



BERMUDA

MERCHANT SHIPPING (SAFETY OF NAVIGATION) REGULATIONS 2021

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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, in exercise of the powers conferred by sections 87, 93 and 96 of that Act, makes the following Regulations:

# MERCHANT SHIPPING (SAFETY OF NAVIGATION) REGULATIONS 2021

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## PART 1 PRELIMINARY

### Citation

1 These Regulations may be cited as the Merchant Shipping (Safety of Navigation) Regulations 2021.

### Interpretation

2 In these Regulations—

“Chapter V” means Chapter V in the Annex to the Convention (relating to safety of navigation);

“Convention” means the International Convention for the Safety of Life at Sea 1974;

“international voyage” means a voyage between—

- (a) a port in Bermuda and a port outside Bermuda; or
- (b) a port in a Convention country (other than Bermuda) and a port in any other country or territory (whether a Convention country or not) which is outside Bermuda,

and for the purposes of sub-paragraph (b), “Convention country” means a country or territory which is either a country, the Government of which is party to the Convention or a territory to which the Convention extends whether or not it is subject to the amendments to, or reservations in respect of the Convention.

### Application

3 (1) Subject to paragraphs (2) and (3), these Regulations apply to—

- (a) Bermuda registered ships, wherever they may be; and
- (b) non-Bermuda registered ships while they are within Bermuda waters.

(2) These Regulations do not apply to—

- (a) ships of war and naval auxiliaries;
- (b) ships owned or operated by a State and engaged only on governmental non-commercial service;
- (c) ships solely navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada; and
- (d) “Island boats” as defined in section 2 of the Marine and Ports Services Act 2021.

(3) A non-Bermuda ship flying the flag of a State which is not a party to the Convention is not subject to these Regulations if it would not have been in Bermuda waters

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but for stress of weather or any other circumstances which neither the master nor the owner or the charterer could have prevented.

(4) Where persons are on board a ship as a consequence of—

(a) the circumstances described in paragraph (3); or

(b) an obligation laid upon the master to carry shipwrecked or other persons,

those persons are not to be taken into account for the purpose of determining the application to that ship, of any provision of these Regulations.

(5) For the purposes of this regulation, “non-Bermuda ship” means any ship other than a Bermuda ship.

### Ambulatory reference

4 (1) In these Regulations, any reference to Chapter V is to be construed—

(a) as a reference to Chapter V as modified from time to time; and

(b) if Chapter V is replaced, as a reference to the replacement.

(2) For the purposes of paragraph (1), Chapter V is modified or replaced if the modification or replacement takes effect in accordance with Article VIII of the Convention.

(3) A modification or replacement of Chapter V has effect at the time such modification or replacement comes into force in accordance with Article VIII of the Convention.

## PART 2

### SAFETY OF NAVIGATION REQUIREMENTS

#### Safety of navigation requirements

5 (1) A ship to which these Regulations apply must comply with each requirement in Chapter V applicable to that ship and referred to in paragraph (2).

(2) Subject to paragraphs (3) and (4), the requirements referred to in paragraph (1) are those referred to in the following provisions in Chapter V—

(a) paragraph 3 of regulation 7 (on board plan for cooperation with search and rescue services);

(b) paragraph 7 of regulation 10 (use of ships' routeing systems);

(c) paragraphs 1 and 7 of regulation 11 (ship reporting systems);

(d) paragraphs 3 and 4 of regulation 14 (ships' manning);

(e) regulation 15 (principles relating to bridge design, design and arrangement of navigational systems and equipment and bridge procedures);

(f) paragraphs 2 and 3 of regulation 17 (electromagnetic compatibility);

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- (g) paragraphs 1 to 3 and 7 to 9 of regulation 18 (approval, surveys and performance standards of navigational systems and equipment and voyage data recorder);
  - (h) regulation 19 (carriage requirements for shipborne navigational systems and equipment), except for paragraphs 1.3, 2.2.4 and 2.4.4;
  - (i) paragraphs 4 to 7 of regulation 19-1 (long-range identification and tracking of ships);
  - (j) paragraphs 1 and 2 of regulation 20 (voyage data recorders);
  - (k) regulations 21 to 30(8);
  - (l) paragraphs 1 and 4 of regulation 31 (danger messages);
  - (m) paragraphs 1, 2, 4 and 5 of regulation 32 (information required in danger messages);
  - (n) paragraphs 1, 2 and 6 of regulation 33 (distress situations: obligations and procedures);
  - (o) regulation 34 (safe navigation and avoidance of dangerous situations);
  - (p) regulation 34-1 (master's discretion); and
  - (q) regulation 35 (misuse of distress signals).
- (3) The requirements referred to in paragraph (2) are subject to the following exceptions—
- (a) regulations 18, 19 and 20 in Chapter V do not apply to high-speed craft to which the Merchant Shipping (High Speed Craft) Regulations 2010 apply;
  - (b) in so far as they relate to systems and equipment regulated by regulations 19 and 20, paragraphs 1 to 3 and 7 to 9 of regulation 18 in Chapter V do not apply to ships below 150 gross tons engaged on any voyage;
  - (c) regulation 19 in Chapter V does not apply to—
    - (i) fishing vessels;
    - (ii) pleasure vessels below 150 gross tons engaged on any voyage, except for paragraph 2.1.7 (requirement for radar reflector); and
    - (iii) ships which are not sea-going, except for paragraphs 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.6, 2.1.7 and 2.1.8 (navigational equipment and arrangements);
  - (d) paragraph 2.2.3 of regulation 19 in Chapter V (bridge navigational watch alarm system) does not apply to ships—
    - (i) below 150 gross tons engaged on any voyage; and
    - (ii) below 500 gross tons not engaged on international voyages;

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- (e) paragraph 1 of regulation 21 in Chapter V (carriage of International Code of Signals) does not apply to ships below 150 gross tons engaged on any voyage;
- (f) paragraph 2 of regulation 21 in Chapter V (carriage of IAMSAR Manual) does not apply to—
  - (i) ships below 150 gross tons engaged on any voyage;
  - (ii) ships below 500 gross tons not engaged on international voyages; and
  - (iii) fishing vessels;
- (g) regulation 23 in Chapter V (pilot transfer arrangements) does not apply to—
  - (i) ships below 150 gross tons engaged on any voyage;
  - (ii) ships below 500 gross tons not engaged on international voyages; and
  - (iii) fishing vessels;
- (h) regulations 24 to 27 in Chapter V do not apply to—
  - (i) pleasure vessels below 150 gross tons engaged on any voyage; and
  - (ii) ships which are not sea-going; and
- (i) paragraph 1 of regulation 28 in Chapter V (requirement to keep on board record of navigational activities and incidents) does not apply to any ship below 150 gross tons engaged on any voyage.

(4) Regulations 24 to 26 in Chapter V (relating to the use of heading or track control systems, and steering gear) are subject to any special rules made by any person empowered by law for roadsteads, harbours, rivers, lakes or inland waterways connected with the high seas and navigable by sea-going vessels.

(5) In this regulation—

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

“gross tons” means gross tonnage ascertained under regulations 6 and 12(1) of the Merchant Shipping (Tonnage) Regulations 2008;

“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) any vessel which at the time it is being used is—
  - (i) in the case of a vessel wholly owned by—
    - (A) an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or

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- (B) a body corporate, used only for sport or pleasure and on which the persons on board 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; or
- (b) any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure and which, at the time 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,

where, in the case of any vessel referred to in sub-paragraph (a) or (b), no other payments are made by or on behalf of users of the vessel, other than by the owner; and in this definition "immediate family" means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the individual's spouse or civil partner; and "relative" means brother, sister, ancestor or lineal descendant;

"sea" includes any estuary or arm of the sea but does not include Bermuda waters;

"sea-going" means operating outside Bermuda waters.

### Exemptions

6 (1) Subject to paragraph (4), the Minister may exempt from any requirement of a provision in Chapter V referred to in regulation 5 (safety of navigation requirements)—

- (a) a ship which does not normally engage on international voyages but is, in exceptional circumstances, required to undertake a single international voyage;
- (b) a ship engaged on a voyage where—
  - (i) the maximum distance of the ship from the shore;
  - (ii) the length and nature of the voyage;
  - (iii) the absence of general navigational hazards; and
  - (iv) other conditions affecting safety,are such as to render compliance with those provisions unreasonable or unnecessary.

(2) Subject to paragraph (4), the Minister may exempt a ship without mechanical means of propulsion from any requirement of the following provisions in Chapter V—

- (a) regulation 15 (principles relating to bridge design, design and arrangement of navigational systems and equipment and bridge procedures);
- (b) regulation 17 (electromagnetic compatibility);

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- (c) regulation 18 (approval, surveys and performance standards of navigational systems and equipment and voyage data recorder);
- (d) regulation 19 (carriage requirements for shipborne navigational systems and equipment), except paragraph 2.1.7;
- (e) regulation 20 (voyage data recorders);
- (f) regulation 22 (navigation bridge visibility);
- (g) regulation 24 (use of heading or track or both control systems);
- (h) regulation 25 (operation of steering gear);
- (i) regulation 26 (steering gear: testing and drills);
- (j) regulation 27 (nautical charts and publications); and
- (k) regulation 28 (records of navigational activities and daily reporting).

(3) The Minister may exempt from or waive, specified requirements of the provisions in Chapter V referred to in regulation 5 where such requirements are subject to a power to—

- (a) exempt from those requirements; or
- (b) waive those requirements,

in relation to a ship or category of ship, if satisfied that the conditions prescribed by those provisions are met.

(4) An exemption under paragraph (1) or (2), or exemption or waiver under paragraph (3), may be—

- (a) granted subject to such safety requirements as the Minister thinks fit, to ensure the overall safety of the ship; and
- (b) on the giving of reasonable notice, altered or cancelled.

(5) An exemption granted under paragraph (1) or (2), or exemption or waiver granted under paragraph (3), or an alteration or cancellation under paragraph (4)(b), must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(6) The requirement that the exemption granted under paragraph (1) or (2), or exemption or waiver granted under paragraph (3), or an alteration or cancellation under paragraph (4)(b), be in writing is satisfied where the text of the approval is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

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(7) Where an exemption or waiver is granted subject to safety requirements, the exemption or waiver ceases to have effect if those requirements are not complied with.

### Equivalents

7 (1) Where the provisions of Chapter V referred to in regulation 5 (safety of navigation requirements) require that—

- (a) a particular fitting, material, appliance or apparatus be fitted on, or carried in a ship;
- (b) any particular arrangement be made on, or in relation to a ship; or
- (c) any particular provision be made in relation to a ship,

the Minister may approve any other fitting, material, appliance, apparatus, arrangement or other provision if satisfied that it is at least as effective as that required by the provisions of Chapter V referred to in regulation 5.

(2) The Minister may approve an equivalent of a partial or conditional nature to a ship engaged on a voyage where—

- (a) the maximum distance of the ship from the shore;
- (b) the length and nature of the voyage;
- (c) the absence of general navigational hazards; and
- (d) other conditions affecting safety,

make, in the opinion of the Minister, compliance with the provisions of Chapter V referred to in regulation 5 unreasonable or unnecessary, taking into account the effect such an approval may have on the safety of other ships.

(3) An approval given under paragraph (1) or (2) may, on the giving of reasonable notice, be continued, altered or cancelled.

(4) Any approval given under paragraph (1) or (2), or a continuation, alteration or cancellation under paragraph (3), must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(5) The requirement that the approval referred to in paragraph (1) or (2), or a continuation, alteration or cancellation in paragraph (3), be in writing is satisfied where the text of the approval is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.



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### Approvals

8 (1) The Minister, or any person authorised by the Minister, may grant an approval in relation to a Bermuda ship for anything in Chapter V requiring to be—

- (a) approved by the Administration of the State whose flag the ship is entitled to fly;
- (b) done to the satisfaction of such Administration; and
- (c) acceptable to that Administration.

(2) An approval given under paragraph (1) may, on the giving of reasonable notice, be continued, altered or cancelled.

(3) Any approval given under paragraph (1), or a continuation, alteration or cancellation under paragraph (2), must—

- (a) be in writing;
- (b) specify the date on which it takes effect; and
- (c) specify the terms, if any, on which it is given.

(4) The requirement that the approval referred to in paragraph (1), or the continuation, alteration or cancellation under paragraph (2), be in writing is satisfied where the text of the approval is—

- (a) transmitted by electronic means;
- (b) received in legible form; and
- (c) capable of being used for subsequent reference.

### PART 3

#### CONTROL AND ENFORCEMENT

Offences in respect of which a sentence of imprisonment or a fine or both, may be imposed

9 (1) Any contravention of—

- (a) regulation 5(2)(a) (on board plan for cooperation with search and rescue services);
- (b) regulation 5(2)(g), in so far as it requires a ship to comply with paragraphs 1 to 3 and 7 of regulation 18 in Chapter V (approval, surveys and performance standards of navigational systems and equipment and voyage data recorder);
- (c) regulation 5(2)(h) (carriage requirements for shipborne navigational systems and equipment);
- (d) regulation 5(2)(j) (voyage data recorders); or

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- (e) regulation 5(2)(k), in so far as it requires a ship to comply with regulation 30 in Chapter V (operational limitations),

is an offence by the owner and master.

(2) Any contravention of—

- (a) regulation 5(2)(c), in so far as it requires a ship to comply with paragraph 7 of regulation 11 in Chapter V (ship reporting systems);
- (b) regulation 5(2)(k), in so far as it requires a ship to comply with regulation 28 in Chapter V (records of navigational activities and daily reporting);
- (c) regulation 5(2)(l), in so far as it requires a ship to comply with paragraph 1 of regulation 31 in Chapter V (danger messages);
- (d) regulation 5(2)(n), in so far as it requires a ship to comply with paragraphs 1 and 2 of regulation 33 in Chapter V (distress situations: obligations and procedures); or
- (e) regulation 5(2)(o) (safe navigation and avoidance of dangerous situations),

is an offence by the master.

(3) Any contravention of regulation 5(2)(k) in so far as it requires a ship to comply with the following regulations in Chapter V—

- (a) regulation 24 (use of heading or track or both control systems);
- (b) regulation 25 (operation of steering gear); and
- (c) regulation 26 (steering gear: testing and drills), other than paragraph 3.1,

is an offence by the master or any person directed to undertake tasks.

(4) Any contravention of—

- (a) regulation 5(2)(p) (master's discretion); or
- (b) regulation 5(2)(q) (misuse of distress signals),

is an offence by the person responsible.

(5) An offence under this regulation is punishable—

- (a) on summary conviction, by a fine not exceeding \$10,000; and
- (b) on conviction on indictment, by imprisonment for a term not exceeding two years, or a fine, or both.

Offences in respect of which a fine only may be imposed

10 (1) Any contravention of—

- (a) regulation 5(2)(f) (electromagnetic compatibility);
- (b) regulation 5(2)(g), in so far as it requires a ship to comply with paragraphs 8 and 9 of regulation 18 in Chapter V (approval, surveys and performance

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standards of navigational systems and equipment and voyage data recorder); or

- (c) regulation 5(2)(i) (long-range identification and tracking of ships),

is an offence by the owner and master.

- (2) Any contravention of—

(a) regulation 5(2)(b) (use of ships' routing system); or

(b) regulation 5(2)(k), in so far as it requires a ship to comply with regulation 23 in Chapter V (pilot transfer arrangements),

is an offence by the owner, master or any other person responsible.

(3) Any contravention of regulation 5(2)(d) (ships' manning) is an offence by the owner or master.

- (4) An offence under this regulation is punishable—

(a) on summary conviction, by a fine; and

(b) on conviction on indictment, by a fine.

Offences in respect of which a fine may be imposed on summary conviction only

11 (1) Any contravention of regulation 5(2)(k), in so far as it requires a ship to comply with the following regulations in Chapter V—

(a) regulation 21 (the International Code of Signals and IAMSAR Manual);

(b) regulation 22 (navigation bridge visibility);

(c) paragraph 3.1 of regulation 26 (failure to display steering gear changeover procedures on navigational bridge);

(d) regulation 27 (nautical charts and nautical publications); and

(e) regulation 29 (life-saving signals to be used by ships, aircraft or persons in distress),

is an offence by the owner and master.

(2) An offence under this regulation is punishable on summary conviction by a fine.

Detention

12 (1) For the purposes of this regulation, any reference to "the Act" is a reference to the Merchant Shipping Act 2002.

(2) Any ship which does not comply with the requirements of the provisions in Chapter V referred to in regulation 5 (safety of navigation requirements) may be detained.

(3) Section 242 of the Act applies where a ship is liable to be detained under this regulation as if—

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- (a) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and
  - (b) subsection (7) were omitted.
- (4) Where a ship is liable to be detained under this regulation, the person detaining the ship must serve on the master a detention notice which—
- (a) states the grounds of the detention; and
  - (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 242 (1) of the Act.
- (5) Subject to paragraph (6), section 104 (references of detention notices to arbitration) and section 105 (compensation in connection with invalid detention of a ship) of the Act apply in relation to a detention notice issued pursuant to this regulation, as they apply in relation to detention notices issued pursuant to section 242 (enforcing detention of a ship).
- (6) For the purposes of paragraph (5)—
- (a) section 104 of the Act applies as if—
    - (i) subsection (3) were omitted; and
    - (ii) the words “as a dangerously unsafe ship” in subsection (5) were omitted; and
  - (b) sections 104 and 105 of the Act apply as if “the relevant inspector” means a person issuing the detention notice pursuant to this regulation.
- (7) Subject to paragraph (8), where a ship other than a Bermuda ship is detained, the Minister must immediately inform the ship’s flag administration, in writing.
- (8) If it is not possible to inform the ship’s flag administration in accordance with paragraph (7), the Minister must inform the Consul of the State of the flag administration, or in the absence of a Consul, the nearest diplomatic representative of the State of the flag administration.
- (9) For the purposes of paragraphs (7) and (8), “flag administration” in relation to a ship means the administration of the State whose flag the ship is entitled to fly.

### Revocation

13 The Merchant Shipping (Safety of Navigation) Regulations 2010 are revoked.

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Made this 29th day of December 2021

Minister of Transport

[Operative Date: 29 December 2021]