

L.N. 458 of 2004

**TERRITORIAL WATERS AND CONTIGUOUS
ZONE ACT
(CAP. 226)**

**MALTA MARITIME AUTHORITY ACT
(CAP. 352)**

**Vessel Traffic Monitoring and Reporting Requirements
Regulations, 2004**

IN exercise of the powers conferred by article 7 of the Territorial Waters and Contiguous Zone Act and, by article 28 of the Malta Maritime Authority Act, the Prime Minister and Minister of Finance and the Minister for Competitiveness and Communications, after consultation with the Malta Maritime Authority, have made the following regulations:-

1. (1) The title of these regulations is the Vessel Traffic Monitoring and Reporting Requirements Regulations, 2004. Citation and Commencement.

(2) These regulations shall come into force on the 1st November, 2004.

2. (1) The purpose of these regulations is to establish, in accordance with the provisions of the European Council Directive 2002/59/EC of the European Parliament and of the Council of the 27th June, 2002 (hereinafter referred as the “Directive”) establishing a Community vessel traffic monitoring and information system with a view to enhancing the safety and efficiency of maritime traffic, improving the response of authorities to incidents, accidents or potentially dangerous situations at sea, including search and rescue operations, and contributing to a better prevention and detection of pollution by ships. Purpose.

(2) These regulations shall be without prejudice to any other law or instrument that relates to territorial waters and contiguous zone, the provision of search and rescue and the response in cases of “disaster” as described in the Civil Protection Act. Cap. 411.

Application.

3. (1) These regulations apply to ships of 300 gross tonnage and upwards, unless stated otherwise in these regulations.

(2) These regulations shall not apply to:

(a) warships, naval auxiliaries;

(b) ships owned or operated by the Government of a Member State which are used for non-commercial public service;

(c) fishing vessels, traditional ships, recreational craft with length of less than 45 metres; and

(d) bunkers below 5000 tonnes on board vessels, ships' stores and equipment for use on board ships.

Interpretation.

4. (1) In these regulations unless the context otherwise requires:

“agent” means any person mandated or authorized to supply information on behalf of the operator of the ship;

Cap. 220.

“the Armed Forces of Malta” means the regular force raised under the provisions of the Malta Armed Forces Act;

Cap. 352.

“the Authority” means the Malta Maritime Authority established in terms of the Malta Maritime Authority Act;

“casualty” means a casualty within the meaning of the IMO Code for the Investigation of Marine Casualties and Incidents;

“coastal station” means any of the following, designated in terms of these regulations: a vessel traffic service, a shore-based installation responsible for a mandatory reporting system or a body responsible for coordinating search and rescue, or operations to tackle pollution at sea;

“the competent authority” means the authority appointed under regulation 5 of these regulations;

Cap. 226.

“contiguous zone” has the same meaning as that assigned to it in article 3 of the Territorial Waters and Contiguous Zone Act;

L.N. 1 of 1996.

“dangerous goods” and “polluting goods” shall have the same meaning as defined in the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations, 1996;

“IMO Resolution A.851(20)” means International Maritime Organisation Resolution 851(20) entitled “General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants”;

“ISM Code” means the International Safety Management Code;

“law” means any law or instrument having the force of law;

“Maltese waters” means the ports, internal waters, territorial waters and contiguous zones of Malta;

“maritime enforcement officer” has the same meaning as that assigned to it in the Territorial Waters and Contiguous Zone Act; Cap. 226.

“MARPOL” means the International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol thereto;

“the Minister” means the Minister responsible for shipping and ports;

“operator” means the owner or manager of a ship;

“owner”, as regards a ship, means -

(i) the owner of the ship, or

(ii) any other organization or person such as the manager or the bareboat charterer who has assumed responsibility for the operation of the ship from the owner of the ship, and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code;

“related interests” means the interest of Malta directly affected or threatened and concerning, among others: -

(i) maritime activities in the coastal areas, or in ports, including fishing activities;

(ii) the historical and tourist appeal of the area in question, including water sports and recreation;

(iii) the health of the coastal population;

(iv) the cultural, aesthetic, scientific and educational value of the area;

(v) the conservation of biological diversity and the sustainable use of marine and coastal biological resources;

(vi) supply of water, energy and other resources; and

(vii) the socio-economic interest of Malta.

“ship” means any sea-going vessel or craft;

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“territorial waters” has the same meaning as that assigned to it in article 3 of the Territorial Waters and Contiguous Zone Act;

“traditional ships” means all kinds of historical ships and their replicas including those designed to encourage and promote traditional skill and seamanship, that together serve as living cultural monuments, operated according to traditional principles of seamanship and technique;

“vessel traffic service” means a service designed to improve the safety and efficiency of vessel traffic and to protect the environment, which has the capability to interact with the traffic and to respond to traffic shipping situations developing in Maltese waters.

(2) For the purposes of these regulations:

(a) “accident” means any accident or occurrence affecting the safety of a ship, including, without prejudice to the generality of the foregoing, any occurrence whereby a ship -

(i) is in collision,

(ii) grounds,

(iii) is damaged,

(iv) malfunctions or breaks down,

(v) suffers the flooding or shifting of cargo, or

(vi) suffers a defective hull or structural failure;

(b) “incident” means any incident on a ship which affects or could affect the safety of other ships, including, without prejudice to the generality of the foregoing, a failure or defect which affects or is likely to affect -

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

of the ship.

5. (1) The Competent Authority responsible for ensuring the implementation of the provisions of these regulations, shall be the Malta Maritime Authority.

Appointment of
Competent
Authorities.

(2) Without prejudice to sub-regulation (1) of this regulation, the Armed Forces of Malta shall be the coastal station responsible to monitor shipping and receive information in terms of these regulations.

6. (1) This regulation applies to a ship bound for a port or an anchorage in Malta or to enter the territorial waters to receive a service.

Notification prior
to entry into port
or territorial
waters.

(2) The operator, agent or master of a ship referred to in sub-regulation (1) of this regulation shall notify the Authority of the information specified in sub-regulation (3) at the times specified in sub-regulation (4), and in such manner and in such format as required by the Authority, from time to time.

(3) The information referred to in sub-regulation (2) shall include -

- (a) the name, the call sign, the IMO identification number or the maritime mobile service identity number (MMSI) of the ship;
- (b) the port of destination or the identified area in the territorial waters;

(c) the estimated time of arrival at the port of destination or in the territorial waters, the estimated time of departure from the port of destination referred to in paragraph (b); and

(d) the total number of persons on board the ship.

(4) The times referred to in sub-regulation (2) are -

(a) 24 hours before the arrival of the ship; or

(b) if the duration of the voyage is less than 24 hours, no later than the time of departure from the previous port; or

(c) as soon as possible after it becomes known that the ship is bound for that port.

(5) Where information has been notified in accordance with sub-regulation (2), the master of the ship in question shall notify immediately the Authority of any changes to that information.

(6) Ships carrying dangerous or polluting goods shall comply with the notification obligations established in the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations, 1996.

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Vessel traffic services within territorial waters.

7. The master of a ship shall, prior to entering the territorial waters, make all required reports, including reporting of deficiencies and shall ensure that, when the ship enters the territorial waters of Malta, the ship shall participate in and comply with the rules which apply in the territorial waters.

Vessel traffic services outside territorial waters.

8. The coastal station may request a ship beyond the territorial waters to provide additional information as may be relevant to the enhancing of shipping safety and the protection of the environment, or may request such ship to take certain measures. The ship should endeavour to comply with this request.

Operation of automatic identification system.

9. Ships, calling at a port or an anchorage in Malta, and fitted with an automatic identification system which meets the performance standards drawn up by the IMO, shall maintain the system in operation at all times, except where international agreements, rules or standards provide for the protection of navigational information.

10. (1) Ships meeting the criteria set out below shall be considered to be ships posing a potential hazard to shipping or a threat to maritime safety, the safety of individuals or the environment:

Transmission of information concerning certain ships.

- (a) ships which in the course of their voyage:
 - (i) have been involved in incidents or accidents at sea as referred to in regulation 11; or
 - (ii) have failed to comply with the notification and reporting requirements imposed by these regulations; or
 - (iii) have failed to comply with any applicable rules in Malta;
- (b) ships in respect of which there is proof or presumptive evidence of deliberate discharges of oil or other infringement of the MARPOL Convention in waters under the jurisdiction of Malta;
- (c) ships which have been refused access to ports of the Member States or which have been the subject of a report or notification by a Member State in accordance with Annex I-1 to the Council Directive 95/21/EC of the 19th June, 1995 on port State control of shipping.

(2) The coastal station in Malta holding relevant information on ships referred to in regulation (1) of this regulation, shall communicate such information to the coastal stations of the other Member States located along the planned route of the ship.

(3) The Authority shall ensure that any information on ships referred to in sub-regulation (2) of this regulation communicated to it by a coastal station, is transmitted to any relevant body or authority in Malta.

11. (1) Without prejudice to international law, when a ship is involved in an accident, an incident or a pollution event, the master of that ship shall immediately send to the coastal station responsible for the area in which occurred the accident, incident or pollution event, as the case may be, by the quickest means available the information specified in sub-regulation (3) hereof.

Reporting of incidents and accidents at sea.

- (2) If -
 - (a) a slick of polluting goods; or

- (b) containers or packages drifting at sea; or
- (c) any other material which may pose a pollution or a safety hazard,

are seen from a ship in territorial waters and contiguous zone, the master of that ship shall immediately send to the coastal station responsible for the area in which the sighting occurred by the quickest means available details of the sighting and the information specified in paragraphs (a),(b) and (h) of sub-regulation (3) hereof.

(3) The information referred to in sub-regulation (1) shall include -

- (a) the identity of the ship;
- (b) the position of the ship;
- (c) the last port from which the ship departed;
- (d) the next port of call;
- (e) the number of persons aboard the ship;
- (f) the date on which and the time at which, the accident, the incident or the polluting event, as the case may be, occurred;
- (g) details of the accident, the incident or the polluting event, as the case may be;
- (h) the name of the body or person from whom detailed information regarding any dangerous goods or polluting goods on board the ship may be obtained, together with the necessary information, to enable that person or body, as the case may be, to be contacted; and
- (i) any other relevant information referred to in IMO Resolution A.851(20).

(4) In this regulation “polluting event” means an event or situation likely to result in the pollution of Maltese waters or the coastline of Malta, including, but without prejudice to the generality of the foregoing, the discharge, or the threat of discharge, of polluting goods into the sea.

12. (1) This regulation applies whenever the Authority is of the opinion, based on the sea state and weather forecast information provided to it by a meteorological office, that there is -

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

- (a) a serious threat of pollution in Maltese waters or the shipping zones or coastal areas of any other member state; or
- (b) a risk to human life or property,

as a result of exceptionally bad weather or sea conditions.

(2) Whenever possible, the Authority shall provide to the master of every ship which intends to enter or leave a port in a relevant area, full details of -

- (a) the weather and sea conditions; and
- (b) the danger such weather and sea conditions may cause to -
 - (i) the ship, or
 - (ii) to any persons or cargo on board the ship.

(3) Without prejudice to any such measures to be taken to give assistance to ships in difficulty, the Authority may take such measures as it considers appropriate in all the circumstances until it considers that there no longer exists such a serious threat of pollution or a risk to human life or property as described in sub-regulation (1).

(4) Without prejudice to the generality of sub-regulation (3), the measures which the Authority may take, include a recommendation or a prohibition described in sub-regulation (5) to a ship in, or about to enter or leave, the port, anchorage or territorial waters.

(5) The recommendation or the prohibition referred to in sub-regulation (4) is:-

- (a) a recommendation for such ship -
 - (i) to enter or leave a port, anchorage or any other sheltered area; or
 - (ii) not to enter or leave a port or anchorage;

- (b) a prohibition for such ship -
 - (i) to enter or leave a port or anchorage; or
 - (ii) to carry out bunkering or any other operations; or
 - (iii) not to carry out bunkering or any other operations.

until the Authority is of the opinion that there is no longer a serious threat of pollution or a risk to human life or property as described in sub-regulation (1).

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(6) All bunkering operations shall be carried out in compliance with the Dangerous Cargo Ships, Marine Terminals and Facilities and Bunkering Regulations, 1996.

(7) A recommendation or a prohibition given pursuant to this regulation -

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

(8) Where the Authority takes any measures pursuant to sub-regulation (3), including the giving of a recommendation or a prohibition pursuant to this regulation, the master of the ship in question shall immediately inform the owner of that ship by the quickest means available of the measures, the recommendation, the prohibition or the opinion, as the case may be.

(9) If, as a result of the exercise of his professional judgement, the master decides not to act in accordance with -

- (a) any measures taken pursuant to sub-regulation (3); or
- (b) a recommendation or a prohibition given pursuant to this regulation,

the master shall inform the Authority of the reasons for not so acting.

(10) In this regulation -

- (a) “relevant area” means an area in Maltese waters affected by exceptionally bad weather or sea conditions;

(b) “professional judgement” means professional judgement as regards matters relating to safe navigation, safety of life or the protection of the marine environment.

13. (1) In the event of incidents or accidents at sea as referred to in regulation 11, the operator, the master of the ship and the owner of the dangerous or polluting goods carried on board must, in accordance with national and international law, cooperate fully with the Authority, at the latter’s request, with a view to minimizing the consequences of an incident or accident at sea.

Measures in the event of incidents or accidents at sea.

(2) A master to whom this regulation applies shall inform the owner of such ship, by the quickest means possible, of any accident or incident at sea in which the ship is involved or which affects the ship, as soon as possible after the accident or incident occurs.

(3) When the operator of a ship is informed by the master of that ship of an accident or incident at sea either in accordance with the ISM Code or in accordance with sub-regulation (2), such owner -

(a) inform the Authority and the coastal station immediately of the accident or incident; and

(b) give such assistance as may be reasonably required by the relevant authority.

14. (1) There shall be established a Maritime Safety and Pollution Prevention Committee (hereinafter referred to as “the Committee”) to advise and make recommendations to the Authority on general ways of dealing with -

Maritime Safety and Pollution Prevention Committee.

(a) a ship involved in an accident, an incident or a pollution event;

(b) an evaluation of the risks involved if such accident, incident or pollution event affects or threatens the related interests or the economy of Malta; and

(c) the co-ordination of responding to such accident, incident or pollution event, in the case the Authority decides that it should take appropriate measures with a view to minimizing the consequences of an incident or accident at sea.

(2) The following senior public officials shall be ex officio members of the Committee:

(a) the Permanent Secretary in the Ministry responsible for shipping and ports, who shall be the Chairman;

(b) the Chairman of the Authority;

(c) the Executive Director of the Authority appointed in terms of article 8 of the Malta Maritime Authority Act and delegated with the functions of implementing the provisions of these regulations;

(d) the Commander of the Armed Forces of Malta;

(e) the Commissioner of Police;

(f) the Director of the Civil Protection Department; and

(g) the Director-General, Malta Environment and Planning Authority:

Provided that the Minister may appoint other persons as members of the Committee who appear to him to have the experience and to have shown the capacity in matters relating to maritime safety and oil pollution prevention and control.

(3) If any vacancy in the Committee occurs on account of death, resignation or for any other cause, the vacancy shall be filled by the senior public official acting or deputizing for the positions described in sub-regulation 2 hereof:

Provided that the Committee and the members thereof may continue to act notwithstanding any such vacancy.

(4) The Committee shall appoint a deputy Chairman who shall act instead of the Chairman whenever the Chairman is absent from a meeting of the Committee or is unable for any reason to act as Chairman.

(5) Notwithstanding any other provision of this regulation, the Minister may at any time terminate the appointment of an appointed member, if, in his opinion, such appointed member is unfit to continue in office or has become incapable of properly performing his functions.

(6) The Chairman of the Committee shall, from time to time, appoint a secretary to the Committee

(7) The Committee shall meet as often as necessary, but in no case less frequently than once in every three calendar months.

(8) The Committee may to co-opt members to the Committee and to decide on the composition and terms of reference of sub-committees or of expert groups to which it can give special tasks.

(9) The Committee shall regulate its own procedures.

(10) In those cases where the Authority fails to deem it, or does not deem it, appropriate, or does not agree with the advices and recommendations of the Committee, it shall provide the Minister with all relative information and justification immediately following the receipt of such advices and recommendations.

15. (1) Any person who fails to comply with any of the requirements prescribed in these regulations shall, for a first offence and on conviction, be liable to a fine (*multa*) not exceeding five thousand liri for each such offence, and in the case of a continuing offence or offences, to a further fine not exceeding five hundred liri for each offence for every day or part thereof during which such offence or offences continue: Offences and penalties.

Provided also that the court shall order to whoever is convicted of an offence against these regulations, to pay those expenses that the Competent Authority, or any other person or party, has incurred as a result of that offence.

(2) It shall also be lawful for the court, in the case of any contravention committed by the operator or master of a ship to order the detention of the ship for a time not exceeding three months at the expense of the operator.

(3) Where any offence against the provisions of these regulations is committed by a body of persons or body corporate, every person who at the time of the commission of the offence was a director, manager or other similar officer of such body of persons or body corporate, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

(4) Proceedings for an offence against these regulations shall be taken before Court of Magistrates (Malta) or the Court of Magistrates (Gozo), as the case may be, and shall be in accordance with the provisions of the Criminal Code regulating the procedure before the said courts as courts of criminal jurisdiction.