



BERMUDA

MERCHANT SHIPPING (INSPECTIONS OF SHIPS AND ISSUE OF MARITIME
LABOUR CERTIFICATES) REGULATIONS 2020

BR 152 / 2020

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The Minister responsible for Maritime Administration, in exercise of the power conferred by sections 37A and 57 of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Inspections of Ships and Issue of Maritime Labour Certificates) Regulations 2020.

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Interpretation

2 In these Regulations—

“anniversary date” means the day and month of the year corresponding to the original date of expiry of the ship’s Maritime Labour Certificate;

“Bermuda ship” means a ship which is a Bermuda ship within the meaning of section 2(1) of the Act;

“commercial activity” means any employment of the vessel for which a contract or charter party is in force and includes the carriage of any cargo or persons for reward;

“GT” means Gross Tonnage as measured under the International Tonnage Convention 1969 and as shown on the vessel’s International Tonnage certificate;

“Maritime Labour Certificate” means the certificate issued to a ship in accordance with Article V of the Maritime Labour Convention;

“Maritime Labour Convention” means the Maritime Labour Convention 2006 adopted at a general conference of the International Labour Organization in Geneva on 7 February 2006;

“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;

“pleasure vessel” means—

(a) a vessel which, at the time that it is being used, is—

(i) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or in the case of a vessel owned by a body corporate, used only for sport or pleasure and on which the passengers are employees or officers of the body corporate, or their immediate family or friends; and

(ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion, and no other payments are made by or on behalf of users of the vessel other than by the owner; or

(b) any vessel wholly owned by or on behalf of a member’s club formed for the purpose of sport or pleasure and which, at the time that it is being used, is used only for the sport or pleasure of members of that club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and no other

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payments are made by or on behalf of users of the vessel other than by the owner,

and, for the purposes of this definition “immediate family” means in relation to an individual, the husband or wife of the individual and a relative of the individual and “relative” means brother, sister, ancestor or lineal descendant;

“shipowner” means the owner of a ship or another organisation or person such as the manager, agent or bareboat charterer who has assumed the responsibility for the operation of the ship, from the owner.

Application

3 (1) These Regulations apply to Bermuda ships wherever they may be, other than—

- (a) fishing vessels;
- (b) vessels owned and operated by a Government Department or Agency for non-commercial purposes;
- (c) pleasure vessels; or
- (d) vessels of less than 500 GT.

(2) Subject to regulation 14, these Regulations apply to ships that are not Bermuda ships when in a port in Bermuda other than—

- (a) fishing vessels;
- (b) pleasure vessels;
- (c) warships, naval auxiliaries and other ships owned or operated by a State and not engaged in commercial activity.

(3) In so far as the issue of a Maritime Labour Certificate is concerned, these Regulations may, at the request of the shipowner, be applied to other Bermuda ships for which that shipowner has responsibility.

Carriage of a Maritime Labour Certificate

4 (1) Every ship to which these Regulations apply shall carry on board—

- (a) a valid Maritime Labour Certificate issued by or on behalf of the Minister;
- (b) a Declaration of Maritime Labour Compliance issued by or on behalf of the Minister and attached to the Maritime Labour Certificate; and
- (c) a copy of the Maritime Labour Convention, including any amendments that may be made from time to time.

(2) A copy of the ship’s Maritime Labour Certificate, including its attached Declaration of Maritime Labour Compliance shall be displayed in a conspicuous place on board and available for inspection by all the seafarers in the ship.

(3) A ship’s Maritime Labour Certificate shall be available for inspection by the Minister or by any official authorised by him, and copies shall be provided where reasonably

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requested by seafarers, Port State Authorities, and shipowner's and seafarer's representatives.

Inspections of ships and issue of certificates

5 (1) An inspection of a Bermuda ship shall be conducted by an authorised person and the authorised person shall examine the following areas—

- (a) minimum age of seafarers;
- (b) medical certification;
- (c) qualifications of seafarers;
- (d) seafarer's employment agreements;
- (e) use of any licensed or certified or regulated private recruitment and placement service;
- (f) hours of work or rest;
- (g) manning levels of the ship;
- (h) accommodation;
- (i) on-board recreational facilities;
- (j) food and catering;
- (k) health and safety and accident prevention;
- (l) on-board medical care;
- (m) on-board complaint procedures;
- (n) payment of wages;
- (o) financial security for repatriation; and
- (p) financial security relating to shipowners' liability.

(2) A Bermuda ship that has been inspected in accordance with paragraph (1) and shown to comply with the regulations covering the areas listed in paragraph (1), shall be issued with a Maritime Labour Certificate.

(3) A vessel that is newly constructed and registered in Bermuda, or which has changed flag to Bermuda from another flag, or which has come under the management of a new shipowner may be inspected as far as reasonable and practical in the areas listed in paragraph (1) and provided—

- (a) there is verification that the shipowner has adequate procedures to comply with the regulations covering the areas prescribed in paragraph (1);
- (b) the master is familiar with the Maritime Labour Convention; and
- (c) relevant information has been submitted to the Minister, sufficient to prepare a Declaration of Maritime Compliance,

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the ship shall be issued with an Interim Maritime Labour Certificate and the Interim Maritime Labour Certificate need not have, attached to it, a Declaration of Maritime Compliance.

(4) A ship that is issued with an Interim Maritime Labour Certificate shall be subjected to the inspection described in paragraph (1), before the expiry of the interim certificate and shall be issued with a Maritime Labour Certificate.

(5) No ship may be issued with a further Interim Maritime Labour Certificate following expiry of the first one.

Survey of ships

- 6 (1) A ship falling within paragraph (2) is subject to the following surveys—
- (a) before a Maritime Labour Certificate is first issued in relation to the ship, an initial survey by a certifying authority, as set out in UK Merchant Shipping Notice 1848(M);
 - (b) within five years of the first issue of a Maritime Labour Certificate, and thereafter, at intervals which must be no more than five years, a renewal survey by a certifying authority, as set out in UK Merchant Shipping Notice 1848(M); and
 - (c) in the period between the anniversary dates of a Maritime Labour Certificate in its second and third years of validity, an intermediate survey by a certifying authority, as set out in UK Merchant Shipping Notice 1848(M).
- (2) A ship falls within this regulation if it is a ship of 500 GT or over and it—
- (a) is engaged in international voyages;
 - (b) is operating to and from a single port in a country other than Bermuda; or
 - (c) is operating between ports in a country other than Bermuda.
- (3) A ship which does not fall within paragraph (2) is subject to a survey by a certifying authority as set out in UK Merchant Shipping Notice 1848(M).
- (4) In this regulation, “international voyage” means a voyage from a country to a port outside that country.

Duration and validity of Maritime Labour Certificates

- 7 (1) Subject to paragraphs (2) and (4), a Maritime Labour Certificate with a period of validity starting on the date of issue and not exceeding five years, must be issued on the date of the completion of the relevant survey.
- (2) Where a renewal survey as required by regulation 6(1)(b) has been completed within a period of three months before the expiry of a Maritime Labour Certificate, the new certificate must be issued as being valid from the original date of expiry of the existing certificate.

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(3) This paragraph applies where a renewal survey as required by regulation 6(1)(b) has been completed but a new Maritime Labour Certificate cannot, on the date of completion of the survey, be issued or made available on board the ship.

(4) Where paragraph (3) applies, the certifying authority may extend the period of validity of the existing Maritime Labour Certificate by a period not exceeding five months.

(5) Where a certifying authority extends the period of validity of a Maritime Labour Certificate under paragraph (4), it must issue the new Maritime Labour Certificate as being valid from the original date of expiry of the existing certificate and endorse the existing certificate accordingly.

(6) "Original date of expiry", in relation to a Maritime Labour Certificate, means the final day of the period of validity of the certificate, excluding any extension to that period added under paragraph (4).

(7) A Maritime Labour Certificate ceases to be valid—

- (a) as respects a ship falling within regulation 6(2), if an intermediate survey has not been completed within the period specified in regulation 6(1)(c) and the certificate endorsed in accordance with UK Merchant Shipping Notice 1848(M); or
- (b) where a certifying authority has issued the certificate in accordance with paragraph (1), if that certificate has not been endorsed in accordance with the requirements of UK Merchant Shipping Notice 1848(M).

(8) Where a certificate ceases to be valid for a reason specified in paragraph (7)(a) or (b), the Minister may issue a new certificate, if satisfied that the non-compliance has been suitably addressed and remedied, notwithstanding that the ship has not been subject to a survey falling within this regulation since the previous certificate was cancelled.

(9) A Maritime Labour Certificate or interim Maritime Labour Certificate ceases to be valid—

- (a) upon transfer of the ship to the flag of another State;
- (b) if the person who is named on the certificate as the shipowner ceases to have responsibility for the operation of the ship;
- (c) if substantial changes are made to the ship's accommodation or its recreational facilities for seafarers or its food and catering facilities; or
- (d) if the ship's accommodation or its recreational facilities for seafarers or the ship's food and catering facilities have sustained damage or otherwise become deficient and that damage or deficiency has not been rectified.

(10) The Minister may cancel a Maritime Labour Certificate issued to a Bermuda ship, where the Minister has reason to believe that the certificate was issued on the basis of incorrect information, and may require such a certificate to be surrendered as directed.

(11) Where a Maritime Labour Certificate or interim Maritime Labour Certificate has been issued to a ship and has not expired and—

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- (a) the Minister has issued to that ship an improvement notice under section 222 of the Merchant Shipping Act 2002 and the contravention specified in the improvement notice has not been remedied within the period specified in the notice; or
- (b) the Minister has determined that there is clear evidence that the ship does not comply with the requirements of the Maritime Labour Convention and that the failure of the ship to comply endangers the safety of the ship or its crew,

the Minister may suspend the validity of the Maritime Labour Certificate or interim Maritime Labour Certificate.

(12) Where the Minister suspends the validity of a certificate under paragraph (11), the Minister must give notice of any such suspension, to the shipowner and the master of the ship, and may require the certificate which has been so suspended to be surrendered as directed.

Format of the Maritime Labour Certificate

8 (1) A Maritime Labour Certificate issued to a Bermuda ship shall be in the form specified by the Minister and in conformity with the model format for such a certificate, contained in the Code to the Maritime Labour Convention.

(2) Every Maritime Labour Certificate, other than an interim Maritime Labour Certificate, shall have attached to it, a Declaration of Maritime Labour Compliance which shall be drawn up in a form specified by the Minister and in conformity with the model form for such a declaration contained in the Code to the Maritime Labour Convention.

(3) Part 1 to the Declaration of Maritime Labour Compliance shall be drawn up by the Minister, in accordance with the Code to the Maritime Labour Convention and Part 2 to the Declaration shall be completed by the shipowner and certified by the inspector following the inspection referred to in regulation 5(1).

Records of inspections

9 Following every periodical inspection or inspection for the renewal of a ship's Maritime Labour Certificate, the person making the inspection shall prepare a record of the inspection including a note of any significant deficiencies that are found and the date when such deficiencies are found to be remedied and this record shall be retained with the ship's Maritime Labour Certificate and be available for inspection by the seafarers, by an official authorised by the Minister, or by a port state control officer or by the seafarer's or shipowner's representatives.

Withdrawal of a Maritime Labour Certificate

10 In any case where the Minister has established that a Bermuda ship no longer complies with the requirements of the Maritime Labour Convention and where the shipowner has not rectified the deficiencies in a reasonable time, the Minister may withdraw the ship's Maritime Labour Certificate and shall not issue a further certificate, until such time as the ship is in compliance with the applicable regulations.

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Recognised organisations and powers of inspectors

11 (1) The Minister, having regard for the requirements in Standard A5.1.2 of the Maritime Labour Convention, may appoint a recognised organisation to carry out any of the inspections prescribed in regulation 5.

(2) Each appointment in accordance with paragraph (1), shall be in writing and extend for the conduct of one inspection.

(3) Any officer of the Bermuda Shipping and Maritime Authority and any inspector from a recognised organisation appointed under paragraph (1), for the purposes of the ship he is appointed to inspect, shall have the power to—

- (a) board a Bermuda ship;
- (b) carry out such examinations, tests and inquiries which they consider necessary, to establish that the applicable regulations covering the areas specified in regulation 5(1) are being complied with; and
- (c) require that any deficiency is rectified within a reasonable period of time.

(4) An inspector appointed from a recognised organisation appointed by the Minister, who establishes that there are deficiencies amounting to a serious breach of the Maritime Labour Convention or which constitute a danger to the health, safety, or security of the seafarers on the ship, shall notify the Minister immediately on finding such deficiencies.

On board complaints procedure

12 (1) The shipowner and the master of a ship shall ensure, as required under section 57 of the Act, that there is available to a seafarer on that ship, a procedure to lodge a complaint alleging a breach of the requirements of the Maritime Labour Convention and for that complaint to be resolved fairly, effectively and expeditiously.

(2) The complaints handling procedure established under paragraph (1), shall meet the standards for on-board complaint procedures as set out in Regulation 5.1.5 of the Maritime Labour Convention 2006.

Penalties

13 (1) If a ship to which these Regulations apply, proceeds or attempts to proceed to sea or on a voyage or excursion without a valid Maritime Labour Certificate and Part I and Part II of the Declaration of Maritime Labour Compliance or an Interim Maritime Labour Certificate, as required under these regulations, the shipowner and master of the ship commit an offence and are liable on summary conviction, to a fine not exceeding \$10,000.

(2) If the shipowner or master of a ship to which a Maritime Labour Certificate has been issued fails to maintain the validity of the certificate and continues, to operate the ship without validating the certificate by conducting the required periodic inspections, he commits an offence and is liable on summary conviction, to a fine not exceeding \$5,000.

(3) Any contravention of regulation 5 is an offence by the shipowner and by the master of the ship and is punishable on summary conviction to a fine not exceeding \$5,000.

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Inspection of foreign ships in Bermuda waters

14 (1) Every foreign ship calling in a port in Bermuda in the normal course of business or for operational reasons may be the subject of inspection under Regulation 5.2.1 of the Maritime Labour Convention, for the purpose of reviewing compliance with the relevant provisions of the Maritime Labour Convention.

(2) The inspections carried out pursuant to paragraph (1) shall be undertaken by the authorised officers of the competent authority and shall be based on the port State inspection and monitoring system operated under the Merchant Shipping (Port State Control) Regulations 2019, and standard A5.2.1 of the Maritime Labour Code, in order to ensure that the working and living conditions for seafarers on ships calling in Bermuda ports meet the requirements of the Maritime Labour Convention including seafarers rights.

(3) Where during the inspection, the authorised officer finds clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of the Maritime Labour Convention, he may undertake a more detailed inspection as provided in the Maritime Labour Code, to ascertain the working and living conditions on board.

(4) Where following the more detailed inspection, the ship is found not to conform to the requirements of the Maritime Labour Convention and—

- (a) the conditions on board are hazardous to the safety, health or security of seafarers; or
- (b) the non-conformity constitutes a repeated breach of the requirements of the Maritime Labour Convention (including seafarer's rights),

the authorised officer shall take steps to ensure that the ship does not proceed to sea, until the non-conformities identified during the detailed inspection have been rectified.

(5) On implementing the port state control inspection procedures under this regulation, all possible effort must be taken to avoid a ship being unduly detained or delayed.

On-shore seafarer complaint-handling procedures

15 (1) The Chief Marine Surveyor shall be the competent authority in Bermuda for handling complaints by a seafarer in Bermuda ports.

(2) There shall be established a documented procedure for handling seafarer complaints.

(3) The Chief Marine Surveyor, on receiving a complaint from a seafarer on a ship in a port in Bermuda, who alleges a breach of the requirement of the Maritime Labour Convention or that there are serious deficiencies in the implementation of measures set out in the maritime Declaration of compliance, shall record the complaint and inform the Minister, promptly.

(4) The Minister shall cause to undertake an investigation into the alleged complaint by an authorised person in accordance with Standard A5.2.2 and Guidelines

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B5.2.2 of the Maritime Labour Code for handling of complaints by seafarers, in order to facilitate a prompt and practical means of redress.

(5) In the event that the investigation conducted under Standard A5.2.2 and Guideline B5.2.2 reveals any non-conformity of a serious nature that falls within the scope of paragraph 6 of Standard A5.2.1 of the Maritime Labour Code, that paragraph shall be applied.

(6) Any seafarer may lodge with the Chief Marine Surveyor, a complaint alleging a breach of the requirements of the Maritime Labour Convention, and the Chief Marine Surveyor shall treat the source of any such complaint as confidential.

Revocation

16 The Merchant Shipping (Inspections of Ships and Issue of Maritime Labour Certificates) Regulations 2013 are revoked.

Made this 22nd day of December 2020

Minister of Transport

[Operative Date: 29 December 2020]