

MERCHANT SHIPPING (SEAFARERS) (ENTRY INTO DANGEROUS SPACES) REGULATION

(Cap. 478 sections 96, 119 and 134)

[2 September 1996]

1. *(Omitted as spent)*

2. Interpretation

In this Regulation, unless the context otherwise requires—

“Code” (守則) means Chapter 10 of the United Kingdom Department of Transport, publication entitled “Code of Safe Working Practices for Merchant Seamen”, published in 1991 by Her Majesty’s Stationery Office, as in force from time to time;

“crew” (船員) means all the seafarers employed on board a ship;

“dangerous space” (危險艙) 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” (僱主) means the person for the time being employing the master;

“gas carrier” (氣體運載船) means any ship constructed or adapted for the carriage in bulk of any liquefied gas;

“master” (船長) excludes a watchman;

“tanker” (油船) means any ship constructed or adapted for the carriage in bulk of oil or chemicals;

“tons” (噸) and “tonnage” (噸位) mean—

- (a) “tons” and “tonnage” as calculated in accordance with the Merchant Shipping (Registration)(Tonnage) Regulations (Cap. 415 sub. leg. C); and
- (b) 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.

3. Application

(1) Subject to subsection (2)—

- (a) this Regulation, except section 11, shall apply to every Hong Kong ship in which a seafarer is employed under a crew agreement; and
- (b) sections 2 and 11 shall apply to a ship—
 - (i) which is not a Hong Kong ship;
 - (ii) while it is within the waters of Hong Kong; and
 - (iii) if it has entered those waters in the normal course of business or for operational reasons.

(2) This Regulation shall not apply to—

- (a) any fishing vessel;

- (b) any pleasure vessel;
- (c) any ship authorized by virtue of a passenger certificate and general safety certificate issued under Part II of the Merchant Shipping (Safety) Ordinance (Cap. 369) to carry passengers within river trade limits; or
- (d) any ship in which there is for the time being no master or crew or watchman.

4. Entrances to dangerous spaces

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.

5. Entry into dangerous spaces

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

6. Drills

The master of each—

- (a) tanker or gas carrier of 500 tons and over; and
- (b) 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 2 months, and that a record of such drills is entered in the official log book.

7. Testing equipment

- (1) The employer shall ensure that each ship where entry into a dangerous space may be necessary shall carry or otherwise have 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.
- (2) 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.

8. Penalties

- (1) Any employer who contravenes section 5 or 7 commits an offence and is liable—
 - (a) on conviction upon indictment, to a fine at level 5 and to imprisonment for 2 years;
 - (b) on summary conviction, to a fine at level 4.
- (2) Any master who contravenes section 4, 5, 6 or 7 commits an offence and is liable on conviction to a fine at level 3.

- (3) Any person other than an employer or master who contravenes section 5(2) or (3) commits an offence and is liable on conviction to a fine at level 2.
- (4) It shall be a defence for a person charged under this section, including a person charged by virtue of section 9, to show he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

9. Where offence due to act or default of another person

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

10. Inspection and detention of Hong Kong ships

- (1) The Authority, or a person authorized by him for the purposes of this section, may inspect a ship for the purpose of ascertaining whether it complies with the requirements of this Regulation which apply to the ship.
- (2) Where the Authority or a person referred to in subsection (1) has carried out an inspection of a ship pursuant to that subsection and is not satisfied that the ship complies with the requirements of this Regulation which apply to the ship, then the Authority or that person, as the case may be, may, if that ship is within the waters of Hong Kong, detain that ship until the Authority or that person, as the case may be, is satisfied that the ship complies with those requirements.
- (3) The Authority and a person referred to in subsection (1) shall not in the exercise of his powers under this section unreasonably delay or detain a ship.

11. Inspection and detention of ships which are not Hong Kong ships

- (1) The Authority, or a person authorized by him for the purposes of this section, may inspect a ship for the purpose of ascertaining whether it complies with the requirements of this Regulation which would apply to it if it were a Hong Kong ship.
- (2) Where the Authority or a person referred to in subsection (1) has carried out an inspection of a ship pursuant to that subsection and is not satisfied that the ship complies with the requirements of this Regulation which would apply to it if it were a Hong Kong ship, then—
 - (a) the Authority or that person, as the case may be, may send a report to that effect to the government of the country in which the ship is registered, and a copy of the report to the Director General of the International Labour Office established by the International Labour Organization; and

- (b) where, in the opinion of the Authority or that person, as the case may be, the ship does not comply with those requirements to such an extent that conditions on board the ship are clearly hazardous to the safety or health of seafarers employed in the ship, the Authority or that person, as the case may be, may detain the ship until measures are taken to rectify those conditions, for which purpose the Authority or that person, as the case may be, may take those measures.
- (3) Where the Authority or a person referred to in subsection (1) exercises any of his powers under subsection (2) in respect of a ship, he shall notify that he has done so to the nearest maritime, consular or diplomatic representative of the country in which the ship is registered.
- (4) The Authority and a person referred to in subsection (1) shall not in the exercise of his powers under this section unreasonably delay or detain a ship.