

MERCHANT SHIPPING SAFETY

Merchant Shipping (Health and Safety—General Duties) Regulations 1984^{*160}

[The Minister] in exercise of powers conferred on him by [section 187 of the Merchant Shipping Act¹⁶¹], and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Health and Safety: General Duties) Regulations 1984* and [came into operation on 5 September, 2001]¹⁶².

Interpretation

2. In these Regulations, except where 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 a shore-based repair or other worker temporarily employed on board a ship;
 - “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;
 - “offshore installation” means any offshore installation within the meaning of section 1(3) of the Mineral Workings (Offshore Installations) Act 1971^{(c) 163};
 - “pleasure craft” means a vessel primarily used for sport or recreation;
 - “substance” means any natural or artificial substance whether in solid or liquid form or in the form of a gas or vapour.
- [“Bahamian ship” has the same meaning as in section 2 of the Merchant Shipping Act].

Application

3.—(1) Subject to paragraph (2) of this regulation,
(a) these Regulations except regulation 13 apply to [Bahamian ships] and
(b) regulations 1, 2, 3, 13¹⁶⁴ apply to ships other than [Bahamian ships] while they are in a [Bahamian] port.

(2) These Regulations do not apply to fishing vessels, pleasure craft or offshore installations whilst on or within 500 metres of their working stations.

* These regulations were applied in 2000 from 1984 Regulations.

¹⁶⁰ applied in the Bahamas from UK SI 408/1984 by the Merchant Shipping (Amendment) Act 2000, 34 of 2000

¹⁶¹ ch. 246, 16 of 1976

¹⁶² these Regulations were inserted into the Second Schedule of the MSA by the Merchant Shipping (Amendment) Act 2000 (34 of 2000) which entered force on 5 September, 2001.

^(c) 1971 [UK] c. 61; section 1 was substituted by section 24 of the [UK] Oil and Gas (Enterprise) Act 1982 (c. 23).

¹⁶³ see Appendix III for excerpt and definition

¹⁶⁴ words “and 14” omitted

General duties of employers

4.—(1) It shall be the duty of the employer of employees aboard a [Bahamian ship] to ensure, so far as is reasonably practicable, the health and safety of employees and other persons aboard ship who may be affected by his acts and omissions.

(2) Without prejudice to the generality of the employer's duty under paragraph (1), the matters to which that duty extends shall include in particular:

- (a) the 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) the provision to his employees of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety of persons aboard ship;
- (d) so far as is reasonably practicable, the maintenance of all places of work in the ship in a condition that is safe and without risk to health;
- (e) the provision and maintenance of an environment for persons aboard ship that is, so far as is reasonably practicable, safe and without risk to health;
- (f) so far as is reasonably practicable collaboration with others who employ persons who are at any time in the course of their employment aboard a ship or engaged in loading or unloading activities in relation to a ship to protect the health and safety of all persons aboard that ship.

(3) It shall be the duty of every employer of employees aboard a [Bahamian ship] to prepare and, as often as may be appropriate, revise a written statement of his general policy with respect to the health and safety aboard ship and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision of it to the notice of his employees:

Provided that this requirement shall not apply to an employer who employs less than five employees in aggregate on board [Bahamian] ships.

General duties of employees

5. It shall be the duty of every employee aboard a [Bahamian] ship:
- (a) to take reasonable care for the health and safety of himself and of other persons aboard ship who may be affected by his acts or omissions; and
 - (b) as regards any duty or requirement imposed on his employer or any other person by these Regulations and the Merchant Shipping Acts¹⁶⁵ or any regulation or rule made thereunder, with regard to the safety or health of persons aboard a [Bahamian ship] to which these Regulations apply, to co-operate with that person so far as is necessary to enable that duty or requirement to be performed or complied with.

Prohibition on levy

6. No employer of persons aboard a [Bahamian ship] shall levy or permit to be levied on any employee of his any charge in respect of anything done or provided in pursuance of any requirement of these Regulations.

¹⁶⁵ words omitted.

Duty not to interfere with or misuse certain things

7. No person shall intentionally or recklessly interfere with or misuse anything provided in the interests of health or safety aboard a [Bahamian ship] in pursuance of these Regulations and the [Merchant Shipping Acts] or any regulation or rule made thereunder.

Penalties

8.—(1) Contravention of regulation 4 or 6 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding £1,000.

(2) Contravention of regulation 5 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding £50.

(3) Contravention of regulation 7 of these Regulations shall be an offence punishable on summary conviction by a fine not exceeding £200.

(4) It shall be a defence for a person charged under paragraph (1) or (2) of this regulation to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

9. Where the commission by any person of an offence under any of these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulations whether or not proceedings are taken against the first-mentioned person.

Offence by body corporate

10.—(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, 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

11. 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 accused to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

Inspection and detention of a [Bahamian ship]

12. Any person duly authorised by [the Minister] may inspect any [Bahamian 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 he may detain the ship until the health and safety of all employees and other person aboard ship is secured, 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 [the Bahamas]

13. —(1) Any person duly authorised by [the Minister] may inspect any ship other than a [Bahamian ship] when the ship is in a [Bahamian] port and, if he is satisfied that the ship does not conform to the standards of health and safety required of [Bahamian ships] 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) above may be taken only when the ship has called at a [Bahamian] port in the normal course of business or for operational reasons.

(2) If he takes either of the measures specified in paragraph (1)(b), the person duly authorised 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 exercise of his powers under this regulation unreasonably detain or delay the ship.

Compensation and Enforcement of Detention

14. *[Regulation 14 is not reproduced here as it is unlikely that it is applied under the MSA. For compensation provisions, see section 211, MSA.]*

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations give effect in part to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organisation Convention 147)¹⁶⁶ which is in force internationally. The Regulations require the employers of persons employed on board [Bahamian] ships, other than fishing vessels, pleasure craft and offshore installations within 500 metres of their working stations, to ensure the health and safety aboard ship of all their employees and of other persons who may be affected by their acts or omissions and in particular make provision for the maintenance of plant, machinery and equipment, the use, handling, stowage and transport of articles and substances, the provision of information, instruction and training, the maintenance of the ship in a safe condition, the maintenance of a safe environment, and collaboration with other employers (regulation 4). The employer is also required to prepare a written statement of his general policy with respect to health and safety, and to bring the statement to the notice of all his employees except where he employs less than five persons on board ships (regulation 4(3)).

The Regulations also require an employee to take reasonable care for the health and safety of himself and other persons, and to co-operate with his employer or any other person so far as may be necessary to enable duties under the Merchant Shipping Acts and subordinate legislation to be performed (regulation 5). Employers are prohibited from levying a charge on employees in respect of any provision made under the Regulations (regulation 6). Any person is prohibited from interfering with or misusing anything provided in the interests of health or safety in pursuance of the Merchant Shipping Acts or subordinate legislation thereunder (regulation 7). The Regulations create offences in relation to specified breaches of the requirement (regulations 8-10) and there is a provision for the detention of [Bahamian ships] (regulation 12) and other ships (regulation 13).

¹⁶⁶ words omitted.