

MERCHANT SHIPPING (SEAFARERS) (SAFE MOVEMENT ON BOARD SHIP) REGULATION

(Cap. 478 sections 96 and 134)

[2 September 1996]

1. *(Omitted as spent)*

2. Interpretation

In this Regulation, unless the context otherwise requires—

“BS 5378 Part I” (BS 5378 第I部) means Standard Number BS 5378 Part I 1980, issued by the British Standards Institution on 31 July 1980, as in force from time to time;

“Code” (守則) means Chapter 9 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;

“employer” (僱主) means the person for the time being employing the master;

“master” (船長) excludes a watchman;

“new ship” (新船舶) means a ship the keel of which was laid, or assembly of any components of the ship began, on or after 1 January 1989.

3. Application

(1) Subject to subsection (2)—

(a) this Regulation, except section 15, shall apply to a Hong Kong ship in which a seafarer is employed under a crew agreement; and

(b) subsection (3) and sections 2 and 15 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) fishing vessels;

(b) pleasure vessels;

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

(3) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or individual cases on such conditions, if any, as he thinks fit and may, subject to giving reasonable notice, alter or cancel any such exemption.

4. General

- (1) The employer and master shall ensure that safe means of access is provided and maintained to any place on the ship to which a person may be expected to go.
- (2) The employer and master in carrying out the obligations contained in this section shall take full account of the principles and the guidance in the Code.

5. Transit areas

The employer and master shall ensure that all deck surfaces used for transit about the ship, and all passageways, walkways and stairs, are properly maintained and kept free from materials or substances liable to cause a person to slip or fall.

6. Lighting

The employer and master shall ensure that those areas of the ship being used for the loading or unloading of cargo or for other work processes or for transit are adequately and appropriately illuminated.

7. Safety signs

The employer and master shall ensure that any permanent safety signs used on board the ship for the purpose of giving health or safety information or instruction comply with BS 5378 Part I or with any equivalent standard.

8. Guardrails

- (1) Subject to subsection (2), the employer and master shall ensure that any opening, open hatchway or dangerous edge into, through, or over which a person may fall is fitted with secure guards or fencing of adequate design and construction, which shall be kept in a good state of repair.
- (2) The requirements of subsection (1) shall not apply—
 - (a) where any opening affords a permanent means of transit about the ship, to the side of the opening used for access; or
 - (b) where, and to the extent that, the person upon whom a duty is imposed is able to show that the work process being carried out or about to be carried out makes the provisions of such guards or fencing not reasonably practicable.

9. Ladders

The employer and master shall ensure that all ship's ladders are of good construction and sound material, of adequate strength for the purpose for which they are used, free from patent defect and properly maintained.

10. Movement of vehicles

The employer and master shall ensure that—

- (a) no ship's powered vehicle or powered mobile lifting appliance is driven in the course of a work process except by a competent person who is authorized to do so;
- (b) danger from use or movement of all such vehicles and mobile lifting appliances is so far as is reasonably practicable prevented; and
- (c) all ship's vehicles and mobile lifting appliances are properly maintained.

11. Access ladders to ship's holds

The owner shall ensure that in a new ship, ladders providing access to the hold comply with the requirement specified in paragraph 6.4 of the Code.

12. Penalties

- (1) An employer who contravenes section 4, 5, 6, 7, 8(1), 9 or 10 commits an offence and is liable—
 - (a) on conviction upon indictment, to a fine at level 5 and to imprisonment for 2 years; and
 - (b) on summary conviction, to a fine at level 4.
- (2) A master who contravenes section 4, 5, 6, 7, 8(1), 9 or 10 commits an offence and is liable on conviction to a fine at level 3.
- (3) An owner who contravenes section 11 commits an offence and is liable—
 - (a) on conviction upon indictment, to a fine at level 5 and to imprisonment for 2 years; and
 - (b) on summary conviction, to a fine at level 4.
- (4) It shall be a defence for a person charged in respect of a contravention of section 4(1) (so far as it relates to access by means of a transit area referred to in section 5) or 5 to show that the requirements of the relevant section were complied with so far as was reasonably practicable.
- (5) It shall be a defence for a person charged in respect of a contravention of any of the provisions of this Regulation, including a person charged by virtue of section 13, to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

13. 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 except for the operation of section 12(5), 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 the offence by virtue of this section whether or not proceedings are taken against the first-mentioned person.

14. 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.

15. 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 persons on board 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.