



BERMUDA

MERCHANT SHIPPING (SURVEY AND CERTIFICATION) REGULATIONS 2019

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 93 of the Merchant Shipping Act 2002, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Survey and Certification) Regulations 2019.

Application of Act

2 The Merchant Shipping Act 2002 shall apply to these Regulations.

Interpretation

3 (1) In these Regulations—

“anniversary date” means the day and the month of each year which correspond to the date of expiry of the relevant certificate;

“Authority” means the Bermuda Shipping and Maritime Authority (BSMA) established under section 3 of the Bermuda Shipping and Maritime Authority Act 2016;

“cargo ship” means any ship that is not a—

- (a) passenger ship;
- (b) ship of war;
- (c) fishing vessel; or
- (d) pleasure vessel;

“Cargo Ship Safety Certificate”, “Cargo Ship Safety Construction Certificate”, “Cargo Ship Safety Equipment Certificate”, “Cargo Ship Safety Radio Certificate”, and “Passenger Ship Safety Certificate” means the certificates of those names issued pursuant to Regulation 13;

“Electronic Certificate” means a certificate issued in electronic format;

“Electronic signature” means data in electronic form which is attached to or logically associated with other electronic data to serve as a method of authentication of the issuer and content of the electronic data;

“Certifying Authority” has the meaning given by Regulation 4;

“Convention Certificate” means a certificate issued in accordance with the requirements of the SOLAS Convention;

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“Exemption Certificate” means the certificate of that name issued pursuant to Regulation 17;

“gross tons” means gross tonnage ascertained under the Merchant Shipping (Tonnage) Regulations 2008;

“international voyage” means a voyage from a port in one country to a port in another country, either of the countries being a country to which the SOLAS Convention applies;

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

“mile” means an international nautical mile of 1852 metres;

“passenger” means any person carried on a ship except—

- (a) a person employed or engaged in any capacity on the business of the ship;
- (b) a person on board the ship either in pursuance of the obligation laid upon the master to carry shipwrecked, distressed or other persons, or by reason of any circumstance that neither the master nor the owner nor the charterer (if any) could have prevented or forestalled; or
- (c) a child of under one year of age;

“Passenger Certificate” means the certificate of that name issued pursuant to Regulation 14;

“passenger ship” means a ship carrying more than 12 passengers;

“pleasure vessel” means—

- (a) any vessel which at the time it is being used, is—
 - (i) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
 - (ii) in the case of a vessel owned by a body corporate, one on which the persons are employees or officers of the body corporate, or their immediate family or friends; and
 - (iii) on a voyage or excursion which is one for which the owner does not receive money 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 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 the 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

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- (c) in the case of any vessel referred to in paragraph (a) or (b), no other payments 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 relative’s spouse or civil partner, and “relative” means brother, sister, ancestor or lineal descendant;

“Printed version of electronic certificate” means a paper printout produced from an electronic certificate;

“proper officer” means a consular officer appointed by Her Majesty’s Government in the United Kingdom and, in relation to a port in a country outside Bermuda which is not a foreign country, includes an officer exercising in that port, functions similar to those of a superintendent;

“radio installations” means any radio equipment other than radio navigational equipment on board a ship or provided in relation to the ship’s life-saving appliances;

“ship of war” has the same meaning as in the SOLAS Convention;

“short international voyage” means an international voyage in the course of which—

- (a) a ship is not more than 200 miles from a port or place in which the passengers and crew could be placed in safety; and
- (b) the distance—
 - (i) between the last port of call in which the voyage begins and the final port of destination; or
 - (ii) of the return voyage does not exceed 600 miles, where the final port of destination is the last port of call in the scheduled voyage at which the ship commences its return voyage to the country in which the voyage began; and

“SOLAS Convention” means the International Convention for the Safety of Life at Sea 1974, its Protocols of 1978 and 1988, and all amendments to them in force on the date these Regulations come into force, and references to “the 1988 Protocol” are to that 1988 Protocol;

“Unique tracking number” means a string of numbers, letters or symbols used as an identifier to distinguish an electronic certificate issued by an Administration or its representative, from any other electronic certificate issued by the same Administration or its representative;

“Verifying” means a reliable, secure and continuously available process to confirm the authenticity and validity of an electronic certificate using the unique tracking number;

(2) Passenger vessels not engaged on international voyages are subject to the Bermuda Marine Board Act 1962.

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- (3) References to Conventions or Codes in their up to date versions which—
- (a) relate to all or any of the purposes set out in section 93(1) of the Merchant Shipping Act 2002;
 - (b) are considered by the Minister to be relevant from time to time; and
 - (c) are specified in a Merchant Shipping Notice;

have effect in so far as they are so specified.

Certifying Authorities

4 (1) In these Regulations, “Certifying Authority” means the Minister or any person authorised by the Minister.

(2) Authorisation under paragraph (1) may be given conditionally or unconditionally and is subject to paragraph (4).

(3) Without prejudice to the generality of paragraph (2), conditions may impose limitations on any person’s authorisation relating to—

- (a) individual ships;
- (b) classes of ships; and
- (c) the extent of any survey to be carried out by that person.

(4) The Minister may direct, in relation to an individual case or to a class of cases, that a survey, or part of a survey, for the purpose of these Regulations is carried out by the Minister and not by another Certifying Authority.

(5) A Certifying Authority other than the Minister is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown and its property is not to be regarded as property of, or held on behalf of the Crown.

Application and exemption

5 (1) Subject to paragraph (2), these Regulations apply to Bermuda ships wherever they may be and to other ships while they are in Bermuda waters.

(2) These Regulations do not apply to—

- (a) fishing vessels;
- (b) pleasure vessels; and
- (c) high-speed craft which comply with the requirements of the Merchant Shipping (High-Speed Craft) Regulations 2010.

(3) The Minister may grant exemptions from all or any of these Regulations on such terms (if any) as he may specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

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Surveys of passenger ships

6 (1) A Bermuda passenger ship shall be subject to the inspections and surveys mentioned in paragraphs (2) and (3).

(2) Those inspections are an annual inspection of the ship's bottom, of which two inspections within any five year period are to take place out of the water at intervals not exceeding 36 months.

(3) Those surveys are—

- (a) before the ship is put in service, a passenger ship initial survey; and
- (b) before the end of every period of 12 months following the issue of the ship's Passenger Ship Safety Certificate, a passenger ship renewal survey.

Surveys of cargo ship safety equipment

7 A Bermuda cargo ship of 500 gross tons or more engaged on international voyages shall be subject to the following surveys of its life-saving appliances and other equipment—

- (a) before the ship is put in service, a cargo ship safety equipment initial survey;
- (b) at the intervals specified in Merchant Shipping Guidance Notice 2017 No. 2017-03, a cargo ship safety equipment renewal survey;
- (c) within three months before or after the second or third anniversary date of a Cargo Ship Safety Equipment Certificate, a cargo ship safety equipment periodical survey; and
- (d) within three months before or after each anniversary date of the ship's Cargo Ship Safety Equipment Certificate, other than where a periodical survey is required to be carried out within that period, an annual survey.

Surveys of cargo ship radio installations

8 A Bermuda cargo ship of 300 gross tons or more engaged on international voyages shall be subject to the following surveys of its radio installations—

- (a) before the ship is put in service, a cargo ship radio installations initial survey;
- (b) at the intervals specified in Merchant Shipping Guidance Notice 2017 No. 2017-03, a cargo ship radio installations renewal survey; and
- (c) within three months before or after each anniversary date of the ship's Cargo Ship Safety Radio Certificate, a cargo ship radio installations periodical survey.

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Surveys of cargo ship structure, machinery and equipment

9 (1) A Bermuda cargo ship of 500 gross tons or more shall be subject to the following surveys of its structure, machinery and equipment, other than equipment to which Regulations 7 and 8 apply—

- (a) before the ship is put in service, an initial survey;
- (b) at the intervals specified in Merchant Shipping Guidance Notice 2017 No. 2017-03, a cargo ship structure renewal survey;
- (c) within three months before or after the second or third anniversary date of a Cargo Ship Safety Construction Certificate, a cargo ship structure etc. intermediate survey;
- (d) within three months before or after each anniversary date of the ship's Cargo Ship Safety Construction Certificate, other than where a cargo ship structure etc. renewal or intermediate survey is required to be carried out within that period, a cargo ship structure etc. annual survey ; and
- (e) subject to paragraph (2), two inspections of the ship's bottom, to take place out of the water within any five-year period, and at intervals not exceeding 36 months.

(2) For the purpose of paragraph (1)(e), where a cargo ship structure etc. renewal survey takes place within three months after the end of the five-year period of validity of a Convention Certificate, and that certificate has been extended in accordance with Regulation 18(3) or (4), the period of extension of the certificate shall be deemed to be within the five-year period.

Responsibilities of owner and master

10 (1) The owner and master of every ship to which this Regulation applies shall ensure that—

- (a) the ship and its equipment are maintained so as to ensure that the ship in all respects remains fit to proceed to sea without danger to the ship or persons on board;
- (b) after any survey of the ship required by these Regulations has been completed, no change shall be made in the structural arrangements, machinery, equipment and other items covered by the survey, without the approval of the Certifying Authority, except by direct replacement; and
- (c) whenever an accident occurs to a ship or a defect is discovered, either of which affects the safety of the ship or the efficiency or completeness of its life-saving appliances or other equipment—
 - (i) it is reported at the earliest opportunity to the Certifying Authority, or a proper officer; and
 - (ii) if a Bermuda ship is in such a case, in a port outside Bermuda, it is also reported to the appropriate authorities of the country in which the port is situated.

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(2) If a report is made under paragraph (1)(c)(i), the Certifying Authority or proper officer shall determine whether a survey is necessary, and if so, require one to be carried out.

(3) If the survey referred to in paragraph (2) shows that repairs are required, or if any important repairs or renewals are otherwise made to the ship or its equipment, a further survey shall be carried out on the completion of those repairs or renewals.

(4) This Regulation applies to—

- (a) Bermuda ships; and
- (b) except as regards paragraph (1)(a), other ships which have been surveyed pursuant to these Regulations.

Surveys and inspections – general

11 References in Regulations 6(1) and 7 to 10 to surveys or inspections of a particular description which are required to be carried out on a ship are to the surveys or inspections, as the case may be, of those descriptions as set out in Merchant Shipping Guidance Notice 2017 No. 2017-03.

Procedure to be adopted when the ship is deficient

12 (1) Where a surveyor determines that the condition of a ship to which this Regulation applies, does not correspond substantially with the particulars on one or more of the certificates referred to in these Regulations or is such that the ship is not fit to proceed to sea without danger to the ship or persons on board, the surveyor shall advise the owner or master, of the corrective action which in the surveyor's opinion is required, and shall notify the Certifying Authority.

(2) If such corrective action is not taken within such reasonable period as a surveyor may specify, the surveyor, or Certifying Authority, shall notify the Minister who may suspend the validity of the particular certificate issued to the ship.

(3) The Minister shall give notice of any such suspension, to the owner, to the surveyor, and to the Certifying Authority who in turn shall notify the master.

(4) This Regulation applies to Bermuda ships and other ships which have been surveyed pursuant to these Regulations.

Issue of certificates to Bermuda ships engaged on international or short international voyages

13 When a survey to meet the requirements set out in these Regulations has been satisfactorily completed in respect of a ship engaged on international voyages, the Certifying Authority shall issue—

- (a) in the case of a passenger ship, a Passenger Ship Safety Certificate, unless the ship is only engaged on short international voyages when a short international voyage Passenger Ship Safety Certificate shall be issued;

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- (b) in the case of a cargo ship of 300 gross tons or more, a Cargo Ship Safety Radio Certificate; and
- (c) in the case of a cargo ship of 500 gross tons or more—
 - (i) a Cargo Ship Safety Equipment Certificate or, as the case may be, a Cargo Ship Safety Construction Certificate; or
 - (ii) after an initial or renewal survey in accordance with Regulations 7 to 9, a Cargo Ship Safety Certificate.

Issue of certificates to Bermuda ships not engaged on international voyages

14 (1) When a survey of a Bermuda passenger ship to meet the requirements set out in these Regulations has been satisfactorily completed in respect of a ship not engaged on international voyages, the Certifying Authority shall issue a Passenger Certificate appropriate to its class.

(2) Bermuda passenger ships operating within Bermuda waters shall be certified in accordance with the Marine Board Act 1962.

Duration and validity of certificates

15 (1) Subject to paragraph (2), a Convention Certificate shall be issued from the date of the completion of the relevant survey and shall be issued for a period of validity as follows—

- (a) a Passenger Ship Safety Certificate and a short international voyage Passenger Ship Safety Certificate shall be issued for a period of validity not exceeding 12 months; and
- (b) a Cargo Ship Safety Construction Certificate, Cargo Ship Safety Equipment Certificate, Cargo Ship Safety Radio Certificate or Cargo Ship Safety Certificate, shall be issued for a period of validity not exceeding five years.

(2) Where a renewal survey has been completed within a period of three months before the expiry of the relevant Convention Certificate, the new certificate may be issued—

- (a) in the case of a Passenger Ship Safety Certificate, for a period of validity not exceeding 12 months from the date of expiry of the existing certificate; and
- (b) in the case of any other certificate, for a period of validity not exceeding five years from the date of expiry of the existing certificate.

(3) Except in special circumstances as determined by the Authority, where a renewal survey has been completed after the expiry of the relevant Convention Certificate, the new certificate shall be issued—

- (a) in the case of a Passenger Ship Safety Certificate, for a period of validity not exceeding 12 months from the date of expiry of the existing certificate; and

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- (b) in the case of any other certificate, for a period of validity not exceeding five years from the date of expiry of the existing certificate.
- (4) Where an annual, intermediate or periodical survey is completed before the period prescribed as respects such a survey in Regulations 6 to 9—
 - (a) the anniversary date shown on the relevant certificate shall be amended by endorsement, to a date which shall not be more than three months later than the date on which the survey was completed;
 - (b) subsequent annual, intermediate or periodical surveys required under Regulations 6 to 9 shall be completed at the intervals prescribed by those Regulations using the new anniversary date; and
 - (c) the expiry date may remain unchanged provided one or more annual, intermediate or periodical surveys, as appropriate, are carried out, so that the maximum intervals between the surveys prescribed by Regulations 6 to 9 are not exceeded.
- (5) A Passenger Certificate issued under Regulation 14 shall be issued for a period of validity not exceeding 12 months.
- (6) A Convention Certificate and a certificate issued under Regulation 14 shall cease to be valid—
 - (a) if its period of validity has been exceeded and the certificate has not been extended by the appropriate Certifying Authority in accordance with Regulation 18 or otherwise in accordance with the 1988 Protocol by the government of a country to which the 1974 SOLAS Convention applies;
 - (b) if the relevant surveys and inspections have not been completed within the periods specified under Regulations 6 to 9 or otherwise in accordance with the 1988 Protocol by the government of a country to which the 1974 SOLAS Convention applies, and the certificate has either not been extended in accordance with Regulation 17 or otherwise in accordance with the 1988 Protocol by the government of a country to which the 1974 SOLAS Convention applies, or the period of any such extension has expired;
 - (c) upon transfer of the ship to the flag of another State; or
 - (d) if the vessel no longer substantially complies with the requirements of the certificate.

Issue and use of Electronic Certificates

- 16 (1) The IMO approved the issue and use of electronic certificates at the 39th session of the Facilitation Committee.
- (2) The Authority approves the issue and use of electronic certificates.
 - (3) Electronic certificates issued by the Authority—
 - (a) will maintain validity and consistency with the format and content required by the relevant international conventions or instruments, as applicable;

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- (b) shall be protected from edits, modifications or revisions other than those authorised by the Authority; and
- (c) have a unique tracking number used for verification.

Issue and duration of Exemption Certificates

17 (1) When an exemption is granted to a ship in accordance with the relevant Regulations applicable to the ship, an Exemption Certificate shall be issued in addition to any Certificate issued under Regulation 13 or 14.

(2) The period of validity of an Exemption Certificate shall not be longer than the period of validity of the certificate to which it refers.

(3) An Exemption Certificate shall be subject to the same extension and other provisions as the certificate to which it refers.

Extension and other provisions

18 (1) Where a Convention Certificate other than a Passenger Ship Safety Certificate has been issued for a period of validity of less than five years and the surveys required under Regulations 6(1) and 7 to 9 have been satisfactorily completed, the Certifying Authority may extend the validity of that Certificate so that the certificate is valid for a maximum period of five years.

(2) Where a renewal survey required under Regulations 6(1) and 7 to 9 has been satisfactorily completed before the expiry of the relevant Convention Certificate but the new certificate cannot be issued or placed on board the ship before the expiry of the existing certificate, the Certifying Authority may endorse the existing certificate as valid for a period not exceeding 5 months from the expiry date.

(3) Where a renewal survey required under Regulations 6(1) and 7 to 9 has not been satisfactorily completed before the expiry of the relevant Convention Certificate and at the time of expiry the ship is not in a port in which it is to be surveyed, the Certifying Authority may, where it appears to it proper and reasonable to do so, extend the validity of the certificate solely for the purpose of allowing the ship to complete its voyage to its port of survey.

(4) Where no other extension has been granted, the Certifying Authority may extend the validity of a Convention Certificate, of ships engaged on short voyages for a period of no more than one month.

(5) An extension of validity under paragraph (1) or (2), and, except in special circumstances as determined by the Authority, an extension of validity under paragraph (3) or (4), shall be disregarded for the purposes of determining the date of expiry of an existing Convention Certificate under Regulation 15(2) or (3).

Issue and endorsement of Certificates by another Government

19 (1) The Minister may request the Government of a country to which the SOLAS Convention applies, to survey a Bermuda ship and, if satisfied that the requirements of the Convention are complied with, to issue or authorise the issue to the ship, the certificates referred to in Regulation 13.

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(2) A certificate issued in accordance with such a request shall contain a statement that it has been so issued and shall have the same effect as if it was issued by the Minister.

Requests made by other SOLAS Governments

20 (1) The Minister may, at the request of a government of a country to which the SOLAS Convention applies, survey a ship registered in that country.

(2) If the Minister is satisfied that the requirements of the Convention are complied with and that a survey has been satisfactorily completed in accordance with these Regulations, the Minister may issue to the ship one or more of the certificates referred to in Regulation 13, and, where appropriate, endorse such certificates in accordance with the requirements of the Convention.

(3) A certificate issued in accordance with a request mentioned in paragraph (1) shall contain a statement that it has been so issued and shall have the same effect as if it was issued by that government and not by the Minister.

(4) Where a memorandum, issued by or under the authority of the government concerned, is attached to a valid Passenger Ship Safety Certificate or a valid short international voyage Passenger Ship Safety Certificate, in respect of a ship to which the SOLAS Convention applies, which modifies the certificate in respect of the persons that may be carried for a particular voyage, the certificate shall have effect for the purpose of the voyage as if it was modified in accordance with the memorandum.

(5) A surveyor may go on board a ship to which the SOLAS Convention applies, for the purpose of verifying that there is in force any certificate required by these Regulations, that the hull, machinery and equipment correspond substantially with the particulars shown on the certificate and that Regulation 10 is being complied with.

Passenger ships which are not Bermuda ships

21 (1) When a survey of a passenger ship which is not a Bermuda ship, and which is not engaged on international voyages, is completed in accordance with these Regulations, the Certifying Authority shall issue a Passenger Certificate appropriate to its Class.

(2) Such certificates shall be subject to the requirements of these Regulations as though they were issued under Regulation 14.

Cancellation of a certificate

22 (1) The Minister may cancel a certificate issued to a Bermuda ship, where there is reason to believe that—

- (a) the certificate was issued on false or erroneous information; or
- (b) since any survey required by these Regulations, the structure, equipment or machinery has sustained damage or is otherwise deficient.

(2) The Minister may require that a certificate issued to a Bermuda ship which has expired or has been cancelled, be surrendered.

(3) No person shall—

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- (a) intentionally alter a certificate referred to in these Regulations;
- (b) intentionally make a false certificate referred to in these Regulations;
- (c) in connection with any survey required by these Regulations, knowingly or recklessly furnish false information;
- (d) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in these Regulations; or
- (e) fail to surrender a certificate required to be surrendered under paragraph (2).

Availability of certificates

23 The owner and master of every ship issued with a Convention Certificate shall ensure that it is readily available on board, for examination at all times.

Prohibition on proceeding to sea without the appropriate documentation

24 (1) No Bermuda ship engaged on international voyages shall proceed to sea unless it has been surveyed and there is in force the following certificate or certificates—

- (a) in the case of a passenger ship, a Passenger Ship Safety Certificate, or, if the ship is only engaged on short international voyages, a short international voyage Passenger Ship Safety Certificate;
- (b) in the case of a cargo ship of 300 gross tons or more, a Cargo Ship Safety Radio Certificate;
- (c) in the case of a cargo ship of 500 gross tons or more—
 - (i) a Cargo Ship Safety Radio Certificate, a Cargo Ship Safety Equipment Certificate and a Cargo Ship Safety Construction Certificate; or
 - (ii) a Cargo Ship Safety Certificate.

(2) No ship registered in a country to which the SOLAS Convention applies shall proceed to sea from a port in Bermuda unless there is in force, such Convention Certificates that would be required if the ship were a Bermuda ship.

(3) Regulation 17 applies to the Convention Certificates mentioned in paragraph (2), as if the ship were a Bermuda ship.

(4) No cargo ship of 500 gross tons or more, not engaged on international voyages shall proceed to sea from any port in Bermuda, unless it has been surveyed and there is in force a Cargo Ship Safety Construction Certificate.

(5) No ship registered in a country to which the SOLAS Convention does not apply shall proceed to sea from any port in Bermuda unless the ship is in possession of documentation which shows that the ship has been surveyed for compliance with Regulations 6 to 9 as if it were a Bermuda ship.

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(6) If a certificate is issued subject to conditions, or specifies sea areas in which the ship is certified to operate, the owner and master shall ensure that all conditions are complied with, or, as the case may be, that the ship only operates in the specified sea areas.

Prohibition on proceeding on a voyage or excursion without the appropriate certificate

25 (1) A Bermuda domestic passenger vessel certified under the Marine Board Act 1962 shall not proceed on a voyage in Bermuda waters unless it has been surveyed and there is in force a Passenger Certificate appropriate to the voyage or excursion.

(2) Where a certificate is issued subject to conditions, the ship shall not proceed on a voyage or excursion unless all the conditions are complied with.

Limit on the number of passengers on passenger ships

26 The owner and master of a passenger ship shall ensure that there is not on board, a greater number of passengers than that stated on the ship's Passenger Ship Safety Certificate or Passenger Certificate.

Penalties

27 (1) If a ship to which these Regulations apply proceeds or attempts to proceed to sea or on a voyage or excursion without complying with the requirements of Regulations 6 to 9, the owner and master of the ship each commit an offence punishable on summary conviction, by a fine not exceeding \$10,000 or on conviction on indictment, to imprisonment for a term not exceeding two years, or an unlimited fine, or both.

(2) Any contravention of Regulation 10(1), 24(1) to (5) or 25 shall be an offence by both the owner and master and shall be punishable on summary conviction by a fine not exceeding \$10,000 or, on conviction on indictment, by imprisonment for a term not exceeding two years, or an unlimited fine, or both.

(3) Any contravention of Regulation 22(3) shall be an offence, punishable on summary conviction, by a fine not exceeding \$10,000, or conviction on indictment, by imprisonment for a term not exceeding 6 months, or an unlimited fine, or both.

(4) If a ship proceeds to sea without Regulation 23 being complied with, the owner and master each commit an offence punishable on summary conviction by a fine not exceeding \$6,000.

(5) Any contravention of Regulation 26 shall be an offence by both the owner and master and shall be punishable by a fine not exceeding \$75,000 on summary conviction, or on conviction on indictment, by imprisonment for a term not exceeding two years or an unlimited fine, or both.

(6) It shall be a defence for a person charged with an offence under these Regulations to prove that he took all reasonable steps to ensure that the Regulations were complied with.

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Powers to detain

28 (1) In any case where a ship does not comply with the requirements of these Regulations, the ship is liable to be detained and section 242(1) to (6) and (8) of the Act (enforcing detention of ship) shall have effect in relation to the ship, subject to the modification that, as if for the words “this Act” wherever they appear, there were substituted “the Merchant Shipping (Survey and Certification) Regulations 2019”.

(2) Where a ship is liable to be detained under these Regulations the detaining officer shall serve on the master a detention notice which shall—

- (a) state that a surveyor of ships is of the opinion that in relation to that vessel, there is a failure to comply with the requirements of these Regulations;
- (b) specify the matters which, in the opinion of the surveyor of ships, have the effect that in relation to that vessel, those requirements are not met; and
- (c) require the terms of the notice to be complied with before the vessel is released by any person mentioned in section 242(1) of the Act.

(3) Sections 104 and 105 of the Act (which relate to arbitration and compensation in connection with the detention of a ship) apply in relation to a detention notice under this Regulation as those sections apply in relation to a detention notice under section 242(4) of the Act, with the following modifications—

- (a) the arbitrator shall have regard in coming to a decision, to any other matters not specified in the detention notice which appear to be relevant, to whether or not the ship was in breach of a requirement of these Regulations; and
- (b) the arbitrator shall include in the decision a finding whether there was or was not a valid basis for the detention of the ship as not complying with the requirements of these Regulations.

Arbitration

29 (1) If an applicant is dissatisfied for any reason with the outcome of a survey carried out in respect of a Bermuda ship, that person may serve a written notice on the responsible person within 21 days of receiving notice of that outcome—

- (a) stating that there is a dispute in relation to the survey; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) Subject to paragraphs (3), (4) and (6), an arbitrator referred to in paragraph (1) must be appointed by agreement between the parties.

(3) In default of agreement between the parties, the arbitrator is such person as may be appointed by the President or Vice President of the Chartered Institute of Arbitrators Bermuda Branch following a request by—

- (a) a party, after giving written notice to the other party; or
- (b) the parties jointly.

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- (4) No person is to be an arbitrator under this Regulation unless that person is—
- (a) a person who holds a certificate of competency as a Class 1 Deck Officer or Class 1 Marine Engineer Officer, or a certificate of competency which is equivalent to such a certificate;
 - (b) a naval architect;
 - (c) a qualified person;
 - (d) a person with experience of shipping matters; or
 - (e) a Member of the Chartered Institute of Arbitrators Bermuda Branch.
- (5) An arbitrator appointed under this Regulation has the powers of an inspector conferred by section 220 of the Act.
- (6) The rules for arbitration set out in Merchant Shipping Guidance Notice 2017 No. 2017-02 apply unless alternative arrangements are agreed between the applicant and the Minister before the commencement of arbitration proceedings.
- (7) In this Regulation—
- “applicant” means a person who makes an application for a survey required by these Regulations;
 - “the parties” means the applicant and the responsible person, and “party” is to be construed accordingly;
 - “qualified person” means a person who is qualified to be appointed to a high judicial office in Bermuda;
 - “responsible person” means the Certifying Authority responsible for the issue of the certificate in connection with which a survey required by these Regulations is carried out.

Made this 14th day of February 2019

Minister of Tourism and Transport

[Operative Date: 18 February 2019]