



BERMUDA

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

BR 52 / 2004

TABLE OF CONTENTS

PART I  
GENERAL

- 1 Citation
- 2 Interpretation
- 3 Application

PART II  
GENERAL DUTIES

- 4 Persons on whom duties are imposed
- 5 General duties
- 6 Health and safety policy
- 7 Risk assessment
- 8 New or expectant mothers
- 9 Night work
- 10 Notification of pregnancy
- 11 Health surveillance
- 11A Reporting of occupational diseases
- 12 Capabilities and training

PART III  
DUTIES OF THE COMPANY

- 13 Co-ordination
- 13A Reporting of occupational diseases
- 13B Extension of duties in other Regulations as regards seafarers who are not workers

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

PART IV  
SPECIAL RESPONSIBILITY FOR HEALTH AND SAFETY AND CONSULTATION WITH  
WORKERS

- 14 Protective and preventive services
- 15 Appointment of safety officers
- 16 Duties of safety officers
- 17 Election of safety representatives and safety committees
- 18 Powers of safety representatives and safety committees
- 19 Duties of the company and master
- 20 Consultation with workers

PART V  
GENERAL DUTIES OF WORKERS

- 21 General duties of worker or seafarer

PART VI  
PROHIBITIONS, PENALTIES, OFFENCES, INSPECTIONS AND DETENTIONS

- 22 Prohibition on levy
- 23 Duty not to interfere with or misuse certain things
- 24 Penalties
- 25 Offences by body corporate
- 26 Onus of proving what is reasonably practicable
- 27 Inspection, detention of a Bermuda fishing vessel
- 27A Inspection of Bermuda ships and non-Bermuda ships without MLC documentation
- 27B Detention of Bermuda ships and non-Bermuda ships without MLC documentation
- 28 Inspection, detention etc. of fishing vessels registered outside Bermuda
- 28A Inspection of non-Bermuda ships with MLC documentation
- 28B Detention of non-Bermuda ships with MLC documentation
- 29 Enforcement of detention
- 30 Compensation
- 30A Ambulatory reference
- 31 Revocation

SCHEDULE

The Minister of Transport, in exercise of the powers conferred by section 93 of the Merchant Shipping Act 2002, and after consulting the persons referred to in section 94(3) of the Merchant Shipping Act 2002 makes the following regulations:

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

PART I  
GENERAL

Citation

1 These Regulations may be cited as the Merchant Shipping (Health and Safety at Work) Regulations 2004.

Interpretation

2 In these Regulations—

“Act” means the Merchant Shipping Act 2002;

“Bermuda ship” means a ship which—

(a) is a Bermuda ship within the meaning of section 16(3) of the Act; or

(b) is a Government ship within the meaning of section 4 of the Act;

“Code” means the Code of Safe Working Practices for Merchant Seamen;

“company”, in relation to a ship to which these Regulations apply, means the owner of the ship or any other organisation or person such as the manager, or bareboat charterer, who has assumed the responsibility for operation of the ship from the owner;

“competent person” means a person who has sufficient training and experience or knowledge and other qualities, to enable him properly to undertake the duty imposed under the relevant provision in these Regulations, and in the case of a safety officer, has in addition, a minimum of two years consecutive sea service since attaining the age of 18, which, in the case of a safety officer on board a tanker, shall include at least six months service on such a ship;

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

“Declaration of Maritime Labour Compliance” means, in relation to a ship, the Part 1 and Part 2 documents drawn up and issued in accordance with the MLC, in the forms corresponding to the relevant models given in Appendix A5-II of the MLC and having the contents, duration and validity specified in Regulation 5.1.3 and Standard A5.1.3 of the MLC;

“elected representative” means any person elected to represent a group of workers for the purposes of consultation with the employer on health and safety matters under regulation 20;

“employer” means a person by whom a worker is employed under a contract of employment;

“given birth” means delivered a living child or, after twenty-four weeks of pregnancy, a stillborn child;

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

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

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

“Maritime Labour Certificate” means, in relation to a ship, a certificate of that name issued in accordance with the MLC, in a form corresponding to the relevant model given in Appendix A5-II of the MLC and having the contents, duration and validity specified in Regulation 5.1.3 and Standard A5.1.3 of the MLC;

“medical practitioner” means—

- (a) in the case of a medical practitioner based in Bermuda, a medical practitioner who—
  - (i) is registered under the Bermuda Health Council Act 2004 and holds a licence to practice medicine in Bermuda; or
  - (ii) is an approved medical practitioner, appointed by the Minister;
- (b) in the case of a medical practitioner based in the United Kingdom, a medical practitioner who—
  - (i) is registered under the United Kingdom Medical Act 1983; and
  - (ii) holds a licence to practice medicine in the United Kingdom; and
- (c) in the case of a medical practitioner not based in Bermuda or in the United Kingdom, a medical practitioner who—
  - (i) is a qualified medical practitioner in a country which is approved by the Minister;
  - (ii) is listed in Bermuda Shipping Notice 2012-007;
  - (iii) is authorised by the respective country, to issue medical certificates; and
  - (iv) is listed in that country’s medical register, as an approved medical practitioner;

“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;

“Merchant Shipping Notice” *[Revoked by BR 102 / 2019 reg. 2]*

“MLC” means the Maritime Labour Convention adopted on 23rd February 2006 by the General Conference of the International Labour Organization;

“new or expectant mother” means a worker who is either pregnant, or has given birth within the previous six months, or is breast-feeding;

“pleasure vessel” means—

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (a) any vessel which is—
- (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
  - (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends, and when on a voyage or excursion, the owner is not paid 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 which is wholly owned by or on behalf of a members' club, formed for the purpose of sport or pleasure 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; and no payments other than those mentioned are made by or on behalf of the 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;

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

"relevant inspector" means a person mentioned in section 220(1) of the Act;

"sail training vessel" means a sailing vessel which is being used either—

- (a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship; or
- (b) to provide instruction in navigation and seamanship for yachtsmen;

"seafarer" means any person, including a master, who is employed or engaged or works in any capacity on board a ship which is not a fishing vessel and whose normal place of work is on such a ship;

"sea-going" means operating outside Bermuda territorial waters;

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

"trainees and apprentices" does not include persons who are training in a sail training vessel;

## MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS 2004

---

“worker” means any person employed by an employer under a contract of employment, including trainees or apprentices.

*[Regulation 2 definition "Merchant Shipping Notice" revoked by BR 102 / 2019 reg. 2(a) effective 17 October 2019; Regulation 2 definitions "Declaration of Maritime Labour Compliance", "Marine Guidance Note", "Maritime Labour Certificate", "medical practitioner", "Merchant Shipping Notice", "MLC", "pleasure vessel", "seafarer" and "shipowner" inserted by BR 102 / 2019 reg. 2(b) effective 17 October 2019]*

### Application

3 (1) These Regulations shall apply to all activities of workers on ships, except when—

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

and in such a case there shall be a duty on the employer so far as is reasonably practicable to ensure the health and safety of the worker when performing that activity.

(1A) As regards Group A ships, Group B ships and Group C ships, sub paragraphs (a) to (h), insofar as they apply to workers, also apply to seafarers who are not workers and, insofar as they apply to employers, also apply to shipowners—

- (a) Regulation 4(1)(a);
- (b) Regulation 5(1);
- (c) Regulation 7;
- (d) Regulation 12(1) and (2);
- (e) Regulation 16(1)(b)(iii);
- (f) Regulation 18(b) and (c);
- (g) Regulation 19(1)(b)(ii); and
- (h) Regulation 20.

(1B) In relation to seafarers who are not workers, any obligation imposed by paragraph (1A), that would, by virtue of that paragraph, otherwise apply to employers and shipowners, applies to shipowners only.

(2) Part II of these Regulations applies as follows—

- (a) all of the provisions apply to Group A ships and, with the exception of Regulations 11A, to Group D ships; and
- (b) Regulations 4, 5, 7 and 12 apply to Group C ships.

(3) Part III of these Regulations applies as follows—

- (a) Regulation 13 applies to Group A ships, Group C ships and Group D ships; and

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (b) Regulation 13A applies only to Group A ships.
- (4) Part IV of these Regulations applies as follows—
  - (a) all of the provisions apply to Group A ships;
  - (b) Regulations 15 and 19 apply to Group C ships; and
  - (c) Regulations 14, 19 and 20 apply to Group D ships.
- (5) Part V of these Regulations applies to Group A and Group D ships only.
- (6) Part VI of these Regulations applies as follows—
  - (a) all of the provisions other than Regulations 27, 28, 28A, 28B and 29 apply to Group A ships;
  - (b) Regulations 28A, 28B and 30 apply to Group B ships;
  - (c) Regulations 22, 24 to 26, 27A and 27B apply to Group C ships;
  - (d) all of the provisions other than Regulations 27A to 28B apply to Group D ships; and
  - (e) Regulations 28, 29 and 30 apply to Group E ships.
- (7) In this Regulation—
  - (a) subject to paragraph (8), a “Group A” ship is a Bermuda ship which is not a fishing vessel, wherever it may be;
  - (b) subject to paragraphs (8) and (9), a “Group B” ship is a sea-going ship which is not a fishing vessel and which is not a Bermuda ship, which is in Bermuda waters, where—
    - (i) the MLC has come into force for the State whose flag the ship is entitled to fly; and
    - (ii) the ship carries—
      - (aa) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached; or
      - (bb) an interim Maritime Labour Certificate;
  - (c) subject to paragraphs (8) and (9), a “Group C” ship is a sea-going ship which is not a fishing vessel and which is not a Bermuda ship, which is in Bermuda waters, where—
    - (i) the MLC has not come into force for the State whose flag the ship is entitled to fly; or
    - (ii) the MLC has come into force for the State whose flag the ship is entitled to fly, but the ship does not carry—
      - (aa) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached; or

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (bb) an interim Maritime Labour Certificate;
  - (d) a “Group D” ship is a fishing vessel which is a Bermuda ship, wherever it may be; and
  - (e) a “Group E” ship is a fishing vessel which is in Bermuda waters and is not a Bermuda ship.
- (8) The following ships are not Group A, Group B or Group C ships—
- (a) pleasure vessels;
  - (b) ships of traditional build; and
  - (c) warships or naval auxiliaries.
- (9) Vessels which are not ordinarily engaged in commercial activities are not Group B or Group C ships.

*[Regulation 3 paragraph (1) amended, and paragraphs (1A) and (1B) inserted by BR 102 / 2019 reg. 3 effective 17 October 2019; Regulation 3 paragraph (2) deleted and substituted by BR 102 / 2019 reg. 3 effective 17 October 2019; Regulation 3 paragraphs (3) - (9) inserted by BR 102 / 2019 reg. 3 effective 17 October 2019]*

PART II  
GENERAL DUTIES

Persons on whom duties are imposed

- 4 (1) Every—
- (a) employer; and
  - (b) any other natural or legal person upon whom a duty is imposed by these Regulations;

shall comply with these Regulations.

(2) Where a person in paragraph (1) does not have control of the matter to which the regulation relates because he does not have responsibility for the operation of the ship, then any duty imposed by that regulation shall also extend to any natural or legal person who has control of that matter.

General duties

- 5 (1) An employer shall ensure the health and safety of workers and other persons so far as is reasonably practicable, which duty shall be met by the application of the following principles—
- (a) the avoidance of risks, which among other things include the combating of risks at source and the replacement of dangerous practices, substances or equipment by non-dangerous or less dangerous practices, substances or equipment;



MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (b) the evaluation of unavoidable risks and the taking of action to reduce them;
  - (c) adoption of work patterns and procedures which take account of the capacity of the individual, especially in respect of the design of the workplace and the choice of work equipment, with a view in particular to alleviating monotonous work and to reducing any consequent adverse effect on workers' health and safety;
  - (d) adaptation of procedures to take account of new technology and other changes in working practices, equipment, the working environment and any other factors which may affect health and safety;
  - (e) adoption of a coherent approach to management of the vessel or undertaking, taking account of health and safety at every level of the organisation;
  - (f) giving collective protective measures priority over individual protective measures; and
  - (g) the provision of appropriate and relevant information and instruction for workers.
- (2) Without prejudice to the generality of the duties under paragraph (1), the matters to which those duties extend shall include in particular—
- (a) provision and maintenance of plant, machinery and equipment and systems of work that are, so far as is reasonably practicable, safe and without risk to health;
  - (b) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risk to health in connection with the use, handling, stowage and transport of articles and substances;
  - (c) such arrangements as are appropriate, having regard to the nature of, and the substances used in, the activities and size of the operation, for the effective planning, organisation, control, monitoring and review of preventive and protective measures;
  - (d) provision of such information, instruction, training and supervision as is necessary to ensure the health and safety of workers and that of other persons aboard a ship who may be affected by their acts or omissions;
  - (e) maintenance of all places of work in the ship in a condition that is, so far as is reasonably practicable, safe and without risk to health;
  - (f) arrangements to ensure, so far as is reasonably practicable, that no person has access to any area of the ship to which it is necessary to restrict access on grounds of health and safety unless the individual concerned has received adequate and appropriate health and safety instruction;
  - (g) provision and maintenance of an environment for persons aboard a ship that is, so far as is reasonably practicable, safe and without risk to health;

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (h) collaboration with any other persons referred to under regulation 4 to protect, so far as is reasonably practicable, the health and safety of all authorised persons aboard the ship or engaged in loading or unloading activities in relation to that ship.

Health and safety policy

6 (1) Subject to paragraph (2), a written statement shall be prepared and, as often as may be appropriate, revised, of the employer's general policy with respect to health and safety and the organisation and arrangements for the time being in force for carrying out that policy, and this and any revisions to it shall be brought to the notice of the workers.

(2) The written statement referred to in paragraph (1) shall not apply where five or less workers in aggregate are employed by the same employer, or by associated employers, in a Bermuda ship.

Risk assessment

7 (1) A suitable and sufficient assessment shall be made of the risks of the health and safety of workers arising in the normal course of their activities or duties, for the purpose of identifying—

- (a) groups of workers at particular risk in the performance of their duties; and
- (b) the measures to be taken to comply with the employer's duties under these Regulations;

and any significant findings of the assessment and any revision of it shall be brought to the notice of workers.

(2) This assessment shall extend to the risks to the health and safety of other persons on board a ship in so far as they may be affected by the acts and omissions of the employer.

(3) The assessment referred to in paragraphs (1) and (2) shall be reviewed if—

- (a) there is reason to suspect that it is no longer valid; or
- (b) there has been a significant change in the matters to which it relates;

and where such a review identifies a need for any changes to procedures or practices, those changes shall be made.

(4) Every employer and every self-employed person on board a ship shall inform the company of any relevant risks to health and safety arising out of or in connection with the conduct of his own undertaking.

(5) Measures shall be taken, and if necessary protective equipment supplied, to ensure an improvement in the health and safety of workers and other persons in respect of those risks identified.

(6) Workers shall be informed of the measures taken for their protection.

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

New or expectant mothers

8 (1) Where—

- (a) the workers include women with potential for child-bearing; and
- (b) the work is of a kind which could involve risk, by reason of her condition, to the health and safety of a new or expectant mother, or to that of her baby, from any process or working conditions, or physical, biological or chemical agents;

the assessment required by regulation 7(1) shall include the assessment of such risk.

(2) Where, in the case of an individual worker, any other action required to be taken by the employer under these Regulations would not avoid the risk referred to in paragraph (1), if it is reasonable to do so, and would avoid such risk, her working conditions or hours of work shall be altered.

(3) If it is not reasonable to alter the working conditions or hours of work, or if it would not avoid such risk, the employer shall, suspend the worker from work for so long as is necessary to avoid such risk.

(4) In paragraphs (1) to (3) references to risk, in relation to risk from any infectious or contagious disease are references to a level of risk at work which is in addition to the level to which a new or expectant mother may be expected to be exposed outside the workplace.

Night work

9 (1) Where—

- (a) a new or expectant mother works at night; and
- (b) a certificate from a registered medical practitioner or registered midwife shows that it is necessary for her health or safety that she should not be at work for any period of such work identified in the certificate, the worker shall be offered suitable alternative daytime work, if any is available.

(2) Subject to paragraph (1), where no such alternative daytime work is available the worker shall be suspended from her work for so long as is necessary for her health or safety.

Notification of pregnancy

10 (1) Nothing in regulation 8(2) or (3) shall require any action to be taken in relation to a worker until she has notified the employer or the company, as the case may be, in writing that she is pregnant, has given birth within the previous six months or is breast-feeding.

(2) Nothing in regulation 8(2) or (3) or in regulation 9 shall require action to be maintained in relation to a worker—

- (a) in a case—
  - (i) to which regulation 8(2) or (3) relates; and

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

(ii) where the worker has notified her employer that she is pregnant;

where she has failed, within a reasonable time of being requested to do so in writing by her employer, to produce for the employer's inspection a certificate from a registered medical practitioner or a registered midwife showing that she is pregnant;

- (b) once the employer knows that she is no longer a new or expectant mother;  
or
- (c) if the employer cannot establish whether she remains a new or expectant mother.

#### Health surveillance

11 Workers shall be provided with such health surveillance as is appropriate having regard to the risks to their health and safety which are identified by the assessment undertaken in accordance with regulation 7.

#### Reporting of occupational diseases

11A (1) This Regulation applies where—

- (a) an employer receives a written report from a medical practitioner which indicates that a seafarer, having worked on a ship, has (or has had) an occupational disease listed in the table in the Bermuda Shipping Notice 2019-032; and
- (b) that seafarer was involved in an activity, listed in the table as corresponding to the occupational disease, when working on the ship.

(2) In accordance with paragraph (1), an employer must—

- (a) have regard to the International Labour Organization guidance concerning the protection of workers' personal data specified in Bermuda Shipping Notice 2019-032;
- (b) complete the form set out in the Bermuda Shipping Notice 2019-032 in respect of the seafarer; and
- (c) send the completed form, to the address specified in the Bermuda Shipping Notice 2019-032.

*[Regulation 11A inserted by BR 102 / 2019 reg. 4 effective 17 October 2019]*

#### Capabilities and training

12 (1) In entrusting tasks to workers, account shall be taken of their capabilities as regards health and safety.

(2) Workers shall be provided with adequate and appropriate health and safety training and instruction—

- (a) before being assigned to shipboard duties;

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (b) on their being exposed to new or increased risks because of—
    - (i) being transferred or given a change of responsibilities;
    - (ii) the introduction of new equipment or a change to equipment already in use;
    - (iii) the introduction of new technology; or
    - (iv) the introduction of new shipboard practices, a new system of work or a change to a system of work already in use.
  - (3) The training referred to in paragraph (2) shall—
    - (a) be repeated periodically where appropriate;
    - (b) be adapted to take account of any new or changed risks to the health or safety of the workers concerned; and
    - (c) take place during the working hours of the worker concerned.
  - (4) Every person carrying on the activity of an employment agency whose employee is to carry out work aboard a ship to which these Regulations apply shall be provided by the Company with information on—
    - (a) any special occupational qualifications required by workers to carry out their work safely;
    - (b) the specific features of the jobs to be filled by those workers (in so far as those features are likely to affect their health and safety); and
    - (c) any health surveillance required to be provided to workers under these or other relevant regulations;
- and the employment agency concerned shall ensure that the information so provided is given to the said workers.

PART III  
DUTIES OF THE COMPANY

Co-ordination

13 Where there are workers on board a Bermuda ship not employed by the company, the company shall—

- (a) consult every other employer of those workers regarding the arrangements for health and safety required under regulation 5(2)(c);
- (b) co-ordinate arrangements for the protection of all workers and the prevention of risk to their health and safety; and
- (c) ensure that all workers are informed of the significant and relevant findings of the risk assessment carried out under regulation 7, and of the arrangements for their protection referred to in sub-paragraph (b).

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

Reporting of occupational diseases

- 13A (1) This Regulation applies where—
- (a) an employer receives a written report from a medical practitioner which indicates that a seafarer, having worked on a ship, has (or has had) an occupational disease listed in the table in the Bermuda Shipping Notice 2019-032; and
  - (b) that seafarer was involved in an activity, listed in the table as corresponding to the occupational disease, when working on the ship.
- (2) In accordance with subsection (1), an employer must—
- (a) have regard to the International Labour Organization guidance concerning the protection of workers' personal data specified in Bermuda Shipping Notice 2019-032;
  - (b) complete the form set out in the Bermuda Shipping Notice 2019-032 in respect of the seafarer; and
  - (c) send the completed form, to the address specified in the Bermuda Shipping Notice 2019-032.

*[Regulation 13A inserted by BR 119 / 2013 reg. 2 effective 30 June 2014; Regulation 13A deleted and substituted by BR 102 / 2019 reg. 5 effective 17 October 2019]*

Extension of duties in other Regulations as regards seafarers who are not workers

13B (1) Regulation 13A applies if a duty is owed by an employer to a worker on a ship in respect of a risk concerning workplace health and safety, by virtue of any maritime legislation dealing with health and safety and at least one seafarer who is not a worker is exposed to that risk.

(2) The shipowner must, so far as is reasonably practicable and appropriate, ensure that any action taken by any person to discharge a duty referred to in paragraph (1) in respect of that risk as regards workers, is also taken as regards seafarers who are not workers.

*[Regulation 13B inserted by BR 102 / 2019 reg. 5 effective 17 October 2019]*

PART IV

SPECIAL RESPONSIBILITY FOR HEALTH AND SAFETY AND CONSULTATION WITH  
WORKERS

Protective and preventive services

14 (1) One or more competent persons shall be appointed by the employer in order to provide such protective and preventive services for the undertaking as are necessary to enable him to comply with the requirements of these Regulations.

(2) Where there is no competent person available within the undertaking, the employer shall employ an external person who is a competent person.

## MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS 2004

---

(3) If he is a competent person, the employer may appoint himself to undertake the responsibilities specified in paragraph (1).

(4) The number of persons appointed under paragraph (1) shall be sufficient in number to carry out the requirements of these Regulations, and the appropriate persons shall have the necessary time, resources and means, to carry out their duties.

### Appointment of safety officers

15 (1) This Regulation and Regulations 16 to 18 apply to sea-going ships in which five or more seafarers are working.

(2) In every ship to which this regulation applies, the company shall appoint a safety committee and a competent person as a safety officer.

(3) The Minister may grant exemptions from paragraphs (1) and (2) for classes of cases or individual cases on such terms (if any) as he may specify in the exemption and may, subject to giving reasonable notice, alter or cancel any such exemption.

*[Regulation 15 amended by BR 50 / 2011 reg. 2 effective 28 September 2011; Regulation 15 paragraph (1) deleted and substituted by BR 102 / 2019 reg. 6 effective 17 October 2019]*

### Duties of safety officers

16 (1) Subject to paragraph (2), the safety officer having had regard to the International Labour Organization guidance concerning the protection of workers' personal data specified in Merchant Shipping Notice 2019-032, shall use his best endeavours to—

- (a) improve the standard of safety consciousness among the crew and ensure that the Code and safety instructions, rules and guidance for the ship relating to health and safety are complied with;
- (b) investigate, so far as is reasonably practicable—
  - (i) every incident involving death or serious injury, as defined in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2019;
  - (ii) all potential hazards to health and safety; and
  - (iii) all reasonable complaints by workers about health and safety;and make recommendations to the master to prevent the recurrence of such an accident or to remove any hazard, provided that the duty to investigate shall not extend to accidents arising from a casualty to the ship;
- (c) ensure that health and safety inspections of each accessible part of the ship are carried out at least once every three months and more frequently if there have been substantial changes in the conditions of work;
- (d) make representations and, where appropriate, recommendations to the master, about any deficiency in the ship in respect of—
  - (i) any legislative requirement relating to health and safety;

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (ii) any relevant Merchant Shipping Notice; or
- (iii) any provision of the Code;

and also suggest whether those representations and recommendations should be passed by the master on to the employer or other person who has control of the matter;

- (e) maintain a record of every accident involving death, major or serious injury and every dangerous occurrence, and make it available on request to any elected representative, to the master and to any person authorised by the Minister;
- (f) stop any work which he observes in progress and reasonably believes may cause a serious accident, and immediately inform the master or the master's deputy who shall decide when work can safely be resumed.

(2) Nothing in this regulation shall require a safety officer to take any action at a time when emergency action to safeguard life or the ship is being taken.

*[Regulation 16 amended by BR 102 / 2019 reg. 7 effective 17 October 2019]*

#### Election of safety representatives and safety committees

17 (1) In every ship to which this regulation applies and where there is no existing agreement the company shall make rules for the election and appointment of safety representatives.

(2) In every election for a safety representative the candidate receiving most votes shall be elected, provided that no safety representative shall be appointed who has less than two years' consecutive sea service since attaining the age of 18, which in the case of a safety representative on board a tanker shall include at least six months' service in such a ship.

(3) The appointment of a safety representative shall terminate—

- (a) on that person ceasing to be employed in the ship; or
- (b) from the date on which that person resigns from that position or on which another duly elected person is elected in his place.

(4) The company shall appoint a safety committee which shall include the master as Chairman, the safety officer and every safety representative, and may also include any other person appointed under Regulation 14(1).

(5) The appointment of every person under regulations 14(1), 15(2) or paragraph (1) and the appointment of any of those persons onto a safety committee shall be recorded in writing.

*[Regulation 17 paragraph (4) deleted and substituted by BR 102 / 2019 reg. 8 effective 17 October 2019]*

#### Powers of safety representatives and safety committees

18 Safety representatives and safety committees may—



MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (a) participate, subject to the concurrence of the safety officer, in any of the investigations or inspections carried out by the safety officer under regulation 16, or after notification to the master or his deputy, undertake similar investigations or inspections themselves, whether or not such investigations or inspections have already been carried out by the safety officer;
- (b) make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, workers on the ship;
- (c) make representations to the master and the employer on general matters affecting the health and safety of workers on the ship and, in particular, on such matters as those on which the employer carries out consultation under regulation 20;
- (d) request the safety officer to carry out any occupational health and safety inspection they consider necessary and to report the findings to them.

Duties of the company and master

19 (1) The company and master, in co-ordination with the employer, shall facilitate the work of any person appointed under regulations 14(1), 15(2) or 17(1) in carrying out their health and safety functions, and in particular to—

- (a) provide for use by them a copy of the Code (where appropriate), and access to any necessary information, documents and similar material including relevant legislation and Merchant Shipping Notices;
- (b) provide them with relevant information about—
  - (i) the risks and measures for protection identified under regulation 7;
  - (ii) factors known, or suspected, by them to affect the health and safety of the workers on board the ship; and
  - (iii) arrangements for fire-fighting, first aid and other emergency procedures;
- (c) ensure that those persons have the necessary resources and means to carry out their functions and duties;
- (d) allow any of those persons such absence from ship duties without loss of pay as may be necessary to enable them to fulfil their functions, or to undertake any necessary training in health and safety matters;
- (e) receive at any reasonable time, representations about health and safety from the safety officer, safety representatives or the safety committee, discuss their representations with them and implement any agreed measures as soon as may be reasonable and practicable.

(2) Where no safety officer is appointed under Regulation 15, the company shall, having regard to the International Labour Organization guidance concerning the protection

## MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS 2004

---

of workers' personal data specified in Merchant Shipping Notice 2019-032, maintain a record of every accident involving death, major or serious injury, and every dangerous occurrence and make it available on request, to any worker and any person authorised by the Minister.

*[Regulation 19 paragraph (2) deleted and substituted by BR 102 / 2019 reg. 9 effective 17 October 2019]*

### Consultation with workers

20 (1) Workers or their elected representatives shall be consulted in advance and in good time by the employer, and in the case of sub-paragraphs (c) and (d) where applicable, by the Company, on all matters relating to their health and safety, and in particular on—

- (a) the arrangements for appointing a competent person under regulation 14 to provide protective and preventive services for the undertaking;
- (b) the findings of the risk assessment;
- (c) arrangements for health and safety training under regulation 12;
- (d) the introduction of new technology.

(2) Employers shall allow workers or their elected representatives to make representations about health and safety, and shall implement any agreed measures as soon as may be reasonable and practicable.

(3) Workers or their elected representatives shall be given access by the employer and, where applicable by the company, to any relevant information about—

- (a) health and safety matters from inspection agencies and health and safety authorities; and
- (b) every accident involving death, major or serious injury, and every dangerous occurrence.

(4) Elected representatives shall be given adequate time off work without loss of pay in order to exercise their rights and functions under this regulation, and shall be provided with appropriate training.

(5) Workers or their elected representatives shall not be placed at a disadvantage (whether economic or otherwise) because of their activities under this regulation.

## PART V

### GENERAL DUTIES OF WORKERS

#### General duties of worker or seafarer

21 (1) Every worker or seafarer aboard a ship to which these Regulations apply shall—

- (a) take reasonable care for the health and safety of himself and of any other person aboard the ship who may be affected by his acts or omissions; and

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (b) as regards any duty or requirement imposed on the company, his employer or any other person by these Regulations and the Act or any regulation or rule made thereunder, with regard to health and safety, to co-operate with that person so far as is necessary to enable that duty or requirement to be performed or complied with.
- (2) No worker or seafarer shall—
- (a) use any machinery, equipment, dangerous substance, transport equipment, means of production or safety device provided by his employer or the company other than in accordance with any relevant training or instructions which have been received or provided by the employer or the company in compliance with these Regulations; or
  - (b) disconnect, change or remove or otherwise interfere with any safety device provided by the employer or the company.
- (3) Every worker or seafarer shall immediately inform the master or the safety officer or another competent person appointed under regulation 14(1) of any matter which may reasonably be considered to represent a deficiency in the Company's protection arrangements for the health and safety of persons on board the ship.
- (4) Every worker or seafarer shall immediately inform his employer, the safety officer or other competent person—
- (a) of any work situation which he reasonably considers to represent a serious and immediate danger to health and safety; and
  - (b) of any matter which he reasonably considers to represent a deficiency in the employer's protection arrangements for health and safety.

*[Regulation 21 amended by BR 102 / 2019 reg. 10 effective 17 October 2019]*

PART VI

PROHIBITIONS, PENALTIES, OFFENCES, INSPECTIONS AND DETENTIONS

Prohibition on levy

22 No charge in respect of anything done or provided in pursuance of any specific requirement of these Regulations shall be levied or permitted to be levied on any worker.

Duty not to interfere with or misuse certain things

23 No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health and safety aboard a Bermuda ship in pursuance of these Regulations or the Act or any regulation or rule made thereunder.

Penalties

24 (1) Any contravention of regulation 5 or 13A of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding \$10,000.00 or, on

## MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS 2004

---

conviction on indictment, by a fine not exceeding \$20,000.00 or by imprisonment for a term not exceeding two years or both.

(2) Any contravention of regulation 14 shall be an offence punishable on summary conviction by a fine not exceeding \$10,000.00.

(3) Any contravention of regulation 6, 7, 16, 17, 20 or 21 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding \$7500.00.

(4) Any contravention of regulation 8, 9, 11, 11A, 12, 13, 13A, 22 or 23 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding \$2000.00.

(5) Any company which—

(a) fails to appoint a safety officer in accordance with regulation 15; or

(b) fails to carry out any of the duties specified in regulation 19;

commits an offence punishable on summary conviction by a fine not exceeding \$10,000.00.

(6) Any master who fails to carry out any of the duties specified in regulation 19 commits an offence punishable on summary conviction by a fine not exceeding \$2000.00.

*[Regulation 24 paragraph (4) amended by BR 119 / 2013 reg. 3 effective 30 June 2014; Regulation 24 amended by BR 102 / 2019 reg. 11 effective 17 October 2019]*

### Offences by body corporate

25 (1) Where a body corporate is found guilty of an offence under any of these Regulations and that offence is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to have committed that offence and shall be liable to be proceeded against and punished accordingly.

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

### Onus of proving what is reasonably practicable

26 In any proceedings for an offence under any of these Regulations consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the complainant to prove that it was reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

### Inspection, detention of a Bermuda fishing vessel

27 A relevant inspector may inspect any fishing vessel which is a Bermuda ship and if he is satisfied that there has been a failure to comply in relation to that ship, with the requirements of these Regulations, may detain the ship until the health and safety of all

## MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS 2004

---

workers and other persons aboard the ship are secured, but shall not, in the exercise of these powers, detain or delay the ship unreasonably.

*[Regulation 27 deleted and substituted by BR 102 / 2019 reg. 12 effective 17 October 2019]*

### Inspection of Bermuda ships and non-Bermuda ships without MLC documentation

27A (1) For the purpose of checking compliance with these Regulations, a relevant inspector (or, in the case of a Bermuda ship, a proper officer as defined in section 2(1) of the Act (definitions)) may at all reasonable times go on board a ship and inspect the ship, its equipment, any articles on it and any document carried on it.

(2) Section 219(1) and (5) of the Act (powers to inspect ships and their equipment, etc.) applies in relation to paragraph (1) as if references in those subsections to “subsection (1)” and “this section” were references to paragraph (1).

(3) Sections 220(1), (2), (5), (7) and (9) to (11) and 221(1) and (2) of the Act (powers of inspectors in relation to premises and ships, and supplementary provisions) apply in relation to the inspection of a ship to which this Regulation applies, for the purpose of checking compliance with these Regulations, as if—

- (a) references in those sections to “this Act” were to these Regulations;
- (b) for section 220(1)(b), there were substituted a reference to any ship to which this Regulation applies;
- (c) in section 220(2)(h)(iii), the words “or any instrument made under it” were omitted; and
- (d) in section 220(4), the reference to “subsection (2)” were to “paragraph (2)”.

(4) Any Regulations made under section 220(7) or section 221(3) of the Act, apply, for the purposes of paragraphs (2) and (3), as they apply for the purposes of the Act.

(5) Sections 222 to 227 of the Act (improvement notices and prohibition notices) apply for the purposes of these Regulations as if the meaning of “the relevant statutory provisions” in section 222(4) included, these Regulations.

*[Regulation 27A inserted by BR 102 / 2019 reg. 13 effective 17 October 2019]*

### Detention of Bermuda ships and non-Bermuda ships without MLC documentation

27B (1) Where a relevant inspector has clear grounds for believing that—

- (a) a ship to which this Regulation applies, does not comply with these Regulations;
- (b) the conditions on board are clearly hazardous to the safety, health or security of seafarers; and
- (c) the non-compliance represents a serious breach or the latest in a series of repeated breaches of these Regulations or the requirements of the MLC (including the rights of seafarers referred to in Articles III and IV of the MLC which are secured by it),

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

that ship is liable to be detained.

(2) The power under this Regulation to detain a ship may be exercised as regards a Bermuda ship wherever it may be, but as regards a ship which is not a Bermuda ship, may only be exercised if the ship in question is—

- (a) in a port or shipyard in Bermuda; or
- (b) at an offshore terminal in Bermuda waters.

(3) A person having powers to detain a ship may permit a ship which is liable to be detained under this Regulation, to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(4) Section 242 of the Act (enforcing detention of a ship) applies, where a ship is liable to be detained under this Regulation, as if—

- (a) references to the owner of a ship were to the shipowner, under these Regulations;
- (b) references to detention of a ship under the Act were references to detention of the ship in question, under this Regulation; and
- (c) subsection (7) were omitted.

(5) Where a ship is liable to be detained under this Regulation, the person detaining the ship must serve on the master of the ship, a detention notice which—

- (a) states the grounds for 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.

(6) Where a ship other than a Bermuda ship is detained, the Minister must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State, and invite them to send a representative to attend the ship.

(7) Where a ship is detained under this Regulation and all of the grounds for detention have ceased to apply, a person having power to detain the ship must, at the request of the shipowner or master, immediately release the ship—

- (a) if no proceedings for an offence under these Regulations are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under these Regulations, having been instituted within that period, are concluded without a person being convicted;
- (c) if either—
  - (i) the sum of \$50,000 is paid to the Minister by way of security; or

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (ii) security which, in the opinion of the Minister, is satisfactory and is for an amount not less than \$50,000, is given to the Minister,  
by or on behalf of the shipowner or master;
  - (d) where a person is convicted of an offence under these Regulations, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
  - (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea, and any bond or other financial security ordered by such court or tribunal is posted.
- (8) The Minister must repay any sum paid in pursuance of paragraph (7)(c) or release any security so given—
- (a) if no proceedings for an offence under these Regulations are instituted within the period of seven days beginning with the day on which the sum is paid or the security is given; or
  - (b) if proceedings for such an offence, having been instituted within that period, are concluded without a person being convicted.
- (9) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (7)(c) and a person is convicted of an offence under these Regulations, the sum so paid or the amount made available under the security must be applied as follows—
- (a) first, in payment of any costs or expenses ordered by the court to be paid by the person convicted;
  - (b) next, in payment of any fine imposed by the court; and
  - (c) any balance must be repaid to the first-mentioned person.
- (10) Section 144 of the Act (interpretation of references in section 143, to the institution of proceedings or their conclusion) applies for the purposes of paragraphs (7) and (8), as if—
- (a) references to the owner of a ship were to the shipowner under these Regulations; and
  - (b) references to an offence under section 130, were references to an offence under these Regulations.

*[Regulation 27B inserted by BR 102 / 2019 reg. 13 effective 17 October 2019]*

Inspection, detention etc. of fishing vessels registered outside Bermuda

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

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

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

provided that the measures specified in sub-paragraphs (a) and (b) may be taken only when the ship has called at a Bermuda port in the normal course of business for operational reasons.

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

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

*[Regulation 28 deleted and substituted by BR 102 / 2019 reg. 14 effective 17 October 2019]*

Inspection of non-Bermuda ships with MLC documentation

28A (1) A relevant inspector may—

- (a) review the ship's Maritime Labour Certificate and Declaration of Maritime Labour Compliance or the ship's interim Maritime Labour Certificate; and
- (b) where Standard A5.2.1 of the MLC applies, carry out a more detailed inspection in accordance with that Standard.

(2) Where a relevant inspector has power to inspect a ship under paragraph (1)(b), Regulation 27A applies to the relevant inspector as if—

- (a) in paragraphs (1) and (3), for the words "checking compliance with these Regulations" there were substituted "carrying out an inspection under Regulation 28A(1)(b)"; and
- (b) in paragraph (3), for the words "to which this Regulation applies", in both places where they appear, there were substituted "to which Regulation 28A(1)(b) applies".

*[Regulation 28A inserted by BR 102 / 2019 reg. 15 effective 17 October 2019]*

Detention of non-Bermuda ships with MLC documentation

28B (1) Where a relevant inspector inspects the ship under Regulation 28A(1)(b) and has clear grounds for believing that—

- (a) one or more of the requirements of Regulation 4.3 and Standard A4.3 of the MLC (health and safety protection and accident prevention) have not been complied with; and the conditions on board are clearly hazardous to the safety, health or security of seafarers; or



MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

- (b) the non-compliance represents a serious breach or the latest in a series of repeated breaches of the requirements of the MLC (including the rights of seafarers referred to in Articles III and IV of the MLC which are secured by it);

the ship is liable to be detained.

(2) The power under this Regulation to detain a ship may only be exercised if the ship in question is—

- (a) in a port or shipyard in Bermuda; or
- (b) at an offshore terminal in Bermuda waters.

(3) A person having powers to detain a ship may permit a ship which is liable to be detained under this Regulation to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(4) Where a ship is liable to be detained under paragraph (1), section 242 of the Act (enforcing detention of a ship) has effect in relation to that ship as if—

- (a) references to the owner of a ship were to the shipowner under these Regulations;
- (b) references to detention of a ship under the Act were references to detention of the ship in question under these Regulations; and
- (c) subsection (7) were omitted.

(5) Where a ship is detained under this Regulation, the Minister must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly, or the appropriate maritime authorities of that State, and invite them to send a representative to attend the ship.

(6) Where a ship is detained under this Regulation and all the grounds for detention have ceased to apply, a person having power to detain the ship must, at the request of the shipowner or master, immediately release the ship.

*[Regulation 28B inserted by BR 102 / 2019 reg. 15 effective 17 October 2019]*

#### Enforcement of detention

29 Where a ship is liable to be detained under these Regulations, (other than under Regulation 27A or 28B) section 242 of the Act (which relates to the detention of the ship) shall apply as if for the words “this Act”, wherever they appear, there were substituted “the Merchant Shipping (Health and Safety at Work) Regulations 2004”.

*[Regulation 29 amended by BR 102 / 2019 reg. 16 effective 17 October 2019]*

#### Compensation

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

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

Ambulatory reference

30A (1) In these Regulations, “Article I to Article VII”, means Article I to VII of the 2006 Convention and any reference to Article I to VII, is to be construed—

- (a) as a reference to those Articles as modified from time to time; and
- (b) if these Articles are replaced by another instrument, as a reference to that instrument.

(2) For the purposes of paragraph (1), an Article is modified if—

- (a) omissions, additions or other alterations to the text, take effect in accordance with Article XIV of the 2006 Convention or with Article XV of the Code; or
- (b) supplementary provision made under Article XIV of the 2006 Convention or under Article XV of the Convention, takes effect.

(3) A modification to or a replacement of an Article by virtue of paragraph (1), has effect at the time such modification or replacement comes into force in accordance with paragraph (4) of Article XIV of the 2006 Convention.

(4) No modification or replacement of a reference to an Article by virtue of paragraph (1), affects any right or liability arising before the date on which the modification or replacement has effect.

*[Regulation 30A inserted by BR 102 / 2019 reg. 17 effective 17 October 2019]*

Revocation

31 The Merchant Shipping (Health and Safety: General Duties) Regulations 1991 are revoked.

MERCHANT SHIPPING (HEALTH AND SAFETY AT WORK) REGULATIONS  
2004

---

SCHEDULE

(Regulation 13A)

[Revoked by BR 102 / 2019 reg. 18]

*[Schedule inserted by BR 119 / 2013 regulation 2 effective 30 June 2014; Schedule revoked by BR 102 / 2019 reg. 18 effective 17 October 2019]*

Made this 20th day of July 2004

Minister of Transport

---

*[Amended by:*

BR 50 / 2011

BR 119 / 2013

BR 102 / 2019]