

ANTIGUA AND BARBUDA



THE SHIPPING (SMALL COMMERCIAL VESSELS) REGULATIONS, 2008

STATUTORY INSTRUMENT

2008, No. 31

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The Shipping (Small Commercial Vessels) Regulations, 2008, made in exercise of the powers contained in section 7 of the Antigua and Barbuda Merchant Shipping Act, 2006.

**PART I
GENERAL**

1. Short title

These Regulations may be cited as the Shipping (Small Commercial Vessels) Regulations, 2008.

2. Interpretation

In these Regulations

“Act” means the Antigua and Barbuda Merchant Shipping Act, 2006;

“Code” means the Code of Safety for Small Commercial Vessels (the SCV CODE);

“commercial vessel” means a cargo or passenger vessel of more than five metres but less than 24 metres in length that carries not more than 150 passengers or provides overnight accommodation for not more than 50 passengers;

“existing licence” means a licence to operate a commercial vessel of less than 24 metres in length, issued prior to the coming into force of these regulations;

“existing vessel” means a vessel which is not a new vessel;

“fishing vessel” means a vessel used or intended to be used for fishing for profit and does not include vessels used for the carriage of passengers used for sport fishing;

“new vessel” means a vessel the keel of which was laid or the construction or lay-up of which was started on or after 31 January 2005;

“owner” in relation to a ship, includes a demise or bare boat charterer, a managing owner and an operator;

“passenger” means a person carried in a ship, except

- (a) the master, a member of the crew, an apprentice or a person employed or engaged in any capacity on board the ship or the business of the ship;
- (b) a child under one year of age; and
- (c) a person carried on the ship under an obligation imposed upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstances which neither the master nor the owner nor the charterer could prevent or forestall;

"passenger vessel" means a vessel carrying more than 12 passengers;

"voyage" includes an excursion.

3. Application

Subject to regulation 4, these regulations shall apply to commercial vessels registered in Antigua and Barbuda and to other commercial vessels while they are within Antigua and Barbuda waters.

4. Exemptions

(1) The Director may grant exemptions from any provision of these regulations for classes of vessels or cases or individual cases on any terms specified.

(2) An approval or exemption given under these regulations must be in writing and specify the date on which it takes effect and any conditions on which it is given.

5. Equivalent standards

The Director may permit a piece of equipment or machinery to be provided or carried, or a provision to be made, that is different from one specified by these regulations or the Code if he or she is satisfied by trials or otherwise that the other piece of equipment or machinery or provision is at least as effective as those specified.

PART II REQUIREMENTS FOR VESSELS

6. Vessels to be surveyed within one year

A vessel to which these regulations apply must be surveyed for the issue of a Certificate of Inspection in accordance with regulation 8 not later than one year after these regulations come into effect.

7. Certificate of Inspection

(1) The owner of a commercial vessel shall apply to the Director in writing for a Certificate of Inspection from the ADOMS.

(2) If the application is being made in respect of a vessel being newly constructed or converted, the application shall be submitted prior to the start of the construction or conversion.

(3) The application must be accompanied by the information relating to the vessel that the Director requires and the prescribed fee.

(4) The ADOMS shall issue a Certificate of Inspection after it is satisfied, on inspection, that the vessel complies with the Code.

(5) The certificate, unless revoked sooner by the ADOMS, is valid for a period

(a) in the case of a vessel capable of carrying more than 12 passengers on an international voyage, not exceeding one year; and

(b) in any other case, five years.

8. Inspections

(1) An initial or renewal inspection includes an inspection of the hull and related items on dry-dock, structure, machinery, electrical equipment, lifesaving equipment, fire protection equipment, pressure vessels and boilers, steering systems, miscellaneous equipment and systems, sanitation and operational practices including the competence and composition of the crew.

(2) The annual inspection ensures that the ship and its equipment have been maintained in accordance with the Code and are in satisfactory working order.

(3) An inspection for the renewal of a Certificate of Inspection must be conducted no earlier than three months prior to the expiry of the certificate. The new certificate is dated from the expiry date.

(4) An annual inspection must be conducted between the ninth and the fifteen month after the anniversary date of the Certificate of Inspection.

(5) The Director may require a dry-dock inspection to be carried out on a vessel at any other time.

9. Responsibilities of owner and master

The owner or master of a vessel to which these regulations apply shall ensure that

- (a) the safety equipment is maintained so as to comply with the Code;
- (b) after any survey required by these regulations has been completed, no change is made in the structural arrangements, machinery or other items covered by the survey without the approval of the Director; and
- (c) if an accident occurs to the vessel or a deficit is discovered which affects the safety of the vessel or the efficiency or completeness of its life-saving appliances or other equipment, the master or owner of the vessel reports it at the earliest opportunity to ADOMS, who shall determine if an inspection is necessary.

10. Suspension of Certificate of Inspection

(1) If a vessel does not comply with the requirements of these regulations or the Code, the Director may suspend the validity of the Certificate of Inspection by giving notice to the owner and the master of the vessel stating what corrective action is required to end the suspension.

(2) When the Director suspends the validity of a Certificate of Inspection, the owner or master shall immediately deliver the certificate issued in relation to the vessel to the Director.

(3) When the Director is satisfied that the required corrective action has been taken, he or she shall restore the validity of the certificate and return the certificate issued in relation to the vessel to the master.

11. Prohibition on proceeding to sea

A vessel to which these regulations apply shall not proceed or attempt to proceed to sea unless

- (a) it has a Certificate of Inspection in force;
- (b) the vessel complies with the requirements of the Code, including any requirements as to operation, manning and maintenance, and is operated in accordance with any conditions as specified in the certificate; and
- (c) the certificate is displayed in a conspicuous place on board.

PART III BOATMASTERS AND BOAT ENGINEERS

12. Master and Engineers

(1) A vessel to which these regulations apply shall carry in command a person who is qualified as follows:

- (a) he or she holds a licence issued by the Director under regulation 13 stating that he or she is qualified to have command of such a vessel, if
 - (i) the licence is in force and is of a grade appropriate in respect to the waters in which the vessel is being navigated, the size of the vessel and the number of passengers carried; and
 - (ii) the vessel is in an area specified in the licence as one in which a vessel may be navigated under the command of the holder; or
- (b) he or she is the holder of a certificate of competency as a Deck officer issued in accordance with the provisions of the STCW Convention.

(2) A commercial vessel fitted with main propulsion machinery of up to 750 KW shall, where an engineer is required by the Director, or Table IX/8.2 of the Code, carry as engineer a person who is qualified as follows:

(3) Except as authorised by the Director, vessels with engines of higher power shall carry engineers qualified in accordance with the STCW Convention.

13. Issue of Licence, standards and conditions

(1) A person who wishes to apply for a boat master licence or a boat engineer licence shall apply to the Director in the form specified by the Director and shall pay the fee required for the licence.

(2) The Director shall, if satisfied that the applicant meets the requirements referred to in sub-regulation (3) and is a fit person to be the holder of such a licence and has paid the fee, issue the licence.

(3) The Director may specify in writing the conditions required and paragraphs IX/5 to IX/7 and IX/9 to IX/11 of the Code apply with respect to specifying

- (a) the standards of competence to be attained and the conditions, including conditions as to medical fitness, to be satisfied by a person in order for a licence to be issued to him or her under these regulations;
- (b) any exceptions applicable with respect to any of those standards or conditions;
- (c) the manner in which the attainment of the standards or the satisfaction of the conditions is to be evidenced; and
- (d) the conduct of any examinations and the conditions of admission to them.

14. Grade and area restrictions of boat master licences

(1) A licence as a master issued under regulation 13 bears the title "Boat master Licence" of one of the following grades:

- (a) Boat master Licence, Grade 1;
- (b) Boat master Licence, Grade 2; and
- (c) Boat master Licence, Grade 3.

(2) The grade of licence appropriate in respect of a vessel is determined in accordance with paragraph IX/4 of the Code.

(3) A boat master licence of any grade must state the restrictions to which the licence is subject determined by the Director as to the area or areas in which a vessel may be navigated under the command of the holder.

15. Grade and area restrictions of boat engineer licences

(1) A licence as engineer issued under regulation 13 bears the title "Boat Engineer Licence" of one of the following grades.

- (a) Boat Engineer Licence, Grade 1; and
- (b) Boat Engineer Licence, Grade 2.

(2) The grade of licence appropriate in respect of a vessel is determined in accordance with regulation IX/8 of the Code.

(3) A boat engineer licence of any grade must state the restrictions to which the licence is subject that the Director determines as to the area or areas in which a vessel may be operated under the charge of the holder.

16. Existing licences

(1) A person who holds a licence on the day on which these regulations come into force and wishes to apply for a boat master licence or a boat engineer licence shall apply to the Director in the form specified by the Director and shall pay the fee required for the licence.

(2) The Director shall, if satisfied that the applicant meets the requirements, issue the licence, which shall

- (a) be of the grade which is appropriate in respect of
 - (i) a vessel when being navigated or operated in waters in the area or areas stated in the existing licence as the area or areas of operation; and
 - (ii) the size of vessel which in the period of twelve months before the coming into force of these regulations was navigated or operated in that area under the command or charge of the holder of the existing licence; and
- (b) state the area or areas in which a vessel may be navigated or operated under the command or charge of the holder, which is the same as the area or areas stated in the existing licence as the area or areas of operation.

17. Validity and renewal of licences

(1) A licence issued to a person who is less than 63 years old at the time it is issued is valid until the earlier of

- (a) three years after the day on which it was issued; and
- (b) the day on which the holder of the licence turns 63 years old

(2) A person referred to in sub-regulation (1) wishing to re-validate a licence shall

- (a) provide the Director with a valid medical fitness certificate that complies with the requirements specified by the Director;
- (b) provide the Director with proof that the person has had at least 45 days service in vessels for which the licence is valid during the previous three years; and
- (c) pay the prescribed fee for re-validation.

(3) A licence issued to a person who is 63 years old or more at the time it is issued is valid for one year.

(4) A person referred to in sub-regulation (3) wishing to re-validate a licence shall

- (a) provide the Director with a valid medical fitness certificate that complies with the requirements specified by the Director;
- (b) provide the Director with proof that the person has had at least 15 days service in vessels for which the licence is valid during the term of the licence; and
- (c) pay the prescribed fee for re-validation.

(5) A person who is unable to produce proof of the experience required under paragraph (2)(b) or (4)(b) shall apply for an examination.

(6) The Director shall, if satisfied that the applicant meets the requirements referred to in sub-regulation (2) or (4) or has been successful in the examination referred to in sub-regulation (5), is a fit person to be the holder of such a licence and has paid the fee, issue the licence.

18. Standards of competence required

A licence issued under these regulations remains valid only so long as the holder complies with the standards of competence and the conditions, including conditions as to medical fitness, specified in regulation 13(2) of the Code.

19. Record and surrender of licences

The Director shall ensure that the Registrar, or another person designated by the Director keeps a record of

- (a) every licence issued under this Part; and
- (b) every suspension, cancellation or alteration of, and any other matter affecting such a licence.

20. Replacement licences

(1) The holder of a licence who proves to the satisfaction of the Director that he or she has, without fault, lost or been deprived of a licence already issued to him or her, the Director shall cause a copy of the licence to be issued to its holder on payment of the prescribed fee.

(2) If the Director is not satisfied that the loss or deprivation was not due to the fault of the holder of the licence, the Director may cause a copy of the licence to be issued to its holder on payment of the prescribed fee.

(3) The Director shall certify, or cause to be certified by a person he or she designates, copies of licences issued under sub-regulations (1) and (2).

21. Suspension or cancellation of licence

(1) The Director may appoint a person to hold an inquiry into the fitness to discharge duties of a licensed boat master or boat engineer if it appears to the Director that there is a question as to the competence or misconduct of the licence holder or for any other reason.

(2) The Director may suspend the licence pending the outcome of the inquiry.

(3) A person whose licence is suspended shall surrender it to the Director within seven days of receiving a notice of suspension.

(4) If the inquiry recommends the suspension or cancellation of the licence, the Director shall notify the holder of the licence and permit him or her to make representations within fourteen days of the notice.

(5) The Director shall make the decision as to whether to cancel or suspend further the licence after considering the representations, or, if no representations have been made, within ten days after the end of the fourteen days mentioned in sub-regulation (4) and shall notify the holder of the licence accordingly.

PART IV HOURS OF WORK

[note: Have you spoken with the Labour Commissioner to ensure that the Antigua and Barbuda labour code does not apply at all to employees on vessels? Please advise.]

22. Interpretation

(1) In this Part, unless the context otherwise requires,

“crew” in relation to a ship includes seamen and apprentices;

“employer”, in relation to a master who has command of a vessel in the course of employment, means the person who employs that master in that employment;

“seaman” includes every person employed or engaged in any capacity on board a ship, other than a master, a pilot or a person temporarily employed on the ship while in port, and - apprentices;

“working day”, in relation to a person to whom this Part applies, means a period during which the person is on duty which is followed by an interval of rest of not less than 8 hours.

(2) For the purposes of this Part a director of a company is deemed to be employed by it.

23. Duty of owner, master, crew

(1) The owner of a vessel shall ensure, so far as is reasonably practicable, that no master or seaman works more hours than is safe in relation to the safety of the vessel, its cargo and persons carried on board and that regulations 24 and 25 are adhered to.

(2) Every master of a commercial vessel shall ensure, so far as is reasonably practicable, that no seaman works more hours than is safe in relation to the safety of the vessel, its cargo and persons carried on board.

(3) Every master and seaman, so far as reasonably practicable, shall ensure that he or she is properly rested when commencing duty on a vessel and obtains adequate rest during periods when off duty.

24. Working hours in vessels on voyages of 24 hours or more

- (1) This regulation applies to commercial vessels which do not complete a voyage within 24 hours.
- (2) The hours of rest must not be less than ten hours in every twenty-four hour period.
- (3) The ten hours may be divided into no more than two periods, so long as one of them is at least six hours in length.
- (4) The ten hours may be reduced to not less than six consecutive hours if
 - (a) the reduction does not extend beyond two days; and
 - (b) not less than seventy hours of rest are provided in each seven-day period.
- (5) The rest periods required by this regulation need not be maintained in cases of emergency including giving assistance to other vessels, persons in distress at sea, drill or overriding operational conditions.

25. Working hours in vessels on voyages of less than 24 hours

- (1) This regulation applies to vessels which complete a voyage or voyages in less than 24 hours.
- (2) In this regulation, "on duty" means
 - (a) in the case of a master who has command of a vessel in the course of employment, 'being actively employed by the person who employs him or her, whether for the purpose of having the command of a vessel to which this regulation applies or for other purposes; and
 - (b) in the case of a master who has command of a vessel for the purposes of a trade or business, having command of a vessel to which this regulation applies for the purposes of the trade or business, or being otherwise engaged in work for the purposes of that trade or business, in connection with the vessel or the passengers carried by it.
- (3) Subject to sub-regulation (4),
 - (a) the working hours of a master or engineer must not exceed sixteen hours;

- (b) a master or engineer must not be employed on any working day on a vessel or vessels to which this regulation applies for periods amounting in the aggregate to more than ten hours;
- (c) an interval of thirty minutes in which a master or engineer may obtain rest and refreshment must be provided to the master or engineer if
 - (i) the master or engineer has been on duty for a period of six hours; and
 - (ii) the end of the last of the periods does not mark the end of the working day;
- (d) an interval of thirty minutes in which a master or engineer may obtain rest and refreshment must be provided to the master or engineer if
 - (i) the master or engineer has been on duty for periods amounting in the aggregate to six hours;
 - (ii) such an interval has not been provided to the master between two of the periods; and
 - (iii) the end of the last of the periods does not mark the end of the working day;
- (e) an interval of rest of not less than eight hours must be provided to the master or engineer between two successive working days, and a period during which a master who has command of a vessel in the course of employment may be called upon to report for duty if required does not constitute a period of rest.

(4) The rest periods required by this regulation need not be maintained in cases of emergency including giving assistance to other vessels, persons in distress at sea, drill or overriding operational conditions.

26. Contravention of regulation 25

(1) A master and a master's employer or a person to whose orders that master was subject who causes or permits a contravention of regulation 24 or 25 commits an offence.

(2) It is a defence for a person charged with an offence under this regulation to show that the contravention was due to an unavoidable delay in the completion of a voyage arising out of circumstances which the person could not reasonably have foreseen.

(3) It is a defence for a person other than a master charged with an offence under this regulation to show that

- (a) the contravention was due to the fact
 - (i) that the master had conned a vessel or vessels; or
 - (ii) that the master had been on duty otherwise than in the employment of the person charged or otherwise than in the employment in which he or she was subject to the orders of the person charged; and
 - (ii) that the person charged was not, and could not reasonably have become, aware of that fact.

PART V MANNING AND TRAINING

27. Manning

A vessel to which these regulations apply shall not proceed on a voyage or excursion unless the manning of the vessel is in accordance with the Certificate of Inspection or approved by the Director in accordance with paragraph IX/17 of the Code.

28. Training in emergency procedures

The owner of a passenger vessel to which these regulations apply shall

- (a) establish procedures for the person having command of the vessel and other persons employed or engaged in any capacity on board the vessel which set out actions to be taken during emergencies by the master and crew to assist passengers, and otherwise deal with emergencies; and
- (b) ensure that each of those persons has received on-board training in the procedures to be observed by that person in such an event.

PART VI MISCELLANEOUS

29. Offences and penalties

(1) An owner or a master who contravenes any provision of Part II or III or regulation 27 commits an offence and is liable on summary conviction to a fine of thirty thousand dollars, or imprisonment for six months or to both.

(2) A person who contravenes any provision of Part IV or regulation 28 commits an offence and is liable on summary conviction to a fine of twenty thousand dollars.

30. Defence

It is a defence for a person charged with an offence under these regulations to show that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

31. Power to detain

A ship to which these regulations apply that does not comply with the requirements of these regulations is liable to detention under the Act as though the words "the Act" in section 127 relating to detention read "The Shipping (Small Commercial Vessels) Regulations 2008".

Made the 23rd day of June, 2008.



Minister responsible for Merchant Shipping
and Ship Registration