testing the nature and extent of which are appropriate for the purpose.

(9) In paragraph (5) “used outside the ship” means both—

- (a) used on the quayside, dock or jetty or on board another ship; and
- (b) operated by workers who are employed by another person.

Certificates

13 (1) The employer shall ensure that—

- (a) a certificate in the form set out in the Code shall, in the case of a Bermuda ship, be obtained within 28 days following any test and thorough examination under Regulation 11; or
- (b) in the case of a ship other than a Bermuda ship, a certificate in a form approved by the maritime authority for the State where the ship is registered, is carried on board the ship in relation to any test and thorough examination equivalent to that envisaged by Regulation 11.

(2) A certificate given in pursuance of this Regulation shall be in writing and shall specify the date on which it takes effect and any conditions on which it is given.

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Reports and defects

14 (1) The employer and any person from whom the equipment has been hired or leased, shall as soon as practicable after a thorough examination has been carried out in accordance with Regulation 12(2), obtain a report from the person making that examination.

(2) The person making a thorough examination under Regulation 12(2) or within Regulation 12(6) shall—

- (a) notify the employer, or other person who has control of the matter, immediately, of any deficiency in the lifting equipment which in his opinion is or could become a danger to persons;
- (b) as soon as is practicable make a report, conforming with the requirements of paragraph (3), of the thorough examination, to—
 - (i) the employer; and
 - (ii) any person from whom the equipment has been hired or leased; and
- (c) where there is in his opinion a deficiency in the lifting equipment involving an existing or imminent risk of serious personal injury, send a copy of the report as soon as is practicable, to the relevant enforcing authority.

(3) The report made under paragraph (2) shall be in writing and authenticated by the person making the thorough examination or on his behalf by signature or equally secure means and contained in a certificate which sets out the matters mentioned in the relevant Marine Guidance Note.

(4) A person making an inspection for an employer under Regulation 12(1) or (2) shall—

- (a) notify the employer, or other person who has control of the matter immediately, of any deficiency in the lifting equipment which in his opinion is or could become a danger to persons; and
- (b) as soon as is practicable make a record of the inspection, in writing.

(5) Where the employer, or other person who has control of the matter, has been notified of any deficiency under paragraph (2) or (4), he shall ensure that—

- (a) any condition liable to result in a dangerous situation is remedied in good time; and
- (b) in the case of a deficiency to which paragraph (2)(c) applies, lifting equipment is not used until the deficiency is rectified.

(6) In this Regulation “relevant enforcing authority” means such of the following as are applicable—

- (a) where the defective equipment is installed or used on a Bermuda ship, the Authority;

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- (b) where the defective equipment is installed or used on any ship other than a Bermuda ship, the maritime authority of the State in which the ship is registered; and
- (c) the enforcing authority for the premises in which the defective equipment was thoroughly examined.

Keeping of information

15 (1) The employer shall ensure that any certificate or report of a test or thorough examination issued under these Regulations is kept in a safe place on board ship, for a period of at least 2 years following receipt of the certificate or report of the next following test or thorough examination of the lifting equipment, accessory for lifting or loose gear, as the case may be.

(2) Notwithstanding the requirements of paragraph (1), the employer shall ensure that the information contained in—

- (a) every report made under Regulation 14(2) or record made under Regulation 14(4) is kept available for inspection until the next such report or record is made;
- (b) every report made to him under Regulation 14(2) is kept available for inspection—
 - (i) in the case of a thorough examination of lifting equipment, until he ceases to use the lifting equipment;
 - (ii) in the case of a thorough examination of an accessory for lifting within Regulation 12(6), for two years after the report is made; and
 - (iii) in the case of a thorough examination under Regulation 12(2), for two years after receipt of that report, or until the next report is made under that Regulation, whichever is later; and
- (c) every record made in respect of an inspection carried out under Regulation 12(1) is kept available for inspection until he ceases to use the lifting equipment at the place it was installed or assembled.

PART 3

HATCHES

Hatches

16 (1) Every employer and any person in carrying out the obligations contained in this Regulation shall comply with the principles and guidance in the Code.

(2) The employer 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 employer shall ensure that—

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- (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 employer shall ensure that a hatch is not used unless the hatch covering has been completely removed, or if not completely removed, is properly secure.
- (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.

PART 4
DUTY OF WORKERS

Duty of workers

17 Without prejudice to the general duties imposed upon him by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 2004, every worker while at work shall—

- (a) comply, in relation to the use by him of lifting equipment, with any reasonable instruction that may be given to him by his employer for the purpose of securing compliance with any of the obligations imposed upon the employer under Regulation 7, 10 or 16; and
- (b) make full and proper use of any system of work provided for his use by his employer in compliance with Regulation 10(3)(d).

PART 5
PENALTIES, OFFENCES, INSPECTIONS AND DETENTIONS

Penalties

18 (1) Any contravention of Regulations 6 to 12 or, except in the case of a worker, Regulation 16, shall be an offence punishable on summary conviction by a fine not exceeding \$10,000 or on conviction on indictment, by imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(2) Any contravention of Regulation 13, 14(2), (4) or (5) or 15 shall be an offence punishable on summary conviction, by a fine not exceeding \$5,000.

(3) Any contravention of Regulation 14(1) or (3) shall be an offence punishable on summary conviction, by a fine not exceeding \$2,000.

(4) Any contravention by a worker of Regulation 16(1), (5) or 17 shall be an offence punishable on summary conviction, by a fine not exceeding \$1,000.

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Offences by bodies corporate and partnerships

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

(2) Where the affairs of a body corporate are managed by its members, paragraph (1) shall apply in relation to the acts and defaults of a member, in connection with his functions of management as if he were a director of the body corporate.

Onus of proving what is reasonably practicable

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

Inspection and detention of a Bermuda ship

21 (1) A relevant inspector 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, may detain the ship until the health and safety of all persons aboard the ship is secured.

(2) The relevant inspector shall not, in the exercise of his powers under this Regulation, detain or delay the ship unreasonably.

Inspection and other measures in respect of ships registered outside Bermuda

22 (1) A relevant inspector may inspect any ship which is not a Bermuda ship when the ship is in Bermuda waters and, if satisfied that the ship does not conform to the standards required of Bermuda ships by these Regulations, may—

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

when the ship has called at a Bermuda port in the normal course of business or for operational reasons.

(2) If either of the measures specified in paragraph (1)(b) is taken, the relevant inspector shall immediately notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

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(3) The relevant inspector shall not in the exercise of his powers under this Regulation detain the ship unreasonably.

Enforcement of detention

23 Where a ship is liable to be detained under these Regulations, section 103 of the Act (which relates to the detention of a ship) shall apply as if for the words “this Act”, wherever they appear, there were substituted “the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2019”.

Compensation

24 Sections 104 and 105 of the Act (arbitration and compensation) shall apply in relation to a detention notice or order under these Regulations, as they apply to a detention notice under section 103(4) of the Act, and in such application, “relevant inspector” means a person making an inspection under these Regulations.

Revocation

25 The Merchant Shipping (Hatches and Lifting Plant) Regulations 1990 are revoked.

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]