

VIRGIN ISLANDS

MERCHANT SHIPPING (CARIBBEAN SMALL COMMERCIAL VESSELS) REGULATIONS, 2004

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VIRGIN ISLANDS

STATUTORY INSTRUMENT 2004 NO. 7

**MERCHANT SHIPPING ACT, 2001
(No. 13 of 2001)**

**Merchant Shipping (Caribbean Small Commercial Vessels)
Regulations, 2004**

[Gazetted 29th January, 2004]

The Governor in Council, in exercise of the powers conferred by section 459 of the Merchant Shipping Act, 2001 (No. 13 of 2001), makes the following regulations:

**PART I
PRELIMINARY**

1. These Regulations may be cited as the Merchant Shipping (Caribbean Small Commercial Vessels) Regulations, 2004 and shall come into force on the 1st day of February, 2004. Citation and commencement.

2. (1) In these Regulations, Interpretation.

“Act” means the Merchant Shipping Act, 2001; No. 13 of 2001

“Code” means the Code of Safety for Small Commercial Vessels Operating in the Caribbean Sea prepared by the International Maritime Organization for Caribbean Countries and any subsequent amendments thereto;

“Director” means the Director appointed under section 414 of the Act;

“existing licence” means a British Virgin Islands Master’s or Boatmaster’s Licence issued by the Registrar of Shipping or the Director prior to the coming into force of these Regulations;

“existing vessel” means a vessel which is not a new vessel;

“master” means a person who has command of a small commercial vessel;

“new vessel” means a vessel the keel of which was laid on or after 1st July, 2002;

“small commercial vessel” means a vessel of less than 24 metres in length in commercial use and includes a passenger ship that is provided for the transport or entertainment of lodgers at any institution, hotel, boarding house or guesthouse or other establishment;

“STCW Convention” means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, and any amendments made thereto;

“surveyor” means a surveyor of ships employed with the Director or a surveyor of ships authorised by the Director to undertake the surveys required by these Regulations;

“voyage” includes an excursion.

(2) Where a vessel is managed by a person other than the owner, whether on behalf of the owner or some other person, or on his own behalf, a reference in these Regulations to the owner shall be construed as including a reference to that person.

(3) The Director shall cause the Code and each updated version thereof to be published in the *Gazette*.

Application.

- 3.** Subject to regulation 4, these Regulations shall apply to
- (a) small commercial vessels that are Virgin Islands vessels; and
 - (b) other small commercial vessels to which the Code applies, whilst they are in Virgin Islands waters.

Exemptions.

4. (1) The Director may grant exemptions from all or any of the provisions of these Regulations as are specified in the exemption, for such classes of cases or individual cases and on such terms, if any, as he may so specify.

(2) Any approval or exemption given pursuant to these Regulations or the Code shall be given in writing and shall specify the date on which it takes effect and the conditions, if any, on which it is given.

Equivalents.

5. Where these Regulations or the Code require that a particular piece of equipment or machinery shall be provided or carried in a vessel or that any particular provision shall be made, the Director may permit any other piece of equipment or machinery to be provided or carried, or any other provision to be made, where he is satisfied by trials thereof or otherwise that such other piece of equipment or machinery or provision is at least as effective as that required by these Regulations or the Code.

**PART II
REQUIREMENTS FOR VESSELS**

6. Every vessel shall be surveyed for the purposes of the issuance of a Certificate of Inspection in accordance with regulation 8 not later than one year after these Regulations come into operation. Vessels to be surveyed.

7. (1) Application for a Certificate of Inspection shall be made in writing to the Director, and an application for a vessel being newly constructed or converted shall be submitted prior to the start of the construction or conversion. Certificate of Inspection.

(2) A Certificate of Inspection shall be issued by the Director following a satisfactory inspection for compliance with the Code and a Certificate of Inspection shall, unless revoked by the Director, remain valid for a period not exceeding three years from the date of inspection, provided that the vessel passes all annual inspections within that period.

8. (1) An initial or renewal inspection shall include an inspection of the hull and related items on dry-dock, structure, machinery, electrical equipment, life-saving equipment, fire protection equipment, pressure vessels and boilers, steering systems, miscellaneous equipment and systems, sanitation and required operational practices including the competence and composition of the crew. Inspection.

(2) The scope of an annual inspection shall be the same as for an inspection for issue of a Certificate of Inspection but in less detail.

(3) An annual inspection shall be conducted between the tenth to fourteenth month of the anniversary date of the issuance of the Certificate of Inspection.

(4) An inspection for the renewal of a Certificate of Inspection shall be conducted up to two months prior to the expiry of the Certificate and where a vessel is inspected not more than thirty days before the date of expiry of a Certificate of Inspection, the new Certificate shall be dated from the expiry date.

(5) The Director may, at anytime where it is considered necessary, required a dry-dock inspection to be carried out on a vessel.

(6) Every application for the inspection of a vessel under these Regulations shall be made by or on behalf of the owner of the vessel to the Director and shall be accompanied by such information relating to the vessel as the Director may require for the purpose of the survey and the fee prescribed under section 455 of the Act.

Responsibilities of owner and master.

- 9.** (1) The owner or master of every vessel shall ensure that
- (a) the condition of the safety equipment is maintained so as to comply with the Code;
 - (b) after any survey required by these Regulations has been completed, no material change shall be made in the safety equipment subject to such survey without the approval of the Director; and
 - (c) whenever an accident occurs to a vessel or a defect is discovered, either of which affects the safety of the vessel or the efficiency or completeness of its safety equipment, the accident or defect is reported at the earliest opportunity to the Director and where the vessel is in a port outside of the Virgin Islands, the owner or master shall, in addition, make such a report immediately to the appropriate authorities of the country in which the port is situated.

(2) Where an accident or defect is reported to the Director under subregulation (1)(c), the Director shall cause investigations to be initiated to determine whether a survey is necessary and shall require such surveys as it considers necessary to be carried out.

Suspension of Certificate of Inspection.

10. (1) In any case where a vessel does not comply with the requirements of these Regulations or the Code, the Director may suspend the validity of the Certificate of Inspection.

(2) Where the Director suspends the validity of a Certificate of Inspection, the owner or master shall thereupon deliver up the Certificate issued in relation to the vessel.

(3) Where the Director is satisfied that corrective action has been taken so that the vessel complies with the requirements of these Regulations and the Code, it shall restore the validity of the Certificate and return the Certificate issued in relation to the vessel, to the owner or master.

Prohibition from proceeding to sea.

11. (1) A vessel shall not proceed or attempt to proceed to sea or on a voyage or excursion unless

- (a) its Certificate of Inspection is currently in force;
- (b) the vessel complies with the requirements of the Code, including any requirements as to operation, manning and maintenance, and is operated in accordance with any conditions as specified in the Certificate; and

- (c) the Certificate is displayed in some conspicuous place on board.

**PART III
BOATMASTERS AND BOAT ENGINEERS**

12. (1) A vessel shall carry in command a person who is qualified as follows: Masters and engineers.

- (a) he is the holder of a licence issued by the Director under regulation 13 stating that he is qualified to have command of such a vessel and
 - (i) the licence is in force and is of a grade appropriate in respect to the waters in which the vessel is being navigated, the size of the vessel and the number of passengers carried; and
 - (ii) the vessel is in an area specified in the licence as one in which a vessel may be navigated under the command of the holder; or
- (b) he is the holder of a Certificate of Competency as a master issued in accordance with the provisions of the STCW Convention;

Provided that the Director may waive the requirement to be so qualified where the person in command of a vessel holds a valid licence or certificate of equivalent standard to the licence or certificate required under paragraph (a) or (b) and such licence or certificate is issued by the proper authority of the country in which the vessel is registered or by any other authority recognised by the Director.

(2) A vessel fitted with main propulsion machinery of up to 750 KW shall, where an engineer is required by the Director or the Code, carry as engineer a person who is qualified as follows:

- (a) he is the holder of a licence issued by the Director under regulation 13 stating that he is qualified to be in charge of the engines and machinery of such a vessel and
 - (i) the licence is in force and is of a grade appropriate in respect of the waters in which the vessel is being navigated; and

(ii) the vessel is in an area specified in the licence as one in which the engines and machinery of a vessel may be operated under the charge of the holder; or

(b) he is the holder of a Certificate of Competency as an engineer officer issued in accordance with the provisions of the STCW Convention.

(3) Except as authorised by the Director, vessels with main propulsion machinery of more than 750 KW shall carry engineers qualified in accordance with the STCW Convention.

Issue of licence.

13. (1) The Director may, on application and in such form as it may from time to time determine, issue licences for boatmasters or boat engineers, as appropriate, to persons who meet the requirements of this regulation.

(2) Subject to subregulation (3),

(a) the standards of competence to be attained and the conditions, including conditions as to medical fitness, to be satisfied by a person in order for a licence to be issued to him under these Regulations;

(b) any exception applicable with respect to any such standards or conditions;

(c) the manner in which the attainment of any such standards or the satisfaction of any such conditions is to be evidenced; and

(d) the conduct of any examinations and the conditions of admission to them;

shall be those specified in the Code or those which may from time to time be determined by the Director and published in the *Gazette*.

(3) Notwithstanding that an applicant for a licence under this regulation complies with the standards and satisfies the conditions specified in subregulation (2), the Director shall not issue such licence to the applicant unless he is satisfied, having regard to all the relevant circumstances, that the applicant is a fit person to be holder of such a licence.

Grades and area restrictions of boat master licences.

14. (1) A licence for a boatmaster issued under regulation 13 shall bear the title “Boatmaster Licence” and shall be one of the following grades, which shall be stated in the licence:

(a) Boatmaster Licence, Grade 1;

- (b) Boatmaster Licence, Grade 2;
- (c) Boatmaster Licence, Grade 3.

(2) The grade of licence appropriate in respect of a vessel shall be determined in accordance with the Code.

(3) A boatmaster licence of any grade shall be subject to such restriction as the Director may determine as to the area or areas in which a vessel may be navigated under the command of the holder and every such restriction shall be stated in the licence.

15. (1) A licence for a boat engineer issued under regulation 13 shall bear the title “Boat Engineer Licence” and shall be of one of the following grades, which shall be stated in the licence:

Grade and area restrictions of boat engineer licences.

- (a) Boat Engineer Licence, Grade 1;
- (b) Boat Engineer Licence, Grade 2.

(2) The grade of licence appropriate in respect of a vessel shall be determined in accordance with the Code.

(3) A boat engineer licence of any grade shall be subject to such restriction as the Director may determine as to the area or areas in which a vessel may be operated under the charge of the holder and every such restriction shall be stated in the licence.

16. The Director shall on the application of the holder of an existing licence issue to him a boatmaster licence under these Regulations and the licence shall

Existing licences.

- (a) be of the grade which is appropriate for
 - (i) a vessel when it is being navigated or operated in waters in the area or areas stated in the existing licence as the area or areas of operation; and
 - (ii) the size of vessel which, in the period of twelve months before the coming into force of these Regulations, was navigated or operated in the area or areas referred to in subparagraph (i) under the command or charge of the holder of the existing licence; and
- (b) state that a vessel may be navigated or operated under the command or charge of the holder in

the same area or areas stated in the existing licence as the area or areas of operation.

Validity and renewal of licences.

17. (1) Licences shall be subject to re-validation every three years for persons up to sixty-five years of age and such re-validation shall be subject to the holder providing proof that he has had at least forty-five days' service in vessels for which the licence is valid during the previous three years, and the submission of a valid medical fitness certificate issued in accordance with such requirements as the Director may from time to time determine.

(2) Licences held by persons sixty-five years of age and over shall be subject to proof that he has had at least fifteen days' service in a vessel for which the licence is valid during the previous year, and the submission of a valid medical fitness certificate issued in accordance with such requirements as the Director may from time to time determine.

(3) Where a person is unable to produce proof of the experience required under subregulation (1) or (2), that person shall apply for examination.

(4) A licence issued under these Regulations shall remain valid only so long as the holder complies with the standards of competence and the conditions, including conditions as to medical fitness, specified in regulation 13 (2).

Record and surrender of licences.

18. (1) The Director shall make and retain a copy of every licence issued under these Regulations.

(2) A record of

(a) every licence issued under this Part;

(b) every suspension, cancellation or alteration of and any other matter affecting such a licence;

shall be kept by the Director.

Loss of licences.

19. (1) Where the holder of a boatmaster or boat engineer licence loses the licence, the Director may, on receipt of any fee payable, cause a copy of the licence to be issued to them.

(2) Any copy issued under subregulation (1) shall be certified as a copy by the Director or, as the case may be, such other person as the Director may have directed.

Suspension of licence.

20. (1) Where it appears to the Director that a licensed boatmaster or boat engineer is unfit to discharge his duties, whether by reason of incompetence or misconduct or for any other reason, it shall cause an inquiry

to be held by one or more persons appointed by him and if it does so, may, suspend, pending the outcome or the inquiry, the licence in question.

(2) A licence so suspended shall be surrendered to the Director within seven days.

(3) Where the inquiry recommends the suspension or cancellation of the licence, the Director shall retain or cancel the licence, as the case may be.

PART IV HOURS OF WORK

21. (1) In this Part, unless the context otherwise requires Interpretation.

“crew” includes every person, except masters and pilots, employed or engaged in any capacity on board a vessel;

“employer”, in relation to a master who has command of a vessel in the course of his employment, means the person who employs that master in that employment;

“working day”, in relation to any person to whom these Regulations apply, means any period during which he is on duty which is not followed by an interval for rest of not less than eight hours.

(2) For the purposes of this Part, a director of a company shall be deemed to be employed by it.

22. (1) Subject to regulation 23, it shall be the duty of the owner to ensure so far as is reasonable practicable, that the master and seamen do not work more hours than is safe in relation to the safety of the vessel and master’s and the seaman’s performance of their duties. Duty of owner, master and crew.

(2) Subject to regulation 23, it shall be the duty of every master of a vessel to ensure, so far as is reasonably practicable that seamen do not work more hours than is safe in relation to the safety of the vessel and the master’s and the seamen’s performance of their duties.

(3) Every master and seaman, so far as reasonable practicable, shall ensure that he properly rested when commencing duty on a vessel and that he obtains adequate rest during periods when he is off duty.

(4) The hours of rest shall not be less than ten hours in every twenty-four hour period which may be divided into no more than two periods, one of which shall be at least six hours rest in length, and the minimum period of ten hours may be reduced to not less than six consecutive hours on condition that such reduction shall not extend beyond two days, and not less than seventy hours of rest are provided in each seven day period.

Exception for emergencies.

23. The requirements for rest periods specified in regulation 22 (4) need not be maintained in cases of any emergency including the giving assistance to any other vessel or to a person in distress at sea, the performance of a drill, or any overriding operational conditions.

Working hours in certain ships.

24. (1) Notwithstanding the provisions of regulation 22, this regulation applies to vessels which complete a voyage or voyages within twenty-four (24) hours.

(2) References to a person being on duty are references

(a) in the case of a master who has command of a vessel in the course of his employment, to his being on duty, whether for the purposes of having the command of a vessel to which this regulation applies or for other purposes, in the employment of the person who employs him in that employment or in any other employment under that person; and

(b) in the case of a master who has command of a vessel for the purposes of a trade or business carried on by him, to his having command of a vessel to which this regulation applies for the purposes of that trade or business or being otherwise engaged in work for the purposes of that trade or business, being work in connection with such a vessel or the passengers carried by it.

(3) Subject to paragraph (4),

(a) the working hours of a master or engineer shall not exceed sixteen hours;

(b) a master shall not on any working day operate a vessel or vessels to which this regulation applies for periods amounting in the aggregate to more than ten hours.

(c) where on any working day a master has been on duty

(i) for a period of six hours and the end of that period does not mark the end of the working day; or

(ii) for periods amounting in the aggregate to six hours and there has not been between any of those periods an interval of not less than thirty minutes in which the

master was able to obtain rest and refreshment and the end of the last of those periods does not mark the end of the working day,

there shall be such an interval as respects the period mentioned in subparagraph (i) at the end of that period, or in the case of the periods mentioned in subparagraph (ii) at the end of the last of those periods.

- (d) there shall be, between any two successive working days of a master, an interval for rest which shall not be less than eight hours and, in the case of a master who has command of a vessel in the course of his employment, a period of time shall not be treated as not being an interval for rest by reason only that he may be called upon to report duty if required.

(4) Where the Director considers that it would be appropriate to grant an exemption from all or any of the requirements of subregulation (3), it may on such terms, if any, as may be specified, grant such an exemption and, subject to giving reasonable notice, the Director may alter or cancel an exemption so granted.

25. (1) Subject to subregulation (2), where any of the requirements of regulation 24 is contravened in the case of any master, that master and any other person, being that master's employer or a person to whose orders that master was subject, who caused or permitted the contravention, commits an offence.

Contravention of regulation 24.

(2) A person shall not be liable under this regulation where he can prove

- (a) that the contravention was due to an unavoidable delay in the completion of a voyage arising out of circumstances which he could not reasonably have foreseen; or
- (b) in the case of a person other than the master that the contravention was due to the fact that the master had for any particular period or periods operated a vessel or vessels or been on duty otherwise than in the employment of the person charged or, as the case may be, otherwise than in the employment in which he was subject to the orders of the person charged, and that the person charged was not, and could not reasonably have become aware of that fact.

**PART V
MANNING AND TRAINING**

Manning.

26. A vessel shall not proceed to sea or on a voyage or excursion unless the manning of the vessel is in accordance with the Certificate of Inspection or subsequently approved by the Director in accordance with the Code.

Training in emergency procedures.

27. The owner of a passenger vessel shall

- (a) establish procedures applying to the person having command of the vessel and any other person or persons employed or engaged in any capacity on board the vessel which shall state actions to be taken during an emergency by the master and crew to assist passengers, and to deal with the emergency in general;
- (b) ensure that each of those persons has received on-board training in the procedures to be observed by that person in such an event.

**PART VI
MISCELLANEOUS**

Enforcement.
No. 13 of 2001

28. (1) Without prejudice to the provisions of any enactment, these Regulations may be enforced in accordance with Part XVI of the Merchant Shipping Act, 2001.

Power to detain.

29. In any case where a vessel does not comply with the requirements of these Regulations, that vessel shall be liable to be detained in accordance with the Merchant Shipping Act, 2001.

Made by the Governor in Council this 22nd day of January, 2004.

HADASSAH WARD,
Clerk of the Executive Council.