

THE TOURIST BOARD ACT

REGULATIONS
(under section 16)

THE TOURIST BOARD (WATER SPORTS) REGULATIONS, 1985

*(Made by the Minister on the 12th day of December, 1985)*L.N. 235/85
Amd.
L.N. 4/98

1. These Regulations may be cited as the Tourist Board (Water Sports) Regulations, 1985.

2. In these Regulations—

“board sailing” means the act of a person moving through the water by means of a craft equipped with a stabilizing fin-keel, and propelled by wind acting on a sail mounted on a universally jointed mast and having an elyptical boom for steering and manoeuvring;

“boat” means any canoe, or undecked craft, however propelled;

“employee” includes a person who performs work on behalf of a water sports operator under a contract for service with that operator and “employ” shall be construed accordingly;

“inspector” means a person appointed as an inspector under regulation 34;

“parasailing” means the act of a person using a device closely resembling a parachute, which provides an aerodynamic lift to that person enabling him to glide through the air while being towed by a boat;

“scuba diving” means the act of a person diving with the aid of compressed air supplied from a self-contained underwater breathing apparatus enabling him to remain under water for prolonged periods;

“sunfish sailing” means the act of a person sailing a craft having a shallow-draught hull not exceeding twelve feet in length, and a centre board and rudder with a fixed mast and lateen sail not exceeding forty square feet in dimension;

- “vessel” means any decked vessel or craft, whatever may be its rig or tonnage and whether propelled by sail, steam or otherwise;
- “water-skiing” means the act of a person, whether or not equipped with floats (called skis) fastened underfoot, being towed through the water by a boat or vessel, aircraft, hydrofoil or hover-craft;
- “water sports services” means the business of providing water sports services to members of the public for reward;
- “water sports operator” means the person who owns the business concerned with water sports services and includes the person who, in the absence of such owner, is primarily in charge of that business.

PART I

Licences in respect of water sports operations

3. Every application for a licence under section 23B of the Act, to provide a tourism enterprise in the category of a water sports service shall be in such form as the Board may approve and the holder of any such licence is hereinafter referred to as a licensed water sports operator.

4.—(1) A licensed water sports operator shall not employ any other person in the provision of water sports services unless that other person is the holder of a licence granted by the Board under these Regulations (hereinafter referred to as a licensed employee).

(2) The Board may, if it sees fit, exempt any person or category of persons from the requirements of paragraph (1).

(3) A person shall not be granted a licence under paragraph (1) if his duties or responsibilities require him to be directly involved in the water sports activities unless he—

- (a) is skilled as a swimmer and properly trained in the procedure for rescuing and resuscitating drowning persons, and satisfies the Board of his ability to perform such duties; and
 - (b) is the holder of a First Aid Certificate issued by an organization approved of by the Board.
- (4) No licensed employee shall be employed—
- (a) as a coxswain, coxswain-driver or driver, as the case may be, of any boat or vessel used in providing water sports services

unless he possesses a valid certificate of competency issued by or approved by the Marine Board pursuant to the Harbour Rules, 1971, appropriate to such duties;

- (b) in operations involving scuba diving, parasailing, sunfish sailing, jet-skiing, aqua biking, wet biking or board sailing, as the case may be, unless his licence states that the Board is satisfied that he is properly qualified by training and experience to carry out the duties or responsibilities to be performed by him in any such operation.

5. No boat or vessel shall be used in the provision of water sports services unless there is in force in respect of that boat or vessel, a licence granted by the Marine Board under and in accordance with the Harbour Rules, 1971, or, if the boat or vessel is exempt under those Rules, a licence granted by the Board under these Regulations.

6. Application for a licence referred to in regulation 4 (1) shall be in such form as the Board may approve.

7.—(1) The Board may, in its discretion, refuse to grant or renew a licence under these Regulations.

(2) Where the Board decides not to grant or renew a licence under these Regulations, the Board shall, in writing, notify the person who made the application or his agent of its decision and of the right of appeal conferred by regulation 8.

(3) Where—

- (a) it appears to the Board that the holder of a licence under these Regulations (hereinafter referred to as the licensee) has contravened any provisions of these Regulation or of any licence granted thereunder;
- (b) a licensee has been convicted of an offence under the Exchange Control Act,

the Board may, by notice in writing, require the licensee to show cause within such time as may be specified in the notice, why the licence should not be revoked or suspended.

(4) Where—

- (a) the licensee fails to comply with a requirement pursuant to paragraph (3) to show cause within the time specified in the

notice or if the cause shown is inadequate in the opinion of the Board; or

- (b) after due enquiry by the Board in respect of any allegation made against the licensee and after giving the licensee an opportunity to make representations, the Board is satisfied that the nature of the facts established consequent on the enquiry is seriously detrimental to the tourist industry,

the Board may by notice in writing to the licensee suspend the licence for such period as the Board may consider necessary or desirable, or, as the case may be, revoke the licence from such date as the Board may specify.

(5) All rights and privileges enjoyed under any licence that is revoked or suspended pursuant to paragraph (4) shall cease to have effect upon such revocation or for the period of suspension, as the case may be, but such revocation or suspension shall not in any way affect the liability of any person in respect of any contravention of these Regulations or of the licence that may have occurred prior to the revocation or suspension.

8.—(1) Any person aggrieved—

- (a) by a decision of the Board granting, refusing to grant, renewing or refusing to renew a licence; or
- (b) by a decision of the Board revoking or suspending a licence, may, within fifteen days of the date of service of the notification required under paragraph (2) of regulation 7 or within fifteen days of the receipt of the notice under paragraph (4) of that regulation, as the case may be, appeal in writing to the Tribunal appointed by the Minister under section 23E (3) of the Act:

Provided that the Tribunal, upon being satisfied that owing to absence from the Island, sickness or other reasonable cause, the person aggrieved was prevented from appealing within such period, may extend the period as may be reasonable in the circumstances.

(2) The provisions of subsections (2), (4) and (5) of section 23E of the Act shall *mutatis mutandis* apply to appeals under this regulation.

(3) Every licence granted by the Board under these Regulations may be granted on such terms and subject to such conditions and for such period as the Board may specify in the licence.

(4) The Board shall cause to be kept a list of all persons to whom a licence is granted under these Regulations.

Safety Regulations

9.—(1) Subject to paragraph (2), every licensed water sports operator shall, in relation to water sports services provided by him at any location, establish at that location a First Aid Station approved by the Board, which shall be clearly identified as such.

(2) Where the Board is satisfied that a First Aid Station is sufficient to service the operations of more than one licensed water sports operator in any particular area, the Board may, if it thinks fit, approve the establishment of any such station to be maintained and operated jointly by such licensed water sports operators as may be specified in the approval.

(3) Every First Aid Station shall at all times during which water sports operations are being carried out—

- (a) be provided with such life-saving equipment (including oxygen tanks and suitable masks as the Board may require;
- (b) be operated by a person, or persons, as the case may require, suitably qualified in first aid procedures and procedures for cardio-pulmonary resuscitation.

10.—(1) Every boat or vessel used in water sports services shall be provided with such First Aid Kit and life-saving equipment as the Board may approve.

(2) All life-saving equipment shall be kept in first class condition and shall be on board at all times during which the boat or vessel is engaged in water sports services, and shall be stowed where it will be most readily available in case of emergency.

11. Every boat or vessel shall, while engaged in water sports services—

- (a) maintain, while travelling parallel to the shore—
 - (i) in any area reserved for swimming and marked with buoys, a distance of not less than fifty yards from such buoys;
 - (ii) in any other area, a distance of not less than one hundred yards from the shore;

- (b) maintain a distance of not less than fifty feet from objects or other boats or vessels;
- (c) look out for divers;
- (d) observe a dive flag in any area in which it is being flown and while in any such area—
 - (i) keep clear of such flag, maintaining a distance of not less than one hundred yards from the flag;
 - (ii) travel at a speed not exceeding three knots;
- (e) when travelling towards the shore, and when within one hundred yards of the shore—
 - (i) approach only at right angles to the shore and observe any channels marked with buoys for that purpose; and
 - (ii) travel at a speed not exceeding three knots.

12. There shall be provided, for the use of passengers on all boats or vessels engaged in water sports services, an adequate supply of life jackets and such other life-saving devices as the Board may require.

13. No activities involving major repairs of boats or vessels engaged in water sports services or routine servicing or storage of such boats or vessels shall be carried out on any beach.

14. In the event of any boat or vessel engaged in water sports services being involved in an accident affecting persons in the water or on board the boat or vessel, the coxswain-driver of the boat or vessel shall, as soon as practicable after the accident, make a report of the circumstances of the accident to the nearest police station and to the nearest office of the Board.

PART II

Scuba Diving

15. In this Part—

“certified diver” means a person certified as such by an internationally recognized scuba diving organization;

“certified instructor” means a person certified by an internationally recognized scuba diving organization as having a qualification equivalent to or higher than that of full open water instructor;

“the Code” means the document entitled “Code of Conduct for the regulation of scuba diving” issued by the Board;

“dive director” means a person certified by an internationally recognized scuba diving organization as being competent to be a full open water instructor;

“internationally recognized scuba diving organization” means an organization mentioned in the Code as being an organization responsible for the training and certification of persons in scuba diving;

“scuba diving operations” means any scuba diving operation conducted pursuant to a licence granted by the Board in respect of water sports services.

16. The provisions of the Code shall apply to all scuba diving operations carried out under a licence granted by the Board in respect of water sports services.

17.—(1) A dive director shall be assigned to every scuba diving operation provided by a licensed water sports operator under these Regulations.

(2) Every dive director assigned pursuant to paragraph (1) shall comply with the rules and regulations set out in the Code and shall take such steps as may be necessary to ensure compliance with these rules and regulations.

18. Formal instructions during scuba diving operations shall be given only by a person who is a certified instructor.

19. No person shall perform duties as a dive leader in any scuba diving operation unless he is certified by an internationally recognized scuba diving organization as having a qualification equivalent to or higher than that of dive master.

20.—(1) There shall be kept in respect of every scuba diving operation, a log book (to be called a base log book) in which particulars of each day’s activities shall be recorded.

(2) Every base log book shall be made available at all reasonable times for inspection by an inspector.

21.—(1) The international dive flag and the red and white flag currently in use in North America shall be flown in the manner specified in paragraph (2), at all times when divers are submerged.

(2) Such flags shall—

(a) be attached to a floating buoy at the dive site; or

(b) be displayed on the boat on which divers are carried while such boat is moored or anchored at the dive site.

PART III

Parasailing and Water-skiing

22. In this Part “Harbour Master” means the Harbour Master of the harbour in or nearest to the area in which parasailing or water-skiing activities are being carried out, or the deputy of such Harbour Master, as the case may be.

23.—(1) Every boat or vessel used for the purpose of towing water-skiers or parasailers shall have on board at least one person (other than the driver) who is employed to keep watch astern on the water-skier or parasailer being towed.

(2) Every such boat or vessel shall move in a counter clockwise rotation in the sea unless the Harbour Master approves otherwise.

24. Every water-skier or parasailer, as the case may be, shall, while away from shore, wear at all times an approved flotation vest.

25.—(1) Where a licensed water sports operator intends to erect a platform for the purpose of parasailing, he shall first obtain the permission of the Harbour Master and where appropriate, the Beach Control Authority.

(2) Permission granted under paragraph (1) may be granted on such terms and subject to such conditions as may be specified therein.

26.—(1) Subject to paragraph (2), all parasails shall take off from and land at a platform provided for that purpose.

(2) Application may be made to the Beach Control Authority for the approval of take-off from or landing at a beach and such approval may be granted on such terms and subject to such conditions as may be specified therein.

27. No boat or vessel used for the purpose of parasailing or water-skiing shall travel within one hundred yards of the shore or beach except when making a direct approach to or, as the case may be, travelling from the beach, on a line perpendicular to the beach through a marked channel.

28.—(1) Appropriate instruction as to the use of parasailing equipment shall be given to each parasailer before he commences parasailing.

(2) No person under the age of twelve years shall be permitted to participate in parasailing activities.

29. Every licensed water sports operator who provides parasailing activities shall carry out a daily inspection of all equipment before use, with a view to detecting signs of deterioration, of all fabric, seams, harnesses, buckles, straps and other accessories.

30. No boat or vessel which is engaged in the towing of parasailers or water-skiers shall, while so engaged, travel in any area which is reserved for swimming.

PART IV

Jet-Skiing, Sunfish Sailing and Board Sailing

31.—(1) All machines used in jet-skiing activities carried out by a licensed water sports operator shall be supervised by persons who, in the opinion of the Board—

- (a) are competent in the use and operation of such machines;
- (b) are skilled as swimmers and properly trained in the procedure for rescuing and resuscitating drowning persons; and
- (c) are holders of valid First Aid Certificate and are suitably qualified in the procedures for cardio-pulmonary resuscitation.

(2) A licensed water sports operator shall ensure that appropriate instructions as to the use of jet-ski machines used in water sports services be given to each person before the machine is used by that person in jet-skiing.

(3) A licensed water sports operator shall not permit any person under the age of twelve years to participate in jet-skiing activities.

32. The provisions of regulations 23 (2), 24 and 26 shall, *mutatis mutandis*, apply to jet-skiing operations carried out by a licensed water sports operator.

33.—(1) A licensed water sports operator who provides jet-skiing, sunfish sailing or board sailing activities, as the case may be, shall provide in connection therewith a boat or vessel for use in rescuing and conveying to shore, any person who, while engaged in any such activity, is injured or otherwise in need of such services.

(2) Every such boat shall be equipped with a First Aid Kit and such life saving equipment as the Board may specify.

PART V

General

34.—(1) The Board may from time to time appoint such persons as the Board considers suitable to be inspectors for the purposes of these Regulations.

(2) An inspector may at any reasonable time enter any premises, vehicle, boat or vessel used in water sports operations, for the purpose of making such inspection or examination as in his opinion may assist in the enforcement of the provisions of these Regulations, and may seize and detain for such time and subject to such conditions as the Board may authorize, any article by means of or in relation to which he reasonably believes any provision of these Regulations has been contravened.

(3) An inspector shall be furnished by the Board with a certificate of appointment and on entering any premises, vehicle, boat or vessel pursuant to paragraph (2), shall, if required to do so, produce the certificate to the person in charge of the premises, vehicle, boat or vessel, as the case may be.

35. Every licensed water sports operator or every person in charge of any premises, vehicle, boat or vessel used in water sports operations, whenever called upon to do so by an inspector, shall produce to the inspector for inspection—

(a) all equipment and machinery used by such operator in his water sports operations;

- (b) all documents and records required to be kept by him in relation to such operations;
- (c) such of those documents and records as may be specified by the inspector.

36.—(1) Every licensed water sports operator shall, in relation to his water sports operations, take out a policy of insurance of such value as may be approved by the Board.

(2) The policy of insurance must be a policy which—

- (a) is issued by a person who is an authorized insurer;
- (b) offers specific coverage in respect of—
 - (i) accidental bodily injury (whether or not the injury is fatal) to any person other than a person who at the time of sustaining such injury is engaged in the service of the insured;
 - (ii) accidental damage to any property specified in sub-paragraph (c), caused by or arising out of water sports operations;
- (c) the property mentioned in sub-paragraph (b) (ii), is any property other than property—
 - (i) belonging to or held in trust by or in the custody or control of the insured or his servant or agent;
 - (ii) being that part of any property, land or building on which the insured or his servant or agent is or has been working.

Offences

37.—(1) Every person, being a licensed water sports operator, who contravenes the provisions of regulation 4, 5, 9, 10, 12 or 13 shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding twenty thousand dollars and in default of payment thereof to imprisonment with or without hard labour for a term not exceeding six months.

(2) Every person who contravenes the provisions of regulation 17, 19 or 20 shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding twenty thousand dollars and in default of payment thereof to imprisonment with or without hard labour for a term not exceeding two months.

38.—(1) Every person who—

- (a) with intent to deceive—
 - (i) forges or uses or lends or allows to be used by any other person any licence issued under section 23B of the Act or these Regulations;
 - (ii) makes or has in his possession any document so closely resembling such licence as to be calculated to deceive;
- (b) assaults or obstructs any inspector appointed under these Regulations acting in the performance of his functions under or pursuant to these Regulations;
- (c) bribes or attempts to bribe any inspector in connection with any matter arising in the performance of any of his functions under or pursuant to these Regulations;
- (d) knowingly gives false or misleading information to any inspector;
- (e) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular;
- (f) being an inspector, accepts any bribe in connection with any matter arising in the performance of any of his functions under or pursuant to these Regulations,

shall be guilty of an offence and shall be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding twenty thousand dollars and in default of payment thereof to imprisonment with or without hard labour for a term not exceeding six months.

(2) If any person is guilty of any contravention of, or non-compliance with, any of the requirements of these Regulations in respect of which no special penalty is provided, he shall for each offence be liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding twenty thousand dollars and in default of payment thereof to imprisonment with or without hard labour for a term not exceeding one month.