

BERMUDA STATUTORY INSTRUMENT

BR 14/1990

**MERCHANT SHIPPING (GUARDING OF MACHINERY AND
SAFETY OF ELECTRICAL EQUIPMENT) REGULATIONS 1990**

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

ARRANGEMENT OF REGULATIONS

- 1 Citation, commencement and interpretation
- 2 Application
- 3 Guarding of machinery
- 4 Electrical equipment
- 5 Offences and penalties
- 6 Act or default of some other person
- 7 Inspection and detention of a Bermuda ship
- 8 Inspection, detention and other measures in respect of ships registered
outside Bermuda
- 9 Compensation and enforcement of detention

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), hereby makes the following Regulations:

Citation, commencement and interpretation

1 (1) These Regulations may be cited as the Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1990 and shall come into operation on 1 April 1990.

MERCHANT SHIPPING (GUARDING OF MACHINERY AND SAFETY OF ELECTRICAL EQUIPMENT) REGULATIONS 1990

(2) In these Regulations, unless the context otherwise requires—

"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;

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

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

(3) For the purposes of these Regulations, machinery is securely guarded if it is protected by a properly installed guard or device of a design and construction which prevents foreseeable contact between any person or anything worn or held by any person and any dangerous part of the machinery.

Application

2 (1) Subject to paragraph (2)—

(a) these Regulations except regulation 8 apply to Bermuda ships; and

(b) regulations 1, 2, 8 and 9 apply to ships other than Bermuda ships when 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.

Guarding of machinery

3 (1) Subject to paragraph (2), the employer and the master shall ensure that every dangerous part of the ship's machinery is securely guarded unless that part is of such construction or is so positioned or is otherwise safeguarded so as to be as safe to anyone on board as if it were securely guarded.

(2) It shall be a defence for any person charged in respect of a contravention of paragraph (1) to show that it was necessary for the dangerous part of machinery to be in motion whilst it was not securely guarded to ensure the safety of the ship or for the purposes of an examination and any adjustment, lubrication or test shown by that examination to be immediately required provided that —

- (a) exposure of the dangerous part was the minimum that was necessary;
- (b) exposure was authorised by a responsible ship's officer or other responsible person;
- (c) examination was carried out only by a competent person;
- (d) any person who was required to be close to the machinery had, so far as was reasonably practicable, an area which was of adequate size, properly illuminated and clear of obstructions and loose material in which to work;
- (e) a conspicuous notice warning of the danger was exhibited on or close to the machinery.

(3) The employer and the master shall ensure that all guards and other devices provided in pursuance of these Regulations are of substantial construction and properly maintained and, subject to paragraph (2), kept in position whilst the parts to be guarded are in motion.

(4) The employer and the master shall ensure that there is a means for taking prompt action to stop any machinery and for cutting off the power in the event of an emergency.

Electrical equipment

4 The employer and the master shall ensure that all ship's electrical equipment and installations are so constructed, installed, operated and maintained that the ship and all persons are protected against electrical hazards.

Offences and penalties

5 (1) An employer who contravenes regulation 3(1), (3), (4) or regulation 4 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 3(1), (3), (4) or regulation 4 is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars.

MERCHANT SHIPPING (GUARDING OF MACHINERY AND SAFETY OF ELECTRICAL EQUIPMENT) REGULATIONS 1990

(3) It shall be a defence for a person charged under these Regulations, including a person charged by virtue of regulation 6, 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

6 Where an offence under any of these Regulations is committed, or would have been committed except for the operation of regulation 5(3), 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

7 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

8 (1) Any person 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

9 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."