

VIRGIN ISLANDS
THE MERCHANT SHIPPING (PORT STATE CONTROL)
REGULATIONS, 2020

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VIRGIN ISLANDS
STATUTORY INSTRUMENT NO. 74

MERCHANT SHIPPING ACT 2001

(No. 13 of 2001)

Merchant Shipping (Port State Control) Regulations, 2020

[Gazetted 25th June, 2020]

The Governor, in exercise of the powers conferred by sections 172, 174, 175, 224 and 459 of the Merchant Shipping Act 2001 (No. 13 of 2001), and having consulted the Secretary of State for Transport of the United Kingdom in accordance with section 465 of that Act, makes these Regulations.

Citation and commencement.

1. These Regulations may be cited as the Merchant Shipping (Port State Control) Regulations 2020.

(2) These Regulations shall come into force on the date that the Merchant Shipping (Amendment) Act, 2020 comes into force.

Interpretation.

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

No. 13 of 2001

“the Act” means the Merchant Shipping Act 2001;

“Caribbean MOU” means the Memorandum of Understanding on Port State Control in the Caribbean Region signed in Barbados on 26 January 1982, in force on the date these Regulations come into force and thereafter as amended from time to time;

“Caribbean MOU Member State” means a State whose flag administration is a member or associate member of the Caribbean MOU;

“classification certificate” means a document confirming compliance with Regulation 3-1 of Chapter II-1 of the International Convention for the Safety of Life at Sea, 1974;

“Conventions” means such of the following Conventions which have been extended or applied to the Virgin Islands

(a) the International Convention on Load Lines, 1966 and Protocol of 1988 (LL 66);

- (b) the International Convention for the Safety of Life at Sea, 1974 and the 1978 and 1988 Protocols (SOLAS 74);
- (c) the International Convention for the Prevention of Pollution from Ships 1973, and the 1978 and 1997 Protocols (MARPOL 73/78);
- (d) the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78/95);
- (e) the Convention on the International Regulations for Preventing Collisions at Sea, 1972 (COLREG 72);
- (f) the International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);
- (g) the Merchant Shipping (Minimum Standards) Convention, 1976 and 1996 Protocol (ILO No 147);
- (h) the International Convention on Civil Liability for Oil Pollution Damage, 1992 and the 1992 Protocol (CLC 92);
- (i) the International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001(AFS 2001);
- (j) the International Convention on Civil Liability for Bunker Oil Pollution Damage 2001;
- (k) the Maritime Labour Convention 2006;
- (l) the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004;
- (m) the Code of Safety for Small Commercial Vessels (SCV Code) 2014; and
- (n) the Code of Safety for Caribbean Cargo Ships (CCSS Code) 2015,

and a reference to a Convention is a reference to any of the Conventions;

“Convention enactments” means

- (a) the Act;

- (b) any statutory instrument made under the Act which implements a Convention; and
- (c) any enactment of the United Kingdom applied to the Virgin Islands by an Order made under section 464(1) of the Act, as validated by the Validation (Merchant Shipping) (Adoption of United Kingdom Enactments Order 2005) Act 2017 (No. 6 of 2017), which implements a Convention;

“deficiency” means a condition found not to be in compliance with the requirements of a relevant Convention;

“Director” means the Director appointed under section 414(1)(a) of the Act;

“fishing vessel” has the meaning given in section 2(1) of the Act;

“flag administration” in relation to a ship means the administration of the State whose flag the ship is entitled to fly;

“GT” means gross tonnage;

“gross tonnage” has the meaning given in the Merchant Shipping (Tonnage) Regulations 1997 of the United Kingdom;

“IMO” means the International Maritime Organisation;

“initial inspection” means an inspection carried out by an inspector in order to check compliance with the relevant Conventions which comprises the matters specified in regulation 10(2);

“inspector” means a person appointed by the Director under section 414(5) of the Act or who is authorised by the Director to carry out inspections required by these Regulations;

“ISM Code” means the International Management Code for the Safe Operation of Ships and for Pollution Prevention adopted by the IMO by Resolution A.741(18);

“more detailed inspection” means an inspection carried out in accordance with the requirements of regulation 11;

“non-Virgin Islands ship” means a ship other than a Virgin Islands ship;

“pleasure vessel” has the meaning given by section 2(1) of the Act;

“Port Authority” means the British Virgin Islands Ports Authority established under section 3 of the Ports Authority Act 1990;

“PSC Resolution” means IMO Resolution A. 1119(30) ‘Procedures for Port State Control’ adopted on 6 December 2017;

“recognised organisation” means an organisation which meets the relevant conditions specified in the RO Code and which has been assessed and authorised by a flag State administration in accordance with the provisions of the RO Code to provide the necessary services and certification to ships entitled to fly that administration’s flag;

“RO Code” means the Code for Recognised Organisations adopted by IMO Resolution MEPC.237(65);

“safe manning document” means a document issued by the Director or a flag administration under Regulation V/14 of the International Convention for the Safety of Life at Sea, 1974;

“ship” means a seagoing vessel to which one or more of the Conventions applies and includes hovercraft;

“stoppage of an operation” means formal prohibition of a ship continuing an operation due to an identified deficiency or deficiencies which, singly or together, render the continuation of such operations hazardous;

“statutory certificate” means a certificate issued by or on behalf of a flag administration in accordance with a Convention;

“substandard ship” means a ship whose hull, machinery, equipment or operational safety is substantially below the standards required by the relevant Convention or whose crew is not in conformance with the safe manning document relating to the ship; and

“Virgin Islands ship” has the meaning given by section 2(1) of the Act.

(2) For the purposes of these Regulations, “clear grounds” exist where the inspector finds evidence which in the inspector’s professional judgement, warrants a more detailed inspection of the ship, its equipment or its crew and include any of the grounds specified in

(a) section 2.4.2 of the PSC Resolution; and

(b) sections 3.2.1 and 3.2.2 of the Caribbean MOU.

(3) In these regulations, “owner” in relation to a ship means

- (a) the registered owner; or
- (b) a person who has assumed responsibility for the operation of the ship and has agreed with the registered owner to take over all the duties and responsibilities imposed by the ISM Code, for the purposes of these regulations includes a bareboat charterer.

(4) Any reference in these Regulations to an international instrument or a specific provision in an international instrument is to be construed as

- (a) a reference to the instrument or the provision in that instrument as modified from time to time; and
- (b) if the instrument is replaced by another instrument, as a reference to the provision in that other instrument.

(5) For the purposes of subsection (4) “international instrument” means

- (a) an international convention or treaty or an instrument, including related Codes of mandatory status, made under such a convention or treaty;
- (b) the Caribbean MOU; and
- (c) the PSC Resolution.

Object of the Regulations.

3. The object of these Regulations is to

- (a) give effect in the law of the Virgin Islands to
 - (i) the provisions of the Conventions relating to port State control;
 - (ii) the PSC Resolution; and
 - (iii) the Caribbean MoU; and
- (b) make associated provision.

Regulations are without prejudice to powers of enforcement in other enactments.

4. The powers conferred by these Regulations are without prejudice to the powers conferred under a Convention enactment.

5. (1) These Regulations apply to a ship and its crew Application.
- (a) in a port or harbour in the Virgin Islands or at an offshore installation; or
 - (b) anchored off such a port or harbour or installation.
- (2) These Regulations do not apply to
- (a) a Virgin Islands ship;
 - (b) a fishing vessel;
 - (c) a warship;
 - (d) a naval auxiliary;
 - (e) a wooden ship of traditional build;
 - (f) a Government ship used for non-commercial purposes; or
 - (g) a pleasure vessel.
- (3) An inspector, when exercising functions in respect of a ship below 500 GT, shall
- (a) have regard to Chapter 1.6 of the PSC Resolution;
 - (b) to the extent a Convention applies to the ship, apply the requirements of that Convention; and
 - (c) to the extent a Convention does not apply to the ship, take such action as may be necessary to ensure that the ship is not hazardous to safety, health or the environment.
6. (1) The Director shall, in each calendar year, ensure the carrying out of a total number of inspections corresponding to Inspection commitment.
- (a) fifteen per cent; or
 - (b) such other percentage as is agreed from time to time under the terms of the Caribbean MOU,
- of the estimated number of non-Virgin Islands ships which call at or anchor off a port, harbour or offshore installation in the Virgin Islands during that year.

(2) The Director shall maintain a record of inspections conducted in the Virgin Islands.

(3) For the purpose of subregulation (1), an inspection is

- (a) an initial inspection; or
- (b) a more detailed inspection.

(4) An inspection in the Virgin Islands of a ship, while not in a port, is considered an inspection for the purposes of these Regulations.

Selection of ships for inspection.

7. (1) In selecting ships for inspection, the Director shall

- (a) give priority to the ships referred to in subregulation (2); and
- (b) use the procedure set out in Annex 3 to the Caribbean MOU (Caribbean MOU targeting matrix).

(2) The ships referred to in subregulation (1) are

- (a) a ship which is visiting a port in a Caribbean MOU Member State for the first time or after an absence of twelve months or more from a port in such a State;
- (b) a ship which has been permitted to leave the port of a Caribbean MOU Member State on condition that deficiencies noted shall be rectified within a specific period, and that period has expired;
- (c) a ship which has been reported by the Port Authority as having deficiencies which may prejudice its safe navigation;
- (d) a ship which has been suspended from its class for safety reasons in the course of the preceding six months; and
- (e) a ship of a type listed in section 3.3.1 of the Caribbean MOU.

(3) Subject to subregulation (4), the Director shall not cause a ship to be inspected if that ship has been inspected by the flag administration of a Caribbean MOU State within the previous six months.

(4) Subregulation (3) does not apply to a ship

- (a) of a type listed in section 3.3.1 of the Caribbean MOU; or
- (b) in respect of which there are clear grounds for believing that the condition of the ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention.

8. (1) Subject to subregulation (2), inspections under these Regulations shall be carried out by a person who Professional profile of inspectors.

- (a) is appointed as an inspector under section 414(5) of the Act by the Director; and
- (b) fulfils the qualification and training requirements contained in section 1.9 of the PSC Resolution.

(2) Where an inspector appointed by the Director does not meet the requirement in subregulation (1)(b), the inspector may be assisted by a person who meets that requirement.

(3) An inspector and any person assisting an inspector shall

- (a) have no commercial interest in
 - (i) the port of inspection; or
 - (ii) the ship inspected; and
- (b) not be employed by, or undertake work on behalf of, a recognised organisation.

9. (1) In carrying out an initial inspection or a more detailed inspection, an inspector shall have regard to Conduct of inspections.

- (a) Appendix 1 to the PSC Resolution (The Code of Good Practice for Port State Control Officers Conducting Inspections within the Framework of the Regional Memoranda of Understanding and Agreement on Port State Control); and
- (b) either
 - (i) Annex 1A to the Caribbean MOU (Guidelines for Surveyors to be Observed in the Inspection of International Shipping); or

- (ii) in relation to the inspection of a Caribbean cargo ship of less than 500 GT or a ship of traditional build, Annex IB to the Caribbean MOU (Guidelines for Surveyors to be Observed in the Inspection of Caribbean Cargo Ships less than 500 Gross Tonnage and Ships of Traditional Build).

(2) When carrying out an initial inspection or a more detailed inspection, the inspector shall make all possible efforts to avoid a ship being unduly detained or delayed.

(3) When carrying out an inspection of a ship, in determining whether the ship or its crew comply with the requirements of a relevant Convention, an inspector shall ensure that no more favourable treatment is given to a non-party ship than to a Convention ship.

(4) For the purpose of this regulation,

“Convention ship” means a ship entitled to fly the flag of a State which is a party to the relevant Convention; and

“non-party ship” means a ship entitled to fly the flag of a State which is not a party to the relevant Convention.

Initial inspections.

10. (1) A ship selected for inspection shall first be subject to an initial inspection.

(2) In carrying out an initial inspection, an inspector shall

- (a) examine the certificates and documents required by the Conventions listed in Appendix 12 to the PSC Resolution;
- (b) examine the overall condition of the ship, including its equipment, navigational bridge, decks including forecastle, cargo holds and areas, engine room and pilot transfer arrangements; and
- (c) verify, in accordance with subregulation (3) that recorded deficiencies have been rectified.

(3) Where

- (a) after an initial inspection has been carried out in any IMO member State, deficiencies to be rectified in the ship’s next

port of call have been recorded in a port state inspection database; and

- (b) that next port of call is in the Virgin Islands,

the inspector shall, if carrying out an inspection of that ship, as a minimum, comply with the requirements of the PSC Resolution and verify that the recorded deficiencies have been rectified.

(4) If, after an initial inspection, an inspector is satisfied that there are clear grounds for believing that the condition of a ship or of its equipment or crew does not substantially meet the relevant requirements of a Convention, a more detailed inspection shall be carried out.

11. Where a more detailed inspection is required in accordance with regulation 10(3), the inspector shall More detailed inspections.

- (a) subject the ship, its equipment and crew to an in-depth examination covering the ship's construction, equipment, manning, living and working conditions and compliance with on-board operational procedures; and
- (b) act in accordance with section 2.1 of Annex 1A to the Caribbean MOU (Guidelines for Surveyors to be Observed in the Inspection of International Shipping).

12. On completion of an initial inspection or a more detailed inspection, the inspector shall Report of inspection to master.

- (a) prepare a report in the forms prescribed in Annexes 4A and 4B to the Caribbean MOU; and
- (b) provide a copy of the report to the ship's master.

13. (1) An owner of a ship shall satisfy the Director that any deficiencies which are confirmed or revealed by an initial inspection or more detailed inspection are or will be rectified in accordance with the Conventions. Rectification and detention.

(2) Where

- (a) such deficiencies are clearly hazardous to safety, health or the environment; or
- (b) the inspection reveals that a copy of a document of compliance or a safety management certificate required by

the ISM Code are not on board a ship to which the ISM Code applies,

the inspector shall detain the ship or require the stoppage of the operation in the course of which the deficiencies have been revealed.

- (3) For the purposes of subregulation (2), in order for the inspector to
 - (a) detain the ship, the inspector shall issue a detention notice in accordance with the powers of detention contained in Convention enactments that the ship is to be detained; and
 - (b) require the stoppage of an operation, a prohibition notice shall be issued under section 420 of the Act.
- (4) A detention notice issued under subregulation (3)(a) may
 - (a) include a direction that a ship shall
 - (i) remain in a particular place; or
 - (ii) be moved to a particular anchorage or berth; and
 - (b) specify circumstances when the master of the ship may move that ship from a specified place for reasons of safety or prevention of pollution.

(5) Measures imposed by an inspector in the circumstances described in subregulation (2) shall not be lifted until the Director has established that the ship can, subject to any necessary conditions, proceed to sea or the operation be resumed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

(6) Without prejudice to any other requirement in the Convention enactments, when exercising professional judgement as to whether or not a ship should be detained, the inspector shall apply the criteria set out in

- (a) section 3.5 and Appendix 2 of the PSC Resolution (Guidelines for the Detention of Ships);
- (b) section 3.7.3 of the Caribbean MOU; and
- (c) section 3.4 of Annex 1A to the Caribbean MOU (Guidelines for Surveyors to be Observed in the Inspection of International Shipping).

(7) A ship may be detained if it is not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Convention requirements.

(8) If the deficiency mentioned in subregulation (7) cannot readily be rectified in the port of detention, the inspector may either allow the ship to proceed to the appropriate repair yard nearest to the port of detention where it is capable of being rectified and is to be so rectified, or require that the deficiency be rectified within a period of thirty days.

(9) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the inspector may, in addition to detaining the ship, suspend the inspection of that ship until the responsible persons have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions.

(10) If a ship is detained or issued with a prohibition notice following an initial inspection or a more detailed inspection, the Director shall immediately inform, in writing

- (a) the ship's flag administration;
- (b) the Consul of the State of the flag administration; or
- (c) the nearest diplomatic representative of the State of the flag administration.

(11) The written information referred to in subregulation (10) shall set out all the circumstances relating to the decision to detain the ship and shall include the report of inspection.

(12) Where subregulation (10) applies, the Director shall also notify all relevant

- (a) nominated surveyors; or
- (b) recognised organisations;

responsible for the issue of classification certificates or statutory certificates in relation to the ship.

(13) These Regulations are without prejudice to any requirements of a Convention enactment concerning notification and reporting procedures related to port state control.

(14) The risk of port congestion shall not be a consideration in a decision to detain a ship or to release a ship from detention.

(15) Where a ship is released from detention or a prohibition notice is revoked, the Director shall inform the persons to whom notice of the detention or prohibition notice was given under subregulations (10) and (12) of that fact.

Enforcing
detention of a
ship.

14. Where

- (a) a ship is detained under a Convention enactment or these Regulations; or
- (b) the master of such a ship is served with a detention notice under such enactment or these Regulations,

section 439 of the Act applies in relation to the ship as if any reference to proceeding to sea were a reference to proceeding contrary to the detention notice and references to sending or taking to sea were construed accordingly.

Right of appeal
and
compensation.

15. (1) Regulations 16 and 17 apply in relation to the exercise of the power of detention in any Convention enactment or under these Regulations.

(2) Section 264 of the Act applies in relation to a ship to which these Regulations apply.

Arbitration.

16. (1) Any question as to whether a matter specified in a detention notice constituted a valid basis for the inspector's opinion shall, if the master or owner of the ship so requires by a notice given to the inspector within twenty-one days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by the arbitrator.

(2) Where a notice is given by the master or owner of the ship in accordance with subregulation (1), the giving of the notice does not suspend the operation of the detention notice.

(3) The arbitrator may have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether the ship was or was not liable to be detained.

(4) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, the arbitrator shall

- (a) cancel the detention notice; or

(b) confirm it with such modifications as the arbitrator may in the circumstances think fit.

(5) In any case other than one described in subregulation (4) the arbitrator shall confirm the detention notice in its original form.

(6) The arbitrator shall include in his or her decision a finding whether there was or was not a valid basis for the detention of the ship.

(7) A person is not qualified for appointment as an arbitrator under this regulation unless that person is qualified as an arbitrator in accordance with section 202(2) of the Act.

(8) In connection with functions under this regulation, an arbitrator has the powers conferred on an inspector by sections 415(2), 416(1) and (2) and 417(1) and (2) of the Act.

17. (1) If on a reference under regulation 16 relating to a detention notice, the arbitrator decides that the owner has proved that

Compensation for unjustified detention.

(a) the matter complained of did not constitute a valid basis for the inspector's opinion; and

(b) there were no reasonable grounds for the issue of the detention notice,

the arbitrator shall award the owner of the ship such compensation in respect of any loss suffered in consequence of the detention of the ship, as the arbitrator thinks fit.

(2) Any compensation awarded under this regulation is payable by the Government.

18. (1) Where deficiencies referred to in regulation 13(2) cannot be rectified in the port of inspection, an inspector may allow the ship to proceed without delay to the appropriate repair yard nearest to the port of detention, as chosen by the master and owner concerned, where follow-up action can be taken, provided the conditions determined by the flag administration and agreed to by the Director are complied with.

Power to permit detained ship to proceed to repair yard.

(2) Such conditions shall ensure that the ship can proceed without risk to the safety and health of passengers or crew, or risk to other ships, or without there being an unreasonable threat of harm to the marine environment.

(3) Where an inspector allows a ship to proceed to an appropriate repair yard under subregulation (1), the Director shall notify in accordance with Annex 2 of the Caribbean MOU

- (a) the flag administration of the State in whose port the ship is next due to call;
- (b) the flag administration of the State whose flag the ship is entitled to fly; and
- (c) any other flag administration which the Director determines should be notified.

Duty of the Port Authority to report deficiencies.

19. (1) If the Port Authority becomes aware that a ship within the limits of any port or harbour within the Virgin Islands has apparent deficiencies which may prejudice the safety of the ship or pose an unreasonable threat of harm to the marine environment, the Port Authority shall immediately inform the Director.

(2) The information provided in accordance with subregulation (1) shall be in electronic format whenever possible and shall include

- (a) the ship's name, IMO number and call sign;
- (b) the flag under which the ship is sailing;
- (c) the previous port of call;
- (d) the port of destination; and
- (e) a description of the apparent deficiencies.

Duty of the Port Authority to report ship arrivals and departures.

20. (1) The Port Authority shall, in respect of each ship calling at a port or harbour within the Virgin Islands, provide the information specified in subregulation (2) to the Director, in a reasonable time and, whenever possible, in electronic format.

(2) The information referred to in subregulation (1) is

- (a) the identifier of the port concerned;
- (b) the ship's name, IMO number and call sign; and
- (c) the ship's actual time of arrival or departure, as appropriate.

(3) The Port Authority shall also provide the Director with information in its possession about

- (a) a ship which fails to notify the Port Authority of any information in accordance with any requirement relating to
 - (i) port reception facilities; or
 - (ii) vessel traffic monitoring; and
- (b) a ship which has been denied entry or expelled from a port on security grounds.

(4) The information provided in accordance with subregulation (3) shall include the ship's name, IMO number and call sign.

21. The Director shall report on the inspections carried out under these Regulations in accordance with section 4 and Annex 5 of the Caribbean MOU. Publication of information.

22. (1) The owner of a ship shall pay the costs that the Director incurs in relation to Costs.

- (a) any inspection which results in the detention of a ship or the issue of a prohibition notice;
- (b) any subsequent inspection relating to the deficiencies which led to the detention.

(2) The Director may refuse to lift a detention made under these Regulations until the owner has

- (a) paid the costs referred to in subregulation (1); or
- (b) has provided the Director with sufficient security for those costs.

23. (1) If there is any contravention of a direction made pursuant to regulation 13(4) in respect of a ship, the owner and the master, each commit an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both. Offences.

(2) Where a ship

- (a) is permitted to leave a port under regulation 20 but fails to proceed to the repair yard specified; or
- (b) to which regulation 18 (8) applies fails

- (i) to proceed to the repair yard specified; or
- (ii) to comply with the requirement that the deficiency be rectified within thirty days,

the owner and the master, each commit an offence;

(3) A person who commits an offence under subregulation (2) is liable on summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years, or both.

(4) A person who obstructs an inspector, or any person assisting the inspector commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars.

(5) It is a defence for a person charged under this regulation to prove that that person took all reasonable steps to avoid committing the offence.

Made in this 16th day of June, 2020.

(Sgd.) Augustus J. U. Jaspert,
Governor.