L.N. 433 of 2003

MERCHANT SHIPPING ACT (CAP. 234)

Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and High-Speed Passenger Craft Services) Regulations, 2003

IN exercise of the powers conferred by article 374 of the Merchant Shipping Act, the Minister for Transport and Communications has made the following regulations:-

Short title, commencement and scope.

1. (1) The title of these regulations is the Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and High-Speed Passenger Craft Services) Regulations, 2003.

(2) These regulations shall come into force on the 1st April, 2004.

(3) These regulations adopt the measures contained in Council Directive 1999/35/EC of 29 April 1999 in its up-to-date version, hereinafter referred to in these regulations as Council Directive 1999/35/EC.

Interpretation.

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

"Act" means the Merchant Shipping Act; Cap. 234.

"1974 SOLAS Convention" means the International Convention for the Safety of Life at Sea signed in London on 1 November 1974, together with Protocols and amendments thereto ratified or acceded to by the Government of Malta, in its up-to-date version;

"administration of the flag State" in the case of Maltese ships means the Registrar-General and in the case of other ships means the competent authority of the State whose flag a ro-ro ferry or a high-speed passenger craft is entitled to fly;

"certificates" means:

(i) for ro-ro ferries and high-speed passenger craft engaged on international voyages, the safety certificates issued under the 1974 SOLAS Convention together with the relevant

records of equipment and where appropriate exemption certificates and permits to operate;

(ii) for ro-ro ferries and high-speed passenger craft engaged on domestic voyages, the safety certificates issued in accordance with the Commercial Vessels Regulations, 2002 together with the relevant records of equipment and where appropriate exemption certificates and permits to operate;

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"Code for the Investigation of Marine Casualties" means the Code for the Investigation of Marine Casualties and Incidents adopted by the International Maritime Organization by means of Assembly Resolution A.849(20) of 27 November 1997, in its up-to-date version;

"company" means a company operating one or more ro-ro ferries to which a document of compliance with the ISM Code has been issued in compliance with Article 5(2) of Council Regulation 3051/95/EC of 8 December 1995 on the safety management of roll on roll off passenger ferries (ro-ro ferries) or a company operating high-speed passenger craft, to which a document of compliance has been issued in accordance with Regulation IX/4 of the 1974 SOLAS Convention;

"Council Directive" or "Council Regulation" means a directive or regulation of the Council of the European Union published in the Official Journal of the European Union, as the case may be;

"deficiency" means a condition found not to be in compliance with the requirements of these regulations;

"domestic voyage" means a voyage in sea areas within the territorial waters of Malta from any port in Malta to the same or another port in Malta;

"exemption certificate" means any certificate issued under the provisions of Regulation I B/12(a)(vi) of the 1974 SOLAS Convention;

"High-Speed Craft Code" means the International Code for Safety of High-Speed Craft as defined in the 1974 SOLAS Convention;

"high-speed passenger craft" means a high-speed craft as defined in Regulation X/1 of the 1974 SOLAS Convention, carrying more than twelve passengers;

"host State" means a Member State of the European Union to or from whose port or ports a ro-ro ferry or a high-speed passenger craft is engaged on a regular service to or from a port in Malta;

"IMO" means International Maritime Organisation;

"international voyage" means a voyage by sea from any port in Malta to a port outside Malta, or conversely;

"ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention as defined in the 1974 SOLAS Convention;

"qualified inspector" means a public sector employee, including an employee of the Malta Maritime Authority, or other person, duly authorised by the Authority or by the competent authority of a Member State of the European Union to carry out surveys and inspections related to certificates and fulfilling the criteria of qualification and independence specified in Annex V *Criteria of Qualification And Independence For Qualified Inspectors* of Council Directive 1999/35/EC, provided that inspectors not fulfilling these criteria are also accepted if on the date of the coming into force of these regulations they were authorised for statutory surveys or port State control inspections by the competent authority;

"recognised organisation" means an organisation recognised in accordance with Article 4 of Council Directive 94/57/EC of 22 November 1994, in its up-to-date version;

"regular service" means a series of ro-ro ferry or high-speed passenger craft crossings operated so as to serve traffic between the same two or more ports, or a series of voyages from and to the same port without intermediate calls, either:

(i) according to a published timetable; or

(ii) with crossings so regular or frequent that they constitute a recognisable systematic series;

"ro-ro ferry" means a seagoing passenger vessel with facilities to enable road or rail vehicles to roll-on and roll-off the vessel, and carrying more than twelve passengers;

"sea area" means any sea area included in a list established in accordance with Article 4 of Council Directive 98/18/EC of 17 March 1998 on safety rules and standards for passenger ships;

"specific survey" means a survey by the competent authority or another host State as specified in regulations 6 and 8 hereof;

"territorial waters of Malta" means all parts of the open sea within twelve nautical miles of the coast of Malta, or such other distance as may be established under article 3 of the Territorial Waters and Contiguous Zone Act, measured as in that Act provided, and includes any waters enclosed between the base lines therein mentioned and the coast.

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"The competent authority" in respect of ro-ro ferries and high-speed passenger craft engaged on domestic voyages in Malta means the Executive Director responsible for ports of the Malta Maritime Authority and in respect of ro-ro ferries and high-speed passenger craft engaged on international voyages means the Registrar-General;

Application.

3. These regulations shall apply to all ro-ro ferries and high-speed passenger craft operating to or from any port in Malta on a regular service, regardless of their flag, when engaged on international voyages or on domestic voyages in sea areas covered by Class A as referred to in Article 4 of Council Directive 98/18/EC of 17 March 1998.

Initial verifications required in relation to ro-ro ferries and high-speed passenger craft.

4. (1) Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or by the 30 April 2004 for a ro-ro ferry or high-speed passenger craft already operating, the competent authority shall verify that ro-ro ferries and high speed passenger craft to which these regulations apply:

(i) carry valid certificates, issued by the administration of the flag State or by a recognised organisation acting on its behalf;

(ii) have been surveyed for the issue of certificates in accordance with the relevant procedures and guidelines annexed to IMO Assembly Resolution A.746(18) of 4 November 1993 on survey guidelines under the harmonised system of survey and certification, in their up-to-date version, or with procedures designed to achieve the same goal;

(iii) comply with the standards specified for classification by the rules of a recognised organisation, or rules accepted as equivalent by the administration of the flag State for construction and maintenance of their hull, machinery and electrical and control installation;

(iv) are fitted with a voyage data recorder (VDR) for the purpose of providing information for the benefit of a possible casualty investigation, which shall meet the performance standards of IMO Assembly Resolution A.861(20) of 27 November 1997 and comply with the testing standards laid down in International Electrotechnical Commission (IEC) standard No 61996:

Provided that ro-ro ferries and high-speed passenger craft built before the 1 June 1999 may be exempted from some of these requirements and, the exemptions and the conditions under which they can be granted shall be those adopted in accordance with the procedure laid down in Article 4 of Council Directive 1999/5/EC of 29 April 1999;

(v) comply with specific stability requirements which may be adopted from time to time at regional level, and incorporated into the Laws of Malta when operating a service in a region where these are applicable, provided those requirements do not exceed those specified in the Annex *Stability Requirements Pertaining To The Agreement* to Resolution 14 adopted by the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 on 29 November 1995 and have been notified to the Secretary-General of the IMO, in accordance with the procedures specified in point 3 of that resolution.

(2) The provisions of paragraph 4(1)(v) hereof shall apply to high-speed passenger craft only where appropriate.

Initial verifications required in relation to companies and flag States.

5. Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or by the 30 April, 2004 for a ro-ro ferry or high-speed passenger craft already operating, the competent authority shall verify that companies which operate or intend to operate such a ferry or craft on regular service:

(i) take the necessary measures to ensure that the specific requirements laid down in Annex I *Specific Requirements To Be Fulfilled By Companies* to Council Directive 1999/35/EC are applied and provide the evidence of compliance with this subparagraph and with regulation 4 hereof to the competent authority and to the host States involved in the regular service;

(ii) agree in advance that the competent authority, any other host State and any substantially interested Member State of the European Union may conduct, participate fully in or cooperate in any investigation of a marine casualty or incident in accordance with regulations 13 and 14 hereof, and will give them access to the information retrieved from the VDR of their ferry or craft involved in such a casualty or incident.

and where such a ferry or craft is not a Maltese ship or does not fly the flag of a Member State of the European Union, the competent authority shall also verify that the flag State accepts the company's commitment to meet the requirements of these regulations.

Initial specific surveys.

6. (1) Prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, or by the 30 April, 2004 for a ro-ro ferry and high-speed passenger craft already operating a regular service on that date, the competent authority shall carry out an initial specific survey in accordance with Annex I *Specific Requirements To Be Fulfilled By Companies* and Annex III *Procedures For Specific Surveys* contained in European Council Directive 1999/35/EC to satisfy itself that the ro-ro ferry or high-speed passenger craft fulfils the necessary requirements for safe operation of a regular service.

(2) Where this regulation is applied prior to the start of operation, the competent authority shall set a date for the initial specific survey which is no more than one month after receipt of the evidence necessary to complete the verification under regulations 4 and 5 hereof.

Special provisions.

7. (1) When a ro-ro ferry or high-speed passenger craft is to be engaged on a new regular service which includes Malta, the competent authority shall take the utmost account of verifications and surveys previously carried out for that ferry or craft for operation on a previous regular service including ports of a Member State of the European Union:

Provided that if the competent authority is satisfied with these previous verifications and surveys that they are relevant to the new operational conditions, regulations 4, 5 and 6 hereof need not be applied prior to the ro-ro ferry or high-speed passenger craft starting operation on the new regular service.

(2) In cases where, following unforeseen circumstances, a replacement ro-ro ferry or high-speed passenger craft must be introduced rapidly to ensure continuity of service, and sub-regulation 7(1) hereof is not applicable, the competent authority may allow the ferry or craft to start operating provided that:

(i) a visual inspection and document verification raise no concerns that the ro-ro ferry or high-speed passenger craft does not fulfil the necessary requirements for safe operation, and

(ii) the competent authority completes the verifications and surveys under regulations 4, 5 and 6 hereof within one month.

Regular specific surveys and other surveys.

8. (1) A ro-ro ferry or high-speed passenger craft shall be subject once in every twelve month period to the surveys specified below:

(i) a specific survey in accordance with Annex III *Procedures For Specific Surveys* to Council Directive 1999/35/EC;

(ii) a survey during a regular service, which shall aim to cover enough items listed in Annexes I *Specific Requirements To Be Fulfilled By Companies*, III *Procedures For Specific Surveys* and IV *Indicative Guidelines For Qualified Inspectors When Carrying Out Unscheduled Surveys During A Regular Crossing* to Council Directive 1999/35/EC in order to satisfy the competent authority that the ferry or craft continues to fulfill all the necessary requirements for safe operation.

(2) An initial specific survey in accordance with regulation 6 hereof counts as a specific survey for the purposes of this regulation.

(3) The competent authority shall carry out a specific survey in accordance with Annex III *Procedures For Specific Surveys* to Council Directive 1999/35/EC each time the ro-ro ferry or high-speed passenger craft undergoes repairs, alterations and modifications of a major character, or when there is a change in management or flag, or a transfer of class. However, in case of change in management or flag, or transfer of class, the competent authority may, after taking account of verifications and surveys previously issued for the ferry or craft, and provided that the safe operation of the ferry or craft is not affected by this change or transfer, dispense the ferry or craft from the specific survey required by this sub-regulation.

(4) Should the surveys referred to in sub-regulation (1) hereof confirm or reveal deficiencies in relation to the requirements of these regulations warranting a prevention of operation, all costs relating to the surveys in any normal accounting period shall be covered by the company.

Notification.

9. The competent authority shall inform companies promptly, in writing, of the outcome of verifications and surveys under regulations 4, 5, 6 and 9 hereof.

Prevention of operation.

10. (1) The competent authority shall prevent the operation of a ro-ro ferry or high-speed passenger craft on a regular service to or from any port in Malta, and no ro-ro ferry or high-speed passenger craft shall proceed to sea or operate on a regular service to or from any port in Malta:

(i) when the competent authority has been unable to confirm compliance with the requirements in regulations 4 and 5 hereof;

(ii) whenever deficiencies are found during the surveys referred to in regulations 6 and 8 hereof which deficiencies pose an immediate danger to life, the ferry or craft, its crew and passengers;

(iii) when there is an established failure to comply with the instruments listed in Annex II *List Of Community Instruments* to Council Directive 1999/35/EC which failure poses an immediate danger of life, the ferry or craft, its crew and passengers;

(iv) whenever the competent authority has not been consulted by the flag State on the matters referred to in regulation 15(1) hereof.

until the competent authority has established that the danger has been removed and the requirements of these regulations are met.

(2) Where the competent authority prevents a ro-ro ferry or high-speed passenger craft from operating, it shall inform the company in writing of its decision giving the reasons therefor.

(3) Where the ro-ro ferry or high-speed passenger craft is already operating a regular service and deficiencies are established, the competent authority shall require the company to take the necessary measures for their prompt rectification or within a well-defined and reasonable period of time, provided they do not pose an immediate danger to the safety of the ferry or craft, its crew and passengers. The competent authority shall verify that the deficiencies have been rectified to its full satisfaction and in default it shall prevent the ferry or craft from operating until it is satisfied that the requirements of these regulations have been met.

(4) In cases where regulations 4, 5 and 6 hereof apply prior to the start of operation by a ro-ro ferry or high-speed passenger craft on a regular service, a decision to prevent a ship from operating shall be taken within one month of the initial specific survey and shall be communicated to the company immediately.

Duty to ensure compliance.

11. (1) It shall be the duty of the owner, of the company which has assumed the operation of the ship and of the master to ensure that the ship is in compliance with the provisions of these regulations and such person, if in fault, shall be liable to the penalties provided for in the Act, and if no such penalty is provided, such person shall for each offence be liable to a fine (multa) not exceeding five hundred units.

(2) If a ship proceeds or attempts to proceed to sea or on any voyage or excursion in contravention of these regulations, the owner or master or the ship shall, without prejudice to any other penalty or remedy under the Merchant Shipping Act, be liable to a fine (multa) not exceeding one hundred units.

Procedures related to initial and regular specific surveys.

12. (1) Ro-ro ferries and high-speed passenger craft that have been subject to the specific surveys to the satisfaction of the competent authority shall be exempted by the competent authority from expanded

inspections to be carried out for the purpose of Article 7(4) of Council Directive 95/21/EC and from expanded inspections based on the clear grounds that they belong to the category of passenger ships referred to in Article 7(1) and Annex V.A. 3 of that Directive.

(2) The competent authority shall cooperate with any other host State when involved in the specific survey of the same ship or craft. The specific surveys shall be carried out by a team of qualified inspectors. Wherever there is a need for qualitative assessment of the fulfillment of class-related provisions, the competent authority shall ensure the necessary expertise is included in the team, where appropriate by including a surveyor of a recognised organisation. The inspectors shall report deficiencies to the flag State administrations of the host State. The competent authority shall communicate this information to the flag State, if that State is not a host State involved in the survey.

(3) The competent authority may agree to carry out a survey at the request of an involved host State.

(4) The competent authority, when requested by a company, shall invite the administration of the flag State which is not a host State to be represented in any specific survey under the provisions of these regulations.

(5) The competent authority, in planning a survey in accordance with regulations 6 and 8 hereof, shall take due account of the operational and maintenance schedule of the ferry or craft.

(6) The findings of the specific surveys shall be recorded in a report the format of which shall be determined by the competent authority.

(7) In case of persistent disagreement between the competent authority and any host State on the fulfillment of the requirement of regulations 4 and 5(1), the competent authority shall immediately notify the European Commission the reasons of the disagreement.

Accident investigation.

13. (1) The competent authority shall, in accordance with the Code for the Investigation of Marine Casualties, conduct a marine casualty or incident investigation involving a ro-ro ferry or high-speed passenger craft to which these regulations apply where:

(i) the accident or incident occurs in the territorial waters of Malta or,

(ii) where the accident or incident occurs in other waters, if Malta was the last place visited by the ferry or craft.

(2) The competent authority shall remain responsible for the investigation and, where appropriate shall cooperate and coordinate with other substantially interested States until such time as it is mutually agreed which is to be the lead investigating State.

(3) For the purposes of this regulation "substantially interested State", "lead investigating State" and "marine casualty" shall have the same meaning as in the Code for the Investigation of Marine Casualties.

(4) When conducting, participating or cooperating in such investigations the competent authority shall ensure that the investigation is concluded in the most efficient way and within the shortest possible time taking into account the Code for the Investigation of Marine Casualties.

Reports to be made public.

14. The competent authority shall ensure that reports resulting from such an investigation are made public in accordance with the Code for the Investigation of Marine Casualties.

Accompanying measures.

15. (1) When recognising an exemption certificate the competent authority shall consult the involved host State or States or the administration of the flag State to resolve any disagreement concerning the suitability of the exemptions prior to the initial specific survey.

(2) The Executive Director responsible for ports of the Malta Maritime Authority shall operate shore-based navigational guidance systems and other information schemes in accordance with IMO Assembly Resolution A.795(19) to assist ro-ro ferries and high-speed passenger craft in the safe conduct of the regular service, or part of it, for the safety of which they bear responsibility.

(3) The competent authority shall ensure that companies operating ro-ro ferries or high-speed passenger craft on regular services to or from any port in Malta are able to maintain and implement an integrated system of contingency planning for shipboard emergencies. To this end the Authority shall make use of the framework provided by IMO Assembly Resolution A.852(20) on guidelines for a structure of an integrated system of contingency.

(4) Where a ro-ro ferry or high-speed passenger craft to which these regulations apply conducts international voyages in a regular service the competent authority shall together with any other involved host State or States jointly establish an integrated system of contingency planning for shipboard emergencies for the different routes covered by the ferry or craft.

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