

BERMUDA STATUTORY INSTRUMENT

BR 12/1990

**MERCHANT SHIPPING (ENTRY INTO DANGEROUS SPACES)
REGULATIONS 1990**

*[made under section 22 of the Merchant Shipping Act 1979 [title 31 item 16]
and brought into operation on 1 April 1990]*

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The Minister, after consulting with the persons referred to in section 22(7) of the Merchant Shipping Act 1979 [title 31 item 16], in exercise of powers conferred on him by section 22(1)(a) and (b), (3), (4), (5) and (6) of that Act, hereby makes the following Regulations:

MERCHANT SHIPPING (ENTRY INTO DANGEROUS SPACES) REGULATIONS 1990

Citation and commencement

1 These Regulations may be cited as the Merchant Shipping (Entry into Dangerous Spaces) Regulations 1990 and shall come into operation on 1 April 1990.

Interpretation

2 In these Regulations, unless the context otherwise requires—

"Code" means Chapter 10 of the Code of Safe Working Practice for Merchant Seamen published in 1978 by Her Majesty's Stationery Office and any document amending or replacing it which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

"dangerous space" means any enclosed or confined space in which it is foreseeable that the atmosphere may at some stage contain toxic or flammable gases or vapours, or be deficient in oxygen, to the extent that it may endanger the life or health of any person entering that space;

"employer" means the person for the time being employing the master;

"fishing vessel" means a vessel for the time being employed in fishing but does not include a vessel used otherwise than for profit;

"gas carrier" means any ship constructed or adapted for the carriage in bulk of any liquefied gas;

"master" includes any person in charge of a ship during the absence of the master but excludes a watchman;

"Merchant Shipping Notice" means a Notice described as such issued by the Secretary of State;

"pleasure craft" means a vessel primarily used for sport or recreation;

"tanker" means any ship constructed or adapted for the carriage in bulk of oil or chemicals;

"tons" means gross registered tons, and the gross registered tonnage of a ship having alternative gross tonnages shall be taken to be the larger of those tonnages.

Application

3 (1) Subject to paragraph (2)—

(a) these Regulations except regulation 11 apply to Bermuda ships; and

(b) regulations 1, 2, 3, 11 and 12 apply to ships other than Bermuda ships while they are in a Bermuda port.

(2) These Regulations do not apply to —

(a) fishing vessels;

(b) pleasure craft; or

(c) ships on which there is for the time being no master or crew or watchman.

(3) The Minister may grant exemptions from all or any of the provisions of these Regulations (as may be specified in the exemption) for classes of cases or individual cases on such terms, if any, as he may so specify and may, subject to giving reasonable notice, alter or cancel any such exemption.

Entrance to dangerous spaces

4 Except when necessary for entry thereto, the master of a ship shall ensure that all entrances to unattended dangerous spaces on the ship are either kept closed or otherwise secured against entry.

Entry into dangerous spaces

5 (1) The employer shall ensure that procedures for ensuring safe entry and working in dangerous spaces are clearly laid down and the master shall ensure that such procedures are observed on board the ship.

(2) No person shall enter or remain in a dangerous space except in accordance with the procedures laid down pursuant to paragraph (1).

(3) In fulfilling their duties under paragraphs (1) and (2), the employer, master and any other person shall take full account of the principles and guidance contained in the Code.

Drills

6 The master of—

(a) any tanker or gas carrier of 500 tons and over, and

(b) any other ship of 1000 tons and over,

shall ensure that drills simulating the rescue of a crew member from a dangerous space are held at intervals not exceeding two months, and that a record of such drills is entered in the official log book.

Testing equipment

7 The employer shall ensure that each ship were entry into a dangerous space may be necessary shall carry or otherwise have

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available an oxygen meter and such other testing device as is appropriate to the hazard likely to be encountered in any dangerous space on board and the master shall ensure that such meter and any such other testing device are maintained in good working order and, where applicable, regularly serviced and calibrated according to the manufacturers' recommendations.

Offences and penalties

8 (1) An employer who contravenes regulation 5 or 7 is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or on conviction on indictment to imprisonment for two years or a fine of two thousand dollars or both.

(2) A master who contravenes regulation 4, 5, 6 or 7 is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars.

(3) Any person other than the employer or the master who contravenes regulation 5(2) or 5(3) is guilty of an offence and is liable on summary conviction to a fine of four hundred dollars.

(4) It shall be a defence for a person charged under this regulation, including a person charged by virtue of regulation 9, to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Act or default of some other person

9 Where an offence under any of these Regulations is committed, or would have been committed save for the operation of regulation 8(4), by any person due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Inspection and detention of a Bermuda ship

10 Any person duly authorised by the Minister may inspect any Bermuda ship and if he is satisfied that there has been a failure to comply in relation to that ship with the requirements of these Regulations he may detain the ship until the health and safety of all employees and other persons aboard ship is secured, but shall not in the exercise of these powers detain or delay the ship unreasonably.

Inspection, detention and other measures in respect of ships registered outside Bermuda

11 (1) Any person duly authorised by the Minister may inspect any ship other than a Bermuda ship when the ship is in a Bermuda port and if he is satisfied that the ship does not conform to the standards of

health and safety required of Bermuda ships by these Regulations he may —

- (a) send a report to the government of the country in which the ship is registered, and a copy thereof to the Director-General of the International Labour Office; and
- (b) where conditions on board are clearly hazardous to safety or health—
 - (i) take such measures as are necessary to rectify those conditions;
 - (ii) detain the ship:

Provided that the measures specified in sub-paragraphs (a) and (b) may be taken only when the ship has called at a Bermuda port in the normal course of business or for operational reasons.

(2) If he takes either of the measures specified in paragraph (1)(b) the person duly authorised shall forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(3) The person duly authorised shall not in the exercise of his powers under this regulation unreasonably detain or delay the ship.

Compensation and enforcement of detention

12 Section 460(1) and section 692(1) to (3) and (5) of the Merchant Shipping Act 1894 of the United Kingdom (which relate respectively to liability for costs and compensation for the detention of a ship and enforcing the detention of a ship) shall have effect in relation to a ship detained under these Regulations subject to the following modifications;

- (a) in section 460(1) the following words shall be omitted:
 - "by reason of the condition of the ship or the act or default of the owner"
 - "provisional"
 - "as an unsafe ship"
 - "and survey"
 - "or survey"; and
- (b) for the words "this Part of this Act" in section 460(1) and "this Act" wherever they appear in section 692(1) to (3), there shall be substituted the words "the Merchant Shipping (Safe Movement on Board Ship) Regulations 1990."