L.N. 443 of 2003

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Fishing Vessel Safety) Rules, 2003

IN exercise of the powers conferred by articles 207, 208 and 374 of the Merchant Shipping Act, the Minister for Transport and Communications has made the following rules:–

Citation, commencement and scope.

1. (1) The title of these rules is the Merchant Shipping (Fishing Vessel Safety) Rules, 2003.

(2) These rules shall come into force on the 1st May, 2004.

(3) These rules adopt the measures contained in Council Directive 97/70/EC of 11th December 1997, hereinafter referred to in these rules as Council Directive 97/70/EC.

Interpretation.

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

"the Act" means the Merchant Shipping Act;

"administration of the flag State" in the case of Maltese fishing vessels means the Registrar-General and in the case of other fishing vessels means the competent authority of the State whose flag a vessel is entitled to fly;

"certificate" means the certificate of compliance referred to in rule 6 hereof;

"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;

"existing fishing vessel" means a fishing vessel which is not a new fishing vessel;

"fishing vessel" or "vessel" means any vessel equipped or used commercially for catching fish or other living resources of the sea;

"length" means, unless provided otherwise, 96% of the total length on a waterline at 85% of the least moulded depth measured from the keel line, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater, provided that in vessels designed with rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;

"Maltese fishing vessel" means a fishing vessel registered under the Act;

"new fishing vessel" means a fishing vessel for which:

(a) on or after 1 January, 1999 the building or major conversion contract is placed or

(b) the building or major conversion contract has been placed before 1 January, 1999, and which is delivered three years or more after that date; or

(c) in the absence of a building contract, on or after 1 January, 1999:

- the keel is laid, or

- construction identifiable with a specific ship begins, or

- assembly has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is less;

"operating" means catching or catching and processing fish or other living resources of the sea without prejudice to the right of innocent passage in the territorial sea and the freedom of navigation in the 200 mile exclusive economic zone;

"recognised organisation" means an organisation or body authorised in terms of article 367 of the Act or an official surveyor of ships appointed in terms of that article, duly authorised by the Registrar-General;

"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; Cap. 226.

"the Torremolinos Protocol" means the Torremolinos Protocol of 1993 relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977.

Applicability of rules.

3. These rules apply to seagoing Maltese fishing vessels of 24 metres in length and over, wherever they may be, and to other seagoing fishing vessels of 24 metres in length and over operating in the internal or territorial waters of Malta or landing their catch in Malta. Recreational craft engaged in non-commercial fishing are excluded from the scope of these rules.

General requirements.

4. (1) The provisions of the Annex to the Torremolinos Protocol shall apply to Maltese fishing vessels, unless Annex I *Adaptation of provisons of the Annex to the Torrermolinos Protocol for application of Article (1) of Council Directive 97/70/EC* to Council Directive 97/70/EC provides otherwise.

(2) Those requirements in Chapters IV, V, VII and IX of the Annex to the Torremolinos Protocol, that apply to vessels of 45 metres in length and over, shall also apply to new Maltese fishing vessels of 24 metres in length and over, unless Annex II *Adaptation of provisons of Chapters IV, V, VII and IX of the Annex to the Torremolinos Protocol, in accordance with Article 3(4) of the latter, for application to new fishing vessels with a length of 24 metres and over* to Council Directive 97/70/EC provides otherwise:

Provided that Maltese fishing vessels operating in specific areas shall comply with the provisions for those areas, as defined in Annex III *Regional and local provisions (Articles 3(3) and 4(1))* to Council Directive 97/70/EC.

(3) Maltese fishing vessels shall comply with the specific safety requirements laid down in Annex IV *Specific safety requirements (Article 3(4))* to Council Directive 97/70/EC.

(4) No fishing vessel shall operate in the internal or territorial waters of Malta or land their catch in Malta unless it is certified by the flag State administration that it complies with the requirements referred to in sub-rules (1), (2) and (3) of this rule and in rule 5 hereof.

(5) Marine equipment listed in Annex A.1 to Council Directive 96/98/EC and complying with the said Annex, when placed on board a fishing vessel to comply with these rules, shall be automatically considered to be in conformity with these rules, whether or not these rules require that the equipment must be approved and subjected to tests to the satisfaction of the administration of the flag State.

Standards for design, construction and maintenance.

5. The standards for the design, construction and maintenance of hull, main and auxiliary machinery, electrical and automatic plants of a fishing vessel shall be the rules in force at the date of its construction, specified for classification by a recognised organisation or used by the flag State administration.

Surveys and certificates.

6. (1) Subject to the provisions of sub-rule (3) hereof the Registrar-General or a recognised organisation duly authorised by him shall issue to Maltese fishing vessels complying with the requirements referred to in rules 4 and 5 hereof, a certificate of compliance with the requirements of these rules and of Council Directive 97/70/EC, supplemented by a record of equipment and, where appropriate, exemption certificates.

(2) The Registrar-General shall, subject to the provisions of these rules and the Torremolinos Protocol, determine the conditions of issue and validity of such certificates.

(3) The certificate of compliance, record of equipment and and exemption certificate shall be in the format laid down in Annex V *Forms Of Certificate Of Compliance, Exemption Certificate, And Record Of Equipment* to Council Directive 97/70/EC or as near thereto as circumstances permit.

(4) The certificates referred to in sub-rule (1) hereof shall be issued after an initial survey, carried out by the exclusive surveyors appointed in terms of article 367 of the Act or by the exclusive surveyors of a recognised organisation or of a Member State of the European Union authorised by the Registrar-General to carry out surveys, in accordance with Regulation 6, paragraph (1)(a) of Chapter 1 of the Annex to the Torremolinos Protocol.

(5) The periods of validity of the certificates referred to in sub-rule (1) hereof shall not exceed those established in Regulation 11 of Chapter 1 of the Annex to the Torremolinos Protocol. A renewal of the certificate of compliance, shall be issued after periodical surveys, in accordance with Regulation 6 of Chapter 1 of the Annex to the Torremolinos Protocol, have been carried out.

Control provisions.

7. Maltese fishing vessels wherever they are and, other fishing vessels when in Maltese inland or territiorial waters or in Malta ports shall be subject to control by the Registrar-General, in accordance with Article 4 of the Torremolinos Protocol and without discrimination with regard to flag or nationality of the operator, in order to verify that they comply with these rules.

Duty to ensure compliance.

8. It shall be the duty of the owner, of the company which has assumed the operation of the vessel and the skipper to ensure that the vessel is in compliance with the provisions and requirements of these rules 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.