



BERMUDA

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING
REQUIREMENTS) REGULATIONS 2020

BR 150 / 2020

TABLE OF CONTENTS

PART 1
GENERAL

- 1 Citation
- 2 Interpretation
- 3 Competent authority
- 4 Application
- 5 Exemption from the requirements of regulation 6 or 13

PART 2
SHIP REPORTING AND MONITORING

- 6 Notification prior to entry into port
- 7 Vessel traffic services within territorial seas
- 8 Area to be avoided
- 9 Vessel traffic services outside territorial seas
- 10 Installation of automatic identification systems
- 11 Installation of automatic identification systems on fishing vessels
- 12 Operation of automatic identification systems

PART 3
NOTIFICATION OF DANGEROUS OR POLLUTING GOODS

- 13 Notification by ships carrying dangerous or polluting goods

PART 4
INCIDENTS AND ACCIDENTS AT SEA

- 14 Reporting of incidents and accidents at sea
- 15 Measures to be taken in the event of exceptionally bad weather or sea conditions

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

16 Obligations of shipowners in relation to accidents and incidents

PART 5 MISCELLANEOUS PROVISIONS

17 Confidentiality of information
18 Offences
19 Defences
20 Offences due to the fault of another person
21 Offences by corporate bodies
22 Detention of ships

The Minister responsible for Maritime Administration, in exercise of the powers conferred by sections 93 and 94 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 (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2020.

Interpretation

2 (1) In these Regulations—

“agent” means a person mandated or authorised to supply information on behalf of the owner of a ship;

“Bermuda Shipping and Maritime Authority” (BSMA) means the Bermuda Shipping and Maritime Authority established under section 3 of the Bermuda Shipping and Maritime Authority Act 2016;

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

“BMOC” means the Bermuda Maritime Operations Centre, a section of the Department of Marine and Ports Services, a department of the Bermuda Government;

“domestic voyage” means a voyage from a port in Bermuda to the same or another port in Bermuda;

“Exclusive Economic Zone” (EEZ) means the EEZ as established in paragraph 1 of the Proclamation Establishing an Exclusive Economic Zone for Bermuda 1996;

“fishing vessel” means any vessel used for sport and recreation or commercial fishing;

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

- “IBC Code” means the IMO International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk;
- “IGC Code” means the IMO International Code for the Construction and Equipment of Ships Carrying Liquified Gases in Bulk;
- “IMDG Code” means the IMO International Maritime Dangerous Goods Code;
- “IMO” means the International Maritime Organization;
- “IMO guidelines” means the Guidelines for Vessel Traffic Services contained in IMO Resolution A.857(20) adopted on 27th November 1997;
- “IMSBC Code” means the International Maritime Solid Bulk Cargoes (IMSBC) Code;
- “inshore waters” means the coastal marine areas and waterways defined under regulation 2 of the Marine Board (Safety) Regulations 1993;
- “ISM Code” means the International Safety Management (ISM) Code for the Safe Operation of Ships and for Pollution Prevention;
- “MARPOL Convention” means the International Convention for the Prevention of Pollution from Ships 1973 and its 1978 Protocol;
- “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-Bermuda ship” means a ship which is not a Bermuda ship;
- “Notice to Mariners” means a Notice to Mariners described as such and issued by the BMOC;
- “owner”, as regards a ship, includes any organisation or person such as the manager or the bareboat charterer who has assumed responsibility for the operation of the ship from the owner of the ship, and who on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the ISM Code;
- “port operator” means an operator of the port;
- “relevant requirements” means the requirements of paragraph 2.4.5 of Regulation 19 in Chapter V of the Annex to the SOLAS Convention;
- “scheduled service” means a series of ship crossings operated so as to serve traffic between the same or two or more ports, either according to a published timetable, or with crossing, so regular or frequent that they constitute a recognisable systematic series and it is intended that the service will be operated for a minimum of one month;
- “ship” means a sea-going vessel or craft;
- “SOLAS Convention” means the International Convention for the Safety of Life at Sea, 1974 as amended in accordance with its Protocol of 1988;

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

“traditional ship” means an historical ship or a replica of an historical ship operated according to traditional principles of seamanship and technique, and for the purposes of this definition, a replica of an historical ship includes such replica designed to encourage and promote traditional skills and seamanship;

“vessel traffic service” or “(VTS)” means a service—

- (a) which is designed to improve the safety and efficiency of vessel traffic and to protect the environment and which is capable of interacting with that traffic and responding to traffic situations developing in the VTS area; and
- (b) which, in relation to a service operated by Bermuda, is a service provided from within Bermuda and has been designated by the Minister.

(2) For the purposes of these Regulations—

(a) “accident” means any accident or occurrence affecting the safety of a ship, including, any occurrence whereby a ship—

- (i) is in collision;
- (ii) grounds;
- (iii) is damaged;
- (iv) malfunctions or breaks down;
- (v) suffers the flooding or shifting of cargo; or
- (vi) suffers a defective hull or structural failure; and

(b) “incident” means any incident which affects or could affect the safety of a ship or other ships, including, a failure or defect which affects or is likely to affect—

- (i) the manoeuvrability or seaworthiness;
- (ii) the propulsion system;
- (iii) the steering gear;
- (iv) the electrical generating system;
- (v) the navigation equipment; or
- (vi) the communications system, of that ship.

(3) For the purposes of these Regulations, “dangerous goods” means—

- (a) goods classified as dangerous in the IMDG Code;
- (b) dangerous liquid substances listed in Chapter 17 of the IBC Code;
- (c) liquefied gases listed in Chapter 19 of the IGC Code;
- (d) solids referred to in Appendix B of the IMSBC Code; and

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

- (e) goods in respect of whose carriage, appropriate preconditions have been imposed in accordance with paragraph 1.1.3 of the IBC Code or paragraph 1.1.6 of the IGC Code.
- (4) For the purposes of these Regulations, “polluting goods” means—
 - (a) any oil, oily mixture, oil fuel or crude oil, as defined in Annex I to the MARPOL Convention;
 - (b) any noxious liquid substance, as defined in Annex II to the MARPOL Convention; and
 - (c) any marine pollutant identified in the IMDG Code.
- (5) For the purposes of these Regulations—

“Bermuda ship” means a ship which—

 - (a) is registered in Bermuda; or
 - (b) is not registered under the law of any country but is wholly owned by persons each of whom is—
 - (i) a Bermuda Citizen or a British Overseas Territories citizen; or
 - (ii) a body corporate which is established under the Merchant Shipping (Registration of Ships) Regulations 2003.
- (6) Any reference in these Regulations to a particular Merchant Shipping Notice includes a reference to any such document amending or replacing that Notice, which is considered by the Minister to be relevant from time to time.
- (7) Any reference in these Regulations to—
 - (a) the IMSBC Code;
 - (b) the IBC Code;
 - (c) the IGC Code;
 - (d) the IMDG Code; or
 - (e) the ISM Code,

includes a reference to any document amending that publication, which is considered by the Minister to be relevant from time to time and is specified in a Merchant Shipping Notice.

Competent authority

3 For the purposes of these Regulations, as regards Bermuda, the competent authority shall be the Bermuda Maritime Operations Centre (BMOC).

Application

- 4 (1) Subject to paragraph (2), these Regulations, apply to—
- (a) all Bermuda ships wherever they may be; and

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

- (b) all non-Bermuda ships whilst they are in Bermuda waters.
- (2) Subject to regulation 5, these Regulations do not apply to—
 - (a) ships of less than 300 gross tonnage, unless otherwise stated in regulation 10 or 11; and
 - (b) warships, naval auxiliaries and other ships owned or operated by the Government, which are used for non-commercial public service.

Exemption from the requirements of regulation 6 or 13

5 (1) The Minister may exempt the owner, agent and master of a specified ship on a scheduled service, from the requirements of regulation 6(2) or 13(2) in relation to a voyage that is scheduled to last up to 12 hours and is part of a scheduled service between ports within Bermuda.

(2) Any such exemption has effect only if granted in writing and the person who operates the scheduled service—

- (a) maintains, and keeps up to date, a list of the ships engaged on that scheduled service; and
- (b) has sent that list, and details of all updates, to the BMOC.

(3) Where an exemption has been granted under paragraph (1), the master of a specified ship shall notify BMOC of any deviation of the scheduled service.

(4) For the purposes of regulation 13, in relation to a ship, bunkers for use on board that ship shall not be regarded as dangerous or polluting goods.

(5) Regulation 14 applies to—

- (a) fishing vessels;
- (b) traditional ships;
- (c) recreational craft having a length of more than 24 metres;
- (d) all commercial Island boats; and
- (e) in relation to a ship, bunkers of less than 5,000 tonnes for use on board that ship.

(6) In this regulation, “length” means either—

- (a) 96% of the total length of the vessel, ship or craft on a waterline at 85% of the least moulded depth measured from the keel line; or
- (b) the length from the foreside of the stem to the axis of the rudder stock on that waterline,

whichever is the greater, and where the vessel, ship or craft in question is designed with rake of keel, the waterline on which the lengths referred to in sub-paragraphs (a) and (b) are measured shall be parallel to the designed waterline.

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

PART 2

SHIP REPORTING AND MONITORING

Notification prior to entry into port

- 6 (1) This regulation applies to—
- (a) a Bermuda ship bound for a port located in Bermuda; and
 - (b) a non-Bermuda ship bound for a port located in Bermuda.
- (2) The owner, agent or master of a ship referred to in paragraph (1) shall notify the BMOC, of the information specified in the BMOC Notice to Mariners.
- (3) Where information has been given in accordance with paragraph (2), the master of the ship in question shall notify immediately, the BMOC, of any changes to that information.
- (4) A port operator in Bermuda, to whom information has been given pursuant to this regulation shall, on receipt of that information, pass it onto the BMOC and wherever practicable, the notification by the port operator shall be made electronically.
- (5) In the case of a Bermuda ship that originates from a Bermuda port and proceeds beyond inshore waters and returns to a Bermuda port on a single voyage, the need to report re-entry into territorial waters is not required, provided she is fitted with AIS equipment per regulation 12.

Vessel traffic services within territorial seas

- 7 (1) The master of a Bermuda ship shall ensure that, when the ship enters the Bermuda area in respect of which a VTS is operated in accordance with the IMO guidelines, the ship shall participate in, and comply with the rules of that VTS.
- (2) The master of a non-Bermuda ship shall ensure that, when the ship enters the Bermuda area in respect of which a VTS is operated in accordance with the IMO guidelines, the ship shall participate in, and comply with, the rules of that VTS.
- (3) In this regulation—
- “nautical chart” and “nautical publication” have the same meaning as they have in Regulation 2 in Chapter V of the Annex to the SOLAS Convention;
 - “relevant area” means an area within the territorial sea of Bermuda;
 - “rules”, in relation to a VTS, means the most recent rules which have been—
 - (a) published in a nautical chart or a nautical publication; or
 - (b) promulgated so that masters of ships are reasonably aware of them.

Area to be avoided

- 8 (1) All vessels entering the “Area to be Avoided” promulgated in Notice to Mariners No. 2959 (P)85 effective 1 December 1985 and shown on Bermuda Charts 260 and 334 are required to communicate with the Bermuda Maritime Operations Centre (call sign

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

“Bermuda Radio/ZBR”) on channel 16, giving the information contained in BMOB Notice to Mariners No. 01.

(2) Mariners are reminded of the extremely hazardous reef line surrounding Bermuda which extends 8 nautical miles to the North and North West and the need to navigate with extreme caution when approaching the island.

(3) The only approach to the island is from the South East, preferably in daylight.

Vessel traffic services outside territorial seas

9 The master of a Bermuda ship shall ensure that, when the ship enters a VTS area outside Bermuda and that VTS is operated in accordance with IMO guidelines, the ship shall participate in, and comply with, the rules of that VTS.

Installation of automatic identification systems

10 (1) This regulation applies to—

- (a) a cargo craft;
- (b) tug engaged on commercial service;
- (c) a cargo ship, other than a cargo craft, of 300 gross tonnage or more but less than 500 gross tonnage, on a domestic voyage;
- (d) an Island boat as defined in section 2(1) of the Marine Board Act 1962 or a passenger ship which is on a domestic voyage in inshore waters carrying more than 12 passengers and all Island boats proceeding beyond inshore waters;
- (e) a tanker on a domestic voyage; and
- (f) all vessels operating beyond the territorial waters of Bermuda on a domestic voyage, as from 1 January 2021.

(2) A ship referred to in paragraph (1), shall be fitted with an automatic identification system.

(3) In this regulation—

“cargo craft” means a high-speed craft, other than a craft carrying more than 12 passengers, which is capable of maintaining the main functions and safety systems of unaffected spaces after damage in any one compartment on board;

“high speed craft” means a craft capable of a maximum speed in metres per second (m/s) equal to or exceeding: $3.7\#^{0.1667}$ where # = volume of displacement corresponding to the design waterline (m³), excluding craft, the hull of which is supported clear above the water surface in non-displacement mode by aerodynamic forces generated by ground effect;

“relevant requirements” means the requirements of paragraph 2.4.5 of Regulation 19 in Chapter V of the Annex to the SOLAS Convention.

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

Installation of automatic identification systems on fishing vessels

- 11 (1) This regulation applies to any fishing vessel—
- (a) operating in Bermuda territorial waters or the EEZ;
 - (b) landing catch at a port situated in Bermuda; or
 - (c) that is registered in Bermuda.

(2) A fishing vessel referred to in paragraph (1) shall be fitted with either a Class A or B automatic identification system that is correctly programmed to the satisfaction of the BMOC.

Operation of automatic identification systems

12 (1) Where a ship is fitted with an automatic identification system pursuant to regulation 10 or 11, the master shall comply with paragraph (2).

(2) The master shall ensure that the system is maintained in operation at all times, except where the master considers it necessary in the interest of the safety or security of his vessel.

(3) The master shall ensure that the system is maintained in operation at all times, except where international agreements, rules or standards provide for the protection of navigational information.

(4) In cases where the automatic identification system is not operational when in Bermuda waters or in the EEZ, as required under these Regulations, the Master shall inform the BMOC by the most direct means available.

PART 3

NOTIFICATION OF DANGEROUS OR POLLUTING GOODS

Notification by ships carrying dangerous or polluting goods

- 13 (1) This regulation applies to ships, regardless of their size, carrying—
- (a) dangerous goods; or
 - (b) polluting goods.

(2) Subject to regulation 5, before a ship departs from a port in Bermuda, the owner, agent or master of that ship shall notify the BMOC, of the information specified in a BMOC Notice to Mariners.

(3) Subject to paragraph (7) and regulation 6, where a ship is coming from a port which is not located in Bermuda, and is bound for a port in Bermuda or an anchorage located in Bermuda waters, the owner, master or agent of that ship shall notify the BMOC prior to departure, of the information specified in a BMOC Notice to Mariners, in accordance with that Notice, by the time specified in regulation 6.

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

(4) Whenever practicable, the information referred to in paragraphs (2) and (3) shall be given to the BMOC by electronic means using the procedures specified in a BMOC Notice to Mariners.

(5) When required to do so by the BMOC, the owner, agent or master of a ship shall notify—

- (a) the authority of the port of departure in question, of the information referred to in paragraph (2); and
- (b) the authority of the port of destination in question, of the information referred to in paragraph (2).

(6) When a port operator receives information pursuant to paragraph (5), that port operator shall—

- (a) retain that information for as long as the information may be required for use in the event of an incident or accident at sea; and
- (b) provide that information at any time, by electronic means to the BMOC immediately upon request.

(7) Where information has been given in accordance with this regulation, the master of the ship in question shall notify immediately, the person to whom that information was given, of any changes to that information.

PART 4

INCIDENTS AND ACCIDENTS AT SEA

Reporting of incidents and accidents at sea

14 (1) When a ship is involved in an accident, an incident, or an event likely to result in the pollution of the EEZ or Bermuda waters, the master of that ship shall immediately send to the BMOC by the quickest means possible, a report containing the information specified in paragraph (3).

(2) If a slick of polluting goods or containers or packages drifting at sea are seen from a ship in controlled waters, the master of that ship shall immediately send to the BMOC by the quickest means possible—

- (a) details of the sighting;
- (b) the information specified in paragraph (3)(a) and (b); and
- (c) any other relevant information referred to in IMO Resolution A.851(20).

(3) The information referred to in paragraph (1) shall comprise—

- (a) the identity of the ship;
- (b) the position of the ship;
- (c) the last port from which the ship departed;

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

- (d) the next port of call;
- (e) the number of people aboard the ship;
- (f) the date on which, and the time at which, the accident, the incident or the polluting event, occurred;
- (g) details of the accident, the incident or the polluting event; and
- (h) the name of the body or person from whom information regarding any dangerous goods or polluting goods on board the ship may be obtained, together with the necessary information to enable that person or body, to be contacted.

(4) The master shall also ensure that a report referred to in paragraph (1) shall comply as to form and content, with the standard reporting requirements.

(5) When a Bermuda ship is involved in—

- (a) an accident;
- (b) an incident; or
- (c) a pollution event,

outside controlled waters, the master of that ship shall report without delay, the particulars of the accident, incident or pollution event, as the case may be, to the fullest extent possible, together with the information specified in paragraph (9) in accordance with paragraph (6).

(6) A report referred to in paragraph (5)—

- (a) shall be sent—
 - (i) where the accident, incident or pollution event, is a threat to the coastline, or a related interest of Bermuda, to the BSMA or BMOC; and
 - (ii) where the accident, incident or pollution event, is a threat to the coastline, or to a related interest of another State, to the State in question; and
- (b) as to form and content, shall comply with the standard reporting requirements.

(7) When a ship is involved in a discharge, or a probable discharge, of dangerous packaged goods, the master of that ship shall report without delay, the particulars of the discharge or probable discharge to the fullest extent possible, together with the information specified in paragraph (9) in accordance with paragraph (8).

(8) A report referred to in paragraph (7)—

- (a) shall be sent—
 - (i) where the discharge is a threat to the coastline, or to a related interest of Bermuda, to the BMOC; and

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

- (ii) where the discharge is a threat to the coastline, or to a related interest of another State, to the State in question; and
 - (b) shall as to form and content, comply with the standard reporting requirements.
- (9) The information referred to in paragraphs (5) and (7) shall comprise—
 - (a) the identity of the ship;
 - (b) the time and location of the incident;
 - (c) the quantity and type of dangerous goods involved; and
 - (d) the details of assistance and salvage measures.
- (10) In this regulation—
 - “controlled waters” means the areas of sea specified by the Bermuda (Territorial Sea) Order in Council 1988 as areas within which the jurisdiction and rights of Bermuda are exercisable in accordance with Part XII of the United Nations Convention on the Law of the Sea, for the protection and preservation of the marine environment;
 - “dangerous packaged goods” means dangerous goods in packaged form including those in freight containers, portable tanks, road and rail vehicles and shipborne barges;
 - “pollution event” means a discharge, or the threat of a discharge of polluting goods, into the sea;
 - “standard reporting requirements” means the requirements stated in—
 - (a) part 2 (Standard Reporting Format and Procedures); or
 - (b) sections 3.1, 3.2 and 3.3 of part 3 (Guidelines for Detailed Reporting Requirements),of the Appendix to the Annex to Resolution A.851(20).

Measures to be taken in the event of exceptionally bad weather or sea conditions

- 15 (1) This regulation applies whenever, in the event of exceptionally bad weather or sea conditions, the Minister is of the opinion, based on information provided by the Bermuda Weather Service, that there is—
- (a) a serious threat of pollution in Bermuda waters or the territorial sea of any other State; or
 - (b) a risk to human life.
- (2) Whenever possible, the Minister shall provide to the master of every ship which intends to enter or leave a port in a relevant area, full details of—
- (a) the weather conditions and the sea state; and

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

(b) the danger such weather conditions and sea state may cause to—

- (i) the ship; or
- (ii) any people or cargo on board the ship.

(3) Without prejudice to any measures which may be taken to give assistance to ships in distress, the Minister may give a recommendation described in paragraph (4), to the master of a ship in, or about to enter, a relevant area.

(4) The recommendation referred to in paragraph (3), is a recommendation that the ship—

- (a) should enter or leave a port in a relevant area;
- (b) should not enter or leave a port in a relevant area;
- (c) should not be bunkered;
- (d) should only be bunkered subject to certain conditions,

until the Minister is of the opinion that there is no longer a serious threat of pollution or a risk to human life as described in paragraph (1).

(5) If the Minister is of the opinion that a ship in a relevant area—

- (a) should not be bunkered; or
- (b) should only be bunkered subject to certain conditions,

the Minister shall inform the master of the ship, of that opinion.

(6) If the master of a ship is informed of an opinion pursuant to paragraph (5), the master shall ensure that the ship is not bunkered or that the conditions subject to which the ship should be bunkered are complied with, as the case may be.

(7) A recommendation or an opinion given pursuant to this regulation—

- (a) shall be given to the master of the ship in question by the quickest means available; and
- (b) if not given in writing, shall be confirmed in writing as soon as is practicably possible.

(8) Where the Minister gives a recommendation or an opinion pursuant to this regulation, the master of the ship in question shall inform the owner of that ship as soon as is practicably possible and by the quickest means available, of the recommendation or the opinion.

(9) If, as a result of the exercise of his professional judgement, the master decides not to act in accordance with a recommendation given pursuant to this regulation, the master shall inform the Minister, of the reasons for his decision.

(10) In this regulation—

“relevant area” means an area in Bermuda waters in respect of which exceptionally bad weather or sea conditions are forecast;

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

“professional judgement” means professional judgement as regards matters relating to safe navigation or the protection of the marine environment.

Obligations of shipowners in relation to accidents and incidents

16 (1) When the owner of a ship is informed by the master of that ship of an accident or incident at sea, in accordance with the ISM Code, that owner—

- (a) shall inform the relevant authority immediately, of the accident or incident; and
- (b) shall give such assistance as may be reasonably required by the relevant authority.

(2) In this regulation—

“coastal authority” means—

- (a) a person or body which provides a VTS;
- (b) a person or body which is responsible for a mandatory reporting system approved by the International Maritime Organization; or
- (c) a person or body which is responsible for the co-ordination of search and rescue operations at sea or the co-ordination of operations to deal with pollution at sea;

“relevant authority” means the BMOC, where the accident or incident occurs in Bermuda waters.

PART 5

MISCELLANEOUS PROVISIONS

Confidentiality of information

17 (1) Subject to paragraph (4), no authority or member of staff of an authority shall disclose any information which has been obtained by, or furnished to that authority or member of staff, as the case may be, under or for the purposes of these Regulations or use any such information, unless the disclosure or use is made with lawful justification.

(2) For the purposes of paragraph (1), a disclosure or use of information is made with lawful justification only if, and to the extent that—

- (a) the disclosure or use is made for the purposes of, and is necessary for, the performance of any obligation under these Regulations;
- (b) the disclosure or use is made with the consent of the person to whom, or to whose business, property or other assets, the information relates;
- (c) the disclosure or use is made for the purposes of any proceedings, whether criminal or civil; or

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

- (d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (3) In this regulation, “authority” means the BSMA, BMOC or a Bermuda port operator.
- (4) Paragraph (1) shall not apply in the case of information contained in an historical record.
- (5) Where records created at different dates are for administrative purposes kept together in one file or other assembly, all the records in that file or other assembly are to be treated for the purposes of this regulation, as having been created when the latest of those records was created.
- (6) For the purposes of this regulation—
 - (a) a record becomes a “historical record” at the end of the period of 30 years beginning with the year following that in which it was created; and
 - (b) “year” means a calendar year.

Offences

- 18 (1) Any contravention of regulation 6(2) or 13(2), (3), or (5), shall be an offence by the owner, agent and master of the ship in question, punishable—
- (a) on summary conviction, to a fine not exceeding \$5,000; and
 - (b) on conviction on indictment, to an unlimited fine.
- (2) Any person who, in purported compliance with regulation 6(2) or 13(2), (3), (4), or (5) makes a notification which he knows to be false in any material particular, commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding \$5,000; and
 - (b) on conviction on indictment, to an unlimited fine.
- (3) If the master of a ship fails to comply with regulation 6(4), 7(1), or (2), 9, 14 or 15(6) or (9), that master commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding \$5,000; and
 - (b) on conviction on indictment, to an unlimited fine.
- (4) If a ship does not comply with regulation 10 or 11, the owner of that ship commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding \$5,000; and
 - (b) on conviction on indictment, to an unlimited fine or to imprisonment for a term not exceeding two years or both.
- (5) If the master of a ship fails to comply with regulation 12, that master commits an offence and is liable—

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING REQUIREMENTS) REGULATIONS 2020

- (a) on summary conviction, to a fine not exceeding \$5,000; and
 - (b) on conviction on indictment, to an unlimited fine or to imprisonment for a term not exceeding two years or both.
- (6) If a port operator fails to comply with regulation 6(4) or 13(6) or (7), that port operator commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding \$5,000; and
 - (b) on conviction on indictment, to an unlimited fine.
- (7) If the owner of a ship fails to comply with regulation 16(1), that owner commits an offence and is liable—
- (a) on summary conviction, to a fine not exceeding \$10,000; and
 - (b) on conviction on indictment, to an unlimited fine.
- (8) Any person who knowingly or recklessly discloses information in contravention of regulation 17(1) commits an offence, and is liable—
- (a) on summary conviction, to a fine not exceeding \$10,000; and
 - (b) on conviction on indictment, to an unlimited fine.

Defences

19 In any proceedings for an offence under these Regulations, other than an offence under regulation 18(2) or (8), it shall be a defence for a person charged under these Regulations to prove that he took all reasonable steps to avoid the commission of the offence.

Offences due to the fault of another person

20 Where an offence under these Regulations is committed, or would have been committed but for the operation of regulation 19, by any person due to the act or default of some other person, that other person commits the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first mentioned person.

Offences by corporate bodies

21 (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—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) a person who was purporting to act in any such capacity,

he, as well as the body corporate shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND REPORTING
REQUIREMENTS) REGULATIONS 2020

(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.

Detention of ships

22 In any case where a ship does not comply with the requirements of these Regulations, the ship shall be liable to be detained and section 242 of the Act (enforcing detention of ship) shall have effect in relation to the ship as if for the words “this Act”, wherever they appear in that section, there were substituted the words “the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2020”.

Made this 22nd day of December 2020

Minister of Transport

[Operative Date: 29 December 2020]