

BERMUDA STATUTORY INSTRUMENT

BR 5/1991

MERCHANT SHIPPING (PROTECTIVE CLOTHING AND EQUIPMENT) REGULATIONS 1991

*[made under section 22 of the Merchant Shipping Act 1979
[title 31 item 16] and brought into operation on 1 February
1991]*

The Minister, after consulting with the persons referred to in section 22(7) of the Merchant Shipping Act 1979 [title 31 item 16] (hereinafter called "the Act"), in exercise of powers conferred on him by section 22(1)(a) and (b), (2), (3), (4), and (5) of the Act, hereby makes the following Regulations:

Citation and commencement

1 These Regulations may be cited as the Merchant Shipping (Protective Clothing and Equipment) Regulations 1990 and shall come into operation on 1 February 1991.

Interpretation

2 In these Regulations, unless the context otherwise requires—

"employee" means a person (including the master and self-employed persons) employed on board ship other than a dock worker or shore-based worker on board a ship whilst it is in harbour;

"employer" means a person who employs an employee other than himself;

"fishing vessel" means a vessel for the time being employed in sea fishing but does not include a vessel used otherwise than for profit;

"master" includes any person in charge of a ship during the absence of the master;

"Merchant Shipping Notice" means a Notice described as such issued by the Secretary of State;

"pleasure craft" means a vessel primarily used for sport or recreation;

"relevant MSN" means Merchant shipping [sic] Notice No 1195 and any document amending or replacing it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice.

Application

3 (1) Subject to paragraphs (2) and (3)—

(a) these Regulations, other than regulation 14, apply to ships registered in Bermuda; and

(b) regulations 1, 2, 3, 14 and 15 apply to other ships when they are in a port in Bermuda.

(2) These Regulations do not apply to fishing vessels or pleasure craft.

(3) The Minister may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms (if any) as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

Provision and standard of protective clothing and equipment

4 (1) An employer shall ensure that every employee of his in a ship who is engaged in a work process described in the relevant MSN or who may reasonably be expected to be at risk from such a work process carried on in such a ship, is provided with suitable protective clothing and equipment of the kind and to the standard specified in the relevant MSN in relation to that work process or with protective clothing and equipment of a standard which is equivalent thereto:

Provided that other protective clothing and equipment which complies with the approved published specification of a national authority or of the International Organisation for Standardisation may be provided where it has been necessary to purchase items at a place where items complying with the specified standard specifications are not available and it has not been reasonably practicable to replace them.

(2) An employer shall ensure that every employee of his in a ship who is engaged in any other work process involving a particular hazard which can be alleviated by the provision of protective clothing or equipment, or where health or safety may reasonably be expected to be at risk from such a work process carried on in such a ship, is provided with suitable protective clothing and equipment designed to reduce the hazard so far as is reasonably practicable.

Storage and issue

5 An employer shall ensure that whenever any protective clothing or equipment is carried aboard a ship for use by

his employees, it is issued to employees for their individual use or is kept in easily accessible and clearly marked places in a manner which will prevent deterioration or damage during storage or contact with substances likely to affect it adversely.

Maintenance

6 (1) An employer shall ensure that whenever any protective clothing or equipment is carried aboard a ship for use by his employees except in so far as it is issued to employees for their individual use, it is—

(a) properly maintained, due regard being paid to any recommendations made by the manufacturers;

(b) regularly inspected and, where appropriate, its operation checked at intervals of not more than three months;

(c) repaired, decontaminated or replaced as necessary; and

(d) in the case of breathing apparatus specified in item 6 of the relevant MSN, inspected and its operation checked before and after use.

(2) An employee shall ensure that any deficiencies or defects in any items of protective clothing or equipment issued to him for his individual use are reported for repair or replacement to a responsible ship's officer or any other person authorised by the employer of that employee.

Instructions in the use of protective clothing and equipment

7 An employer shall ensure that—

(a) any employee of his who may be required to wear protective clothing or use protective equipment is appropriately instructed in its use; and

(b) where items of protective clothing or equipment are stored on board a ship for use by his employees, instructions for their proper use and maintenance are kept with the protective clothing or equipment to which they refer or in a safe place as close thereto as possible.

Use of protective clothing

8 No person shall require an employee to start in a ship a work process referred to in regulation 4 unless the appropriate clothing or equipment specified in or in accordance with that regulation is in good condition and

working order and is being worn or used by the employee carrying out the work process and by any other employee who is subject to a reasonably foreseeable risk from that work process.

Use of protective equipment

9 Any employee involved in or subject to a reasonably foreseeable risk in a ship from a work process referred to in regulation 4 shall wear the appropriate protective clothing and use the appropriate protective equipment specified in or in accordance with that regulation.

Penalties

10 (1) Contravention of regulation 4, 5, 6(1) or 7 is an offence punishable on summary conviction by a fine of two thousand dollars.

(2) Contravention of regulation 6(2), 8 or 9 is an offence punishable on summary conviction by a fine of two hundred dollars.

(3) It is a defence for a person charged under these Regulations, including a person charged by virtue of regulation 11, to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Act or default of some other person

11 Where an offence under any of these Regulations is committed, or would have been committed except for the operation of regulation 10(3), by any person due to the act or default of some other person, that other person is guilty of 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 a body corporate

12 (1) Where an offence under any of these Regulations committed by a body corporate 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 guilty of 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, paragraph (1) applies 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.

Inspection and retention [sic] of a Bermuda ship

13 Any person duly authorised by the Minister may inspect any ship registered in Bermuda and if he is satisfied that the protective clothing or equipment carried in the ship is inadequate for any work process which is being, or is reasonably likely to be, carried out in port or during the course of the voyage upon which the ship is or is about to be engaged, and that this would constitute a serious risk to the safety or health of those on board, he may detain the ship until suitable protective clothing or equipment is provided, but shall not in the exercise of these powers detain or delay the ship unreasonably.

Inspection, detention and other measures in respect of ships registered outside Bermuda

14 (1) Any person duly authorised by the Minister may inspect any ship which is not registered in Bermuda when the ship is in a port in Bermuda and if he is satisfied that the protective clothing or equipment carried in the ship does not conform to the standards required of ships registered in Bermuda by these Regulations, he may—

(a) send a report to the government of the country in which the ship is registered, and a copy thereof to the Director-General of the International Labour Office; and

(b) where conditions on board are clearly hazardous to safety or health—

(i) take such measures as are necessary to rectify those conditions;

(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 port in Bermuda in the normal course of business or for operational reasons.

(2) If the person duly authorised takes either of the measures specified in paragraph (1)(b), he shall forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(3) The person duly authorised shall not in the exercise of his powers under this regulation unreasonably detain or delay the ship.

Compensation and enforcement of detention

15 (1) If it appears that there was not reasonable and probable cause for the detention of a ship under these Regulations, the Government is liable to pay to the owner of the ship his costs of and incidental to the detention of the ship and also compensation for any loss or damage sustained by him by reason of the detention.

(2) Where under these Regulations a ship is to be or may be detained, any person duly authorised by the Minister for the purpose may detain the ship, and if—

(a) after the ship is detained; or

(b) after notice of an order for the detention of the ship has been served on the master, the ship proceeds or attempts to proceed to sea before it is duly released, the master of the ship and also the owner, and any person who sends the ship to sea, if the owner or such person is party or privy to the offence, shall each be guilty of an offence and be liable on summary conviction to a fine of one thousand dollars.

(3) Where a ship so proceeding to sea takes to sea when on board thereof in the execution of his duty any person duly authorised to detain the ship, the owner and the master of the ship shall each be liable to pay all expenses of and incidental to the duly authorised person being so taken to sea and shall also be guilty of an offence and liable on summary conviction to a fine of five hundred dollars.

(4) Where under these Regulations a ship is to be detained, the Registrar of Shipping shall refuse a clearance to that ship.