



BERMUDA

MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS 2020

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by sections 3 and 93(1) of the Merchant Shipping Act 2002, makes the following Regulations:

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### Citation

1 These Regulations may be cited as the Merchant Shipping (Port State Control) Regulations 2020.

### Interpretation

2 (1) In these Regulations—

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

“Bermuda ship” has the meaning given by section 16(3) of the Act;

“Bermuda waters” has the meaning given in section 2(1) of the Act;

“bulk carrier” has the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“clear grounds” have the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“Conventions” mean—

- (a) the International Convention on Load Lines, 1966 (LL 66);
- (b) the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988);
- (c) the International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
- (d) the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974 (SOLAS PROT 1988);
- (e) the International Convention for the Prevention of Pollution from Ships (MARPOL);
- (f) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78/95);
- (g) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
- (h) the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);
- (i) the International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001 (AFS 1972);
- (j) the International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
- (k) the International Convention on Civil liability for Bunker Oil Pollution damage, 2001 (BUNKERS 2001);
- (l) the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM 2004);

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(m) the Nairobi International Convention on the Removal of Wrecks, 2007 (NAIROBI (WRC 2007));

together with the Protocols and amendments to these Conventions and related Codes of mandatory status, in force on 1 January 2020 and thereafter in their up-to-date versions in so far as those versions relate to all or any of the purposes set out in section 93(1) of the Act, are considered by the Minister to be relevant from time to time and are specified in a Merchant Shipping Notice;

“Convention enactments” mean statutory instruments made under the Act which implement the Conventions;

“deficiency” has the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“detention” has the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“expanded inspection” means an inspection as defined in the Paris Memorandum of Understanding on Port State Control;

“fishing vessel” means a vessel used for catching fish, whales, seals, walrus or other living resources of the sea;

“flag administration” in relation to a ship means the administration of the state whose flag the ship is entitled to fly;

“IMO” means the International Maritime Organization;

“IMO Procedures for port state control” means IMO Resolution A. 1119(30)-2011;

“initial inspection” means an inspection as defined in the Paris Memorandum of Understanding on Port State Control;

“inspection” means a visit on board a ship by an inspector in order to check compliance with the relevant Conventions;

“inspector” means a person authorised by the Minister to carry out inspections required by these Regulations;

“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;

“more detailed inspection” means an inspection as defined in the Paris Memorandum of Understanding on Port State Control;

“owner” includes, in relation to a ship, any operator, manager, charterer or agent of the ship;

“Paris Memorandum of Understanding” means the official document of the organisation consisting of 27 participating maritime Administrations on port State control and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe, whose Mission is to

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eliminate the operation of sub-standard ships through a harmonised system of port State control;

“port authority” means a harbour authority established under the Marine Board Act 1962, or if there is no such authority, the person having control of the operation of the port;

“port state control Officer” has the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“recognised organisation” has the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“refusal of access notice” means a decision issued by the Minister, to the master of the ship to the company responsible for the ship and to the flag state, notifying them that the ship will be refused access to all ports and anchorages in Bermuda;

“ship” means a seagoing vessel to which one or more of the Conventions apply and includes hovercraft;

“ship-port interface” means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship;

“ship risk profile” (SRP) means a profile attributed to a ship, calculated in accordance with Annex 7 of the Paris Memorandum of Understanding on Port State Control and which will determine the ship’s priority for inspection, the interval between inspections and the scope of the inspection;

“stoppage of an operation” has the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“substandard ship” has the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30);

“valid certificates” have the same meaning as given in Chapter 1.7 of IMO Resolution A. 1119(30).

(2) References in these Regulations to a Chapter in the IMO Procedures for port State control are references to that Chapter as amended from time to time.

(3) References in these Regulations to Bermuda include Bermuda waters.

### Application

3 (1) These Regulations apply to any ship and its crew calling at a port or anchorage in Bermuda to engage in a ship-port interface.

(2) Except for regulation 25, these Regulations do not apply to—

(a) a Bermuda ship;

(b) a fishing vessel;

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- (c) a warship;
  - (d) a naval auxiliary;
  - (e) a wooden ship of primitive build;
  - (f) a government ship used for non-commercial purposes; and
  - (g) a pleasure yacht not engaged in trade.
- (3) An inspector must, when exercising functions in respect of a ship below 500 gross tonnage—
- (a) have regard to IMO Procedures for Port State Control Chapter 1.6;
  - (b) to the extent a Convention applies to the ship, apply the requirements of that Convention; and
  - (c) to the extent a Convention does not apply to the ship, take such action as may be necessary to ensure that the ship is not hazardous to safety, health or the environment.
- (4) An inspection in Bermuda of a ship, while not in a port, is considered an inspection, for the purposes of these Regulations.
- (5) Where—
- (a) a ship is detained under a Convention enactment; or
  - (b) the master of such a ship is served with a detention notice under such enactment,

section 242 of the Act (enforcing detention of a ship) applies in relation to the ship as if any reference to proceeding to sea were a reference to proceeding contrary to the detention notice and references to sending or taking to sea were construed accordingly.

### Inspection commitment

- 4 (1) The Minister will in each calendar year ensure the carrying out of inspections on 15 per cent of the total number of eligible vessels visiting Bermuda, which are subject to these Regulations and the Memorandum of Understanding for port State control in the Caribbean Region (Caribbean MOU).
- (2) A record of inspections conducted in Bermuda will be maintained by the Authority.
- (3) An inspection is—
- (a) an initial inspection;
  - (b) a more detailed inspection; or
  - (c) an expanded inspection.

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### Initial inspections and more detailed inspections

5 (1) Subject to paragraph (2), in carrying out an inspection of a ship, the inspector must as a minimum, carry out an initial inspection.

(2) If—

- (a) after an initial inspection has been carried out in any IMO member state, deficiencies to be rectified in the ship's next port of call have been recorded in a port state inspection database; and
- (b) that next port of call is in Bermuda,

the inspector must, if carrying out an inspection of that ship, as a minimum, comply with the requirements of IMO Resolution A. 1119(30) and verify that outstanding deficiencies have been rectified.

(3) A more detailed inspection must be carried out when there are clear grounds for believing, after an initial inspection, that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention.

(4) For the purposes of paragraph (3) and regulation 6(3), clear grounds exist when the inspector finds evidence which in the inspector's professional judgement, warrants a more detailed inspection of the ship, its equipment or its crew as set out in Chapter 2.4 of IMO Resolution A. 1119(30).

### Expanded inspection of certain ships

6 (1) Ships which may be eligible for expanded inspections are—

- (a) ships with a high-risk profile;
- (b) passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years; and
- (c) ships with a high-risk profile and include passenger ships, oil tankers, gas or chemical tankers or bulk carriers, older than 12 years.

(2) If such a ship is eligible for an expanded inspection and is to call at a port or anchorage in Bermuda, its owner or master must—

- (a) notify the Minister of that intention;
- (b) include in the notification, information required for a ship requesting an expanded inspection;
- (c) use electronic means whenever possible, to make that notification;
- (d) make that notification—
  - (i) at least three days before the expected time of arrival at the port or anchorage; or
  - (ii) if the voyage to the port or anchorage is expected to take less than three days, before leaving the previous port or anchorage.

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(3) An expanded inspection may include a more detailed inspection whenever there are clear grounds for believing that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention as described in regulation 5(4).

(4) The ship's owner or master must ensure that sufficient time is available in the operating schedule to allow the expanded inspection to be carried out.

(5) Without prejudice to control measures required for security purposes, the ship must not leave the port or anchorage until the inspection is completed.

(6) On receipt of the notification by the Minister, if an expanded inspection of the ship will not be carried out, an inspector must notify the ship's master or owner of that.

### Report of inspection to master

7 On completion of an initial inspection, a more detailed inspection or an expanded inspection, the inspector must draw up a report in accordance with Chapter 4.1 of the IMO Resolution A. 1119(30) and must provide the ship's master with a copy of the report.

### Professional profile of inspectors

8 (1) Subject to paragraph (2), inspections under these Regulations must be carried out by inspectors qualified and trained as per Chapters 1.8 and 1.9 of IMO Resolution A 1119(30) and employed by the Authority.

(2) Where an inspector with the required professional expertise cannot be provided by the Minister, the inspector may be assisted by any person with the required professional expertise.

(3) An inspector and any person assisting an inspector must have no commercial interest either in the port of inspection or in the ships inspected, nor must the inspectors be employed by, or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates or which carry out surveys necessary for the issue of those certificates, to ships.

### Rectification and detention

9 (1) A ship's owner must satisfy the Minister that any deficiencies which are confirmed or revealed by an initial inspection, more detailed inspection or expanded inspection, are or will be rectified in accordance with the Conventions.

(2) Where such deficiencies are clearly hazardous to safety, health or the environment, the inspector must detain the ship, or require the stoppage of the operation in the course of which the deficiencies have been revealed, using powers of detention in Convention enactments as appropriate, or issuing a prohibition notice under section 223 of the Act, as the case may be.

(3) A detention notice issued in the circumstances described in paragraph (2) may—

- (a) include a direction that a ship must remain in a particular place, or must move to a particular anchorage or berth; and

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(b) specify circumstances when the master of the ship may move that ship from a specified place, for reasons of safety or prevention of pollution.

(4) Measures imposed by an inspector in the circumstances described in paragraph (2) must not be lifted until the Minister has established that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

(5) Without prejudice to any other requirement in the Convention enactments, when exercising professional judgement as to whether or not a ship should be detained, the inspector must apply the criteria set out in Chapter 3.5 of the IMO procedures for port State control.

(6) A ship may be detained if it is not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Convention requirements.

(7) If the deficiency mentioned in paragraph (6) cannot readily be rectified in the port of detention, the inspector may either allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it is capable of being rectified and is to be so rectified, or require that the deficiency be rectified within a period of 30 days.

(8) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the inspector may, in addition to detaining the ship, suspend the inspection of that ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(9) If a ship is detained following an initial inspection, a more detailed inspection or an expanded inspection, the Minister must immediately inform, in writing—

- (a) the ship's flag administration;
- (b) the Consul of the State of the flag administration; or
- (c) the nearest diplomatic representative of the State of the flag administration.

(10) The written information referred to in paragraph (9) must set out all the circumstances relating to the decision to detain the ship and must include the report of inspection.

(11) Where paragraph (9) applies, the Minister must also notify all relevant—

- (a) nominated surveyors; or
- (b) recognised organisations;

responsible for the issue of classification certificates or statutory certificates.

(12) These Regulations do not prejudice the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

(13) When carrying out an inspection under these Regulations, the inspector must make all possible efforts to avoid a ship being unduly detained or delayed.

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(14) The risk of port congestion must not be a consideration in a decision to detain a ship or to release a ship from detention.

### Right of appeal and compensation

10 (1) Regulations 15 and 16 apply in relation to the exercise of the power of detention in any Convention enactment, except the Merchant Shipping Act 2002 and the Merchant Shipping (Survey and Certification) Regulations 2019.

(2) Section 104 of the Act (references of detention notices to arbitration) applies to a detention notice under section 104 of the Act, as if it were modified as follows—

- (a) the references to “relevant inspector” were to a person making an inspection under these Regulations; and
- (b) the following words were omitted—
  - (i) in subsection (1), “in pursuance of section 103(4)(b)”;
  - (ii) in subsection (2), “unless, on the application of the person requiring the reference, the arbitrator so directs”;
  - (iii) in subsection (3), “to whether the ship was or was not a dangerously unsafe ship”; and
  - (iv) in subsection (5), “as a dangerously unsafe ship”.

(3) Section 105 of the Act (compensation in connection with invalid detention of ship) applies in relation to a ship to which these Regulations apply, as if for subsection (1), there were substituted—

“(1) If on a reference under section 104 relating to a detention notice issued in relation to a ship, the owner of the ship shows to the satisfaction of the arbitrator that—

- (a) any matter did not constitute a valid basis for the relevant inspector’s opinion; and
- (b) there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may award the owner, such compensation in respect of any loss suffered by him in consequence of the detention of the ship or the service of the refusal of access notice, as the arbitrator thinks fit.”.

(4) In the operation of sections 225 and 226 of the Act, as applied by regulation 28 of the Merchant Shipping (Survey and Certification) Regulations 2019, as those sections apply in relation to a detention notice or order served under that regulation, on the master of a ship which is not a Bermuda ship—

- (a) notwithstanding paragraph (2)(d) of that regulation, the giving of a notice under section 225 (as applied by those Regulations) does not operate to suspend the operation of the detention notice or order; and

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- (b) on a reference under section 225 (as applied by those Regulations) the burden of satisfying the arbitrator as to the matters specified in section 225(1)(a) and (b), lies with the person on whom the notice was served.

### Arbitration

11 (1) Any question as to whether a matter falling within paragraph (2), constituted a valid basis for the inspector's opinion must, if the master or owner of the ship so requires, by a notice given to the inspector within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties, for that question to be decided by the arbitrator.

(2) A matter falls within this paragraph if it is specified in relation to a ship in a detention notice in pursuance of a power of detention or refusal of access to which this regulation applies in connection with any opinion formed by the inspector.

(3) Where a notice is given by the master or owner of the ship in accordance with paragraph (1), the giving of the notice does not suspend the operation of the detention notice.

(4) The arbitrator must have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether the ship was or was not liable to be detained.

(5) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, the arbitrator must—

- (a) cancel the detention notice, as the case may be; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(6) In any case other than one described in paragraph (5), the arbitrator must affirm the detention notice in its original form.

(7) The arbitrator must include in his decision a finding whether there was or was not a valid basis for the detention of the ship.

(8) A person is not qualified for appointment as an arbitrator under this regulation unless he is—

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within paragraph (9); or
- (d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

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(9) A person falls within this paragraph if that person is qualified to be appointed to a high judicial office in Bermuda.

(10) In connection with functions under this regulation, an arbitrator has the powers conferred on an inspector by section 220 of the Act.

### Compensation for unjustified detention

12 (1) If on a reference under regulation 11 relating to a detention notice, the arbitrator decides that the owner has proved—

- (a) that the matter complained of did not constitute a valid basis for the inspector's opinion; and
- (b) that there were no reasonable grounds for the issue of the detention notice, the arbitrator must award the owner of the ship such compensation in respect of any loss suffered in consequence of, or as the case may be, the detention of the ship, as the arbitrator thinks fit.

(2) Any compensation awarded under this regulation is payable by the Minister.

### Power to permit detained ship to proceed to repair yard

13 (1) Where deficiencies referred to in regulation 9(1) cannot be rectified in the port of inspection, an inspector may allow the ship to proceed without delay to the appropriate repair yard nearest to the port of detention, as chosen by the master and authorities concerned, where follow-up action can be taken, provided the conditions determined by the competent authority of the flag administration and agreed to by the inspector, are complied with.

(2) Such conditions must ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

### Duty of pilots and port authorities to report anomalies

14 (1) This regulation applies to a pilot falling within paragraph (2), who is—

- (a) engaged in the berthing or unberthing of a ship to which these Regulations apply, in Bermuda; or
- (b) engaged on such a ship—
  - (i) bound for a port in Bermuda; or
  - (ii) in transit through Bermuda waters.

(2) A pilot falls within this paragraph if—

- (a) the pilot is authorised under section 71 of the Marine Board Act 1962; or
- (b) the pilot, boards the ship in Bermuda.

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(3) If a pilot learns, in the course of their normal duties, that there are apparent anomalies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment, the pilot shall immediately inform—

- (a) if the pilot falls within paragraph (2)(a), the port authority which authorised the pilot; or
- (b) in any other case—
  - (i) the Minister; or
  - (ii) the competent authority of a coastal IMO Member State.

(4) If a port authority—

- (a) receives information from a pilot in accordance with paragraph (3)(a); or
- (b) learns, in the course of its normal duties, that a ship within its port has apparent anomalies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment,

that authority shall immediately inform the Minister.

(5) The information provided in accordance with paragraph (3) or (4) must be in electronic format whenever possible and must include—

- (a) the ship's name, IMO number and call sign;
- (b) the flag under which the ship is sailing;
- (c) the previous port of call;
- (d) the port of destination; and
- (e) a description of the apparent anomalies.

### Complaints

15 (1) If a complaint relating to a ship is submitted to the Minister, the Minister must make an assessment of it as quickly as possible to determine whether it is justified.

(2) If the complaint is determined to be justified, the Minister must—

- (a) inform the complainant of that conclusion and of any follow-up action taken with regard to the complaint;
- (b) ensure that anyone directly concerned about that complaint can make their views known;
- (c) take such action as the Minister considers necessary; and
- (d) inform the administration of the ship's flag State, and the International Labour Organization if appropriate, of the complaint and action taken.

(3) If the complaint is determined not to be justified, the Minister must inform the complainant, of the reasons for this conclusion.

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(4) The identity of the complainant must not be revealed to the master or owner of the ship concerned, by the Minister or by an inspector.

(5) An inspector interviewing any members of the crew of the ship, concerning the complaint must—

- (a) ensure confidentiality during such interviews; and
- (b) report on such interviews, to the Minister.

### Costs

16 (1) All costs relating to any inspection for the purposes of these Regulations, are recoverable from the owner or their representative in Bermuda.

(2) If a ship is detained pursuant to a Convention enactment, for deficiencies in relation to the requirements of a Convention warranting the detention of the ship, or to regulation 9(6)—

- (a) all costs of inspections which confirm or reveal—
  - (i) deficiencies in relation to the requirements of a Convention warranting the detention of the ship; or
  - (ii) that the ship is not equipped with a functioning voyage data recorder system when its use is compulsory; and
- (b) all costs relating to the detention in port or anchorage,

are recoverable from the owner or their representative in Bermuda.

(3) Any detention, made pursuant to these Regulations or a Convention enactment, for those deficiencies, must not be lifted until any fees payable under the Merchant Shipping (Fees) Regulations 2012 in respect of an inspection leading to it or arising from it and any other costs payable under paragraphs (1) and (2) have been paid, or the person to whom they are due has provided sufficient security for them.

### Offences

17 (1) Subject to regulation 13, if there is any contravention of a direction made pursuant to regulation 9(3) in respect of a ship, the owner, as well as the master, each commit an offence and is liable on summary conviction, to a fine not exceeding \$10,000 or on conviction on indictment, to imprisonment not exceeding two years, or an unlimited fine, or both.

(2) Where a ship—

- (a) is permitted to leave a port pursuant to regulation 13(1) but fails to proceed to the repair yard specified; or
- (b) is a ship to which regulation 9(7) applies and which, as applicable—
  - (i) fails to proceed to the repair yard specified; or

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- (ii) fails to comply with the requirement that the deficiency be rectified within 30 days,

the owner, as well as the master, each commit an offence, and is liable on summary conviction, to a fine not exceeding \$10,000 or on conviction on indictment, to imprisonment not exceeding two years, or an unlimited fine, or both.

- (3) Where a ship—

- (a) fails to give notification, in breach of regulation 6(2); or
- (b) leaves a port or anchorage, in breach of regulation 6(5),

the owner and master each commit an offence and is liable on summary conviction, to a fine not exceeding \$2,000.

(4) A person who obstructs an inspector or any person assisting the inspector, commits an offence and is liable on summary conviction, to a fine not exceeding \$5,000.

(5) A pilot who contravenes regulation 14(3), commits an offence and is liable on summary conviction, to a fine not exceeding \$2,000.

(6) A port authority which contravenes regulation 14(4) commits an offence and is liable on summary conviction, to a fine not exceeding \$2,000.

(7) It is a defence for a person charged under this regulation, to prove that he took all reasonable steps to avoid committing the offence.

### Rights of appeal and compensation in respect of detained ships

18 (1) Subject to paragraph (2), regulations 11 and 12 apply in relation to the exercise of the power of detention contained in—

- (a) the Merchant Shipping (Prevention of Oil Pollution) Regulations 2010; and
- (b) safety Regulations made or treated as made under section 93 of the Merchant Shipping Act 2002,

as they apply in relation to the exercise of a power of detention, in accordance with these Regulations.

(2) Paragraph (1) does not apply in relation to a ship which is not a Bermuda ship in relation to any Merchant Shipping (Standards of Training, Certification and Watchkeeping) Regulations 2019, or any Regulations revoking and re-enacting those Regulations.

### Familiarity of crew with operational procedures

19 (1) Ships, when in port in Bermuda, and in the case of Bermuda ships, when elsewhere, are subject to inspection for the purpose of checking that the master and crew are familiar with essential procedures and operations relating to the safety of the ship.

(2) Section 219 of the Act applies in relation to a ship in a port in Bermuda as if, in subsection (1), after “articles on board”, there were inserted “the familiarity of the crew with essential procedures and operations relating to the safety of the ship”.

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Revocation

20 The Merchant Shipping (Port State Control) Regulations 2019 are revoked.

Made this 22nd day of December 2020

Minister of Transport

[Operative Date: 29 December 2020]