L.N. 12 of 2004

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Port State Control) Regulations, 2004

IN exercise of the powers conferred by articles 154 and 374 of the Merchant Shipping Act and article 28 of the Malta Maritime Authority Act, the Minister for Transport and Communications has made the following regulations:–

Citation, commencement and scope.

1. (1) The title of these regulations is the Merchant Shipping (Port State Control) Regulations, 2004.

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

(3) These regulations adopt the measures contained in Council Directive 95/21/EC of 19 June, 1995 in its up-to-date version, hereinafter referred to in these regulations as Council Directive 95/21/EC.

Interpretation.

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

Cap. 234.

"the Act" means the Merchant Shipping Act;

Cap. 194.

"continental shelf" shall have the same meaning as is assigned to it in article 2 of the Continental Shelf Act;

"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;

"flag State" means the State whose flag the ship is entitled to fly;

"inspector" means a person duly authorised by the competent authority to carry out port State control inspections, and responsible to that authority;

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

"member State" means a member State of the European Union;

"off-shore installation" means a fixed or floating platform operating on or over the continental shelf of Malta;

"port" shall have the same meaning as is assigned to it under article 2 of the Malta Maritime Authority Act and shall include off-shore installations unless the text otherwise clearly excludes them;

"recognised State" means a State the maritime administration of which either is a signatory to the MOU or enjoys a cooperating status in terms of the MOU;

"ship" shall mean any seagoing vessel to which one or more of the Conventions apply, flying a flag other than that of Malta.

"the competent authority" in relation to Malta means the Executive Director responsible for merchant shipping of the Malta Maritime Authority established by the Malta Maritime Authority Act, hereinafter referred to as the Executive Director and, in relation to any other State means the national maritime administration maintained by that State for the inspection of ships;

Cap. 352.

(2) Unless otherwise defined in these regulations or unless the context otherwise requires, words and expressions used in these regulations shall have the same meaning assigned to them in Council Directive 95/21/EC.

Application.

3. (1) These regulations apply to any ship and her crew:

(a) calling at a port in Malta or at an off-shore installation, or

(b) anchored off such a port or such an installation:

Provided that nothing in these regulations shall affect the rights of intervention available to any authority under any of the relevant international Conventions or under any other convention.

(2) These regulations shall not apply to,

(a) fishing vessels,

(b) government ships used for non-commercial purposes,

(c) naval auxiliaries,

(d) pleasure yachts not engaged in trade,

(e) ships of war,

(f) ships registered in Malta, or

(g) wooden ships of a primitive build.

(3) In case of ships of a gross tonnage below 500, the inspector shall apply those requirements of a relevant Convention which are applicable and shall, to the extent that a Convention does not apply and without prejudice to any other powers under these regulations, take such action as may be necessary to ensure that the ships concerned are not clearly hazardous to safety, health or the environment. In the application of this sub-regulation the inspector shall be guided by Annex 1 to the MOU.

(4) When inspecting a ship flying the flag of a State which is not a party to a Convention, the treatment given to such ship and its crew shall be no more favourable than that given to a ship flying the flag of a State which is a party to that Convention or to the crew of such a ship.

Inspection commitments.

4. (1) The competent authority shall, annually, carry out a total number of inspections of the ships referred in sub-regulation (2) of this regulation and in regulation 6 hereof, corresponding to at least twenty five per cent of the average annual number of ships to which these regulations apply, calculated on the basis of the three most recent calendar years for which statistics are available.

(2) The competent authority shall, subject to the provisions of regulation 7 hereof, ensure that an inspection in accordance with regulation 5 is carried out on any ship, not subject to an expanded inspection, with a target factor greater than 50 in the Sirenac information

system, provided that a period of at least one month has elapsed since the last inspection carried out in a port in a recognised State.

(3) In selecting other ships for inspection, the competent authority shall determine the order of priority as follows:

(a) the first ships to be selected for inspection shall be those listed in Part I *Overriding factors* of Annex I *Ships To Be Considered For Priority Inspection* to Council Directive 95/21/EC, irrespective of their target factor,

(b) the ships listed in Part II *Overall targeting factor* of Annex I *Ships To Be Considered For Priority Inspection* to Council Directive 95/21/EC shall be selected in descending order, depending on the order of priority resulting from the value of their target factor ranges as referred to in the Sirenac information system.

(4) The competent authority shall refrain from inspecting ships which have been inspected by any recognised State within the previous six months, provided that:

(a) the ship is not listed in Annex I *Ships To Be Considered For Priority Inspection* to Council Directive 95/21/EC;

(b) no deficiencies have been reported following a previous inspection;

(c) no clear grounds exist for carrying out an inspection;

(d) the ship is not covered by sub-regulation (2) hereof.

Inspection procedure.

5. (1) When carrying out an inspection in accordance with these regulations, the inspector shall as a minimum:

(a) check the certificates and documents listed in Annex II *List Of Certificates And Documents* to Council Directive 95/21/EC, to the extent applicable;

(b) satisfy himself of the overall condition of the ship, including the engine room and accommodation and including hygienic conditions.

(2) The inspector may also examine all relevant certificates and documents, other than those listed in Annex II *List Of Certificates And Documents* to Council Directive 95/21/EC, required to be carried on board in accordance with the Conventions.

(3) Whenever there are clear grounds for believing, after the inspection referred to in sub-regulations (1) and (2) hereof, 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, including further checking of compliance with on-board operational requirements.

(4) For the purposes of sub-regulation (3) hereof, "clear grounds" exist when the inspector finds evidence which in his professional judgement warrants a more detailed inspection of the ship, its equipment or its crew. Without prejudice to its generality the term "clear grounds" includes, the circumstances set out in Annex III *Examples Of 'Clear Grounds' For A More Detailed Inspection* to Council Directive 95/21/EC.

(5) The inspector shall also observe the relevant procedures and guidelines for the control of ships specified in Annex IV *Procedures For The Control Of Ships* to Council Directive 95/21/EC.

Mandatory expanded inspection of certain ships.

6. (1) A ship in one of the categories in section A *Categories Of Ships Subject To Expanded Inspection* of Annex V to Council Directive 95/21/EC, is liable to an expanded inspection after a period of twelve months since the last expanded inspection carried out in a port of a recognised State.

(2) If such a ship is selected for inspection in accordance with sub-regulation 4(3) hereof, an expanded inspection shall be carried out. However, an inspection in accordance with regulation 5 hereof may be carried out in the period between two expanded inspections.

(3) Following the lapse of a period of twelve months since the last expanded inspection, the operator or master of a ship to which sub-regulation (1) hereof applies shall communicate to the competent authority in Malta all the information listed in section B *Information To Be Notified To The Competent Authority* of Annex V to Council Directive 95/21/EC before each call at a port in Malta. This information shall be provided at least three days before the expected time of arrival in the port or before leaving the previous port if the voyage is expected to take fewer than three days.

(4) Any ship not complying with the provisions of sub-regulation (3) hereof shall be subject to an expanded inspection at the port of destination.

(5) Subject to regulation 7 of these regulations, the competent authority shall ensure that an expanded inspection is carried

out in respect of a ship to which sub-regulation (3) hereof applies and which has a target factor of 7 or more at its first visit to a port in Malta following the lapse of a period of twelve months since the last expanded inspection.

Provided that if the competent authority is unable to increase its capacity in time to carry out all the additional inspections required, particularly because of problems connected with the recruitment and training of inspectors, the competent authority is allowed until 1 February 2005 to build its inspection service gradually.

(6) An expanded inspection shall be carried out in accordance with the procedures in section C *Procedures Relating To Expanded Inspection Of Certain Categories Of Ships* of Annex V to Council Directive 95/21/EC.

Procedure in case certain ships cannot be inspected.

7. (1) In cases where, for operational reasons, the competent authority is unable to carry out an inspection of a ship with a target factor of more than 50 as referred to in sub-regulation 4(2) hereof or a mandatory expanded inspection as referred to in sub-regulation 6(5) hereof, it shall, without delay, inform the Sirenac information system that such inspection did not take place.

(2) The competent authority shall, at intervals of six months, notify the case mentioned in sub-regulation (1) hereof to the European Commission together with the reasons for not inspecting the ships concerned.

(3) During any calendar year, such cases of non-inspection shall not exceed 5% of the average annual number of individual ships eligible for the inspections referred to in sub-regulation (1) hereof calling at ports in Malta, calculated on the basis of the three most recent calendar years for which statistics are available.

(4) Where a ship, which for operational reasons was not subject to an inspection of the type referred to in sub-regulation 4(2) hereof or a mandatory expanded inspection of the type referred to in sub-regulation 6(5) hereof, as appropriate, at its previous call at a port in a member State, including Malta, visits a port in Malta, it shall be inspected, as appropriate by the competent authority.

Refusal of access to certain ships.

8. (1) Save in the cases provided for in sub-regulation 13(9) hereof no access to any port in Malta shall be granted to a ship falling within one of the categories of Section A *Categories Of Ships Subject To Refusal Of Access To Community Ports* of Annex XI to Council Directive 95/21/EC, if the ship,

(a) either flies the flag of a State appearing in the black list as published in the annual report of the MOU, and has been detained more than twice in the course of the preceding twenty four months in a port of a recognised State;

(b) or flies the flag of a State described as 'very high risk' or 'high risk' in the black list as published in the annual report of the MOU, and has been detained more than once in the course of the preceding thirty six months in a port of a recognised State.

(2) The refusal of access in accordance with sub-regulation (1) hereof, shall become applicable immediately the ship has been authorised to leave the port where it has been the subject of a second or third detention as appropriate.

(3) In the case of refusal of access in accordance with sub-regulation (1) hereof, the procedures relating to refusal of access laid down in Section B *Procedures Relating To Refusal Of Access To Community Ports* of Annex XI to Council Directive 95/21/EC shall apply.

Report of inspection to the master.

9. On completion of an inspection, a more detailed inspection or an expanded inspection, the inspector shall draw up a report in accordance with Annex IX *Inspection Report Drawn Up In Accordance With Article* 8 to Council Directive 95/21/EC and a copy of the inspection report shall be provided to the ship's master.

Rectification and detention.

10. (1) Any deficiencies confirmed or revealed by the inspection referred to in regulations 4 and 6 hereof shall be rectified in accordance with the Conventions to the satisfaction of the competent authority.

(2) (a) In the case of deficiencies which are clearly hazardous to safety, health or the environment, the competent authority shall order the ship to be detained, or shall order the operation in the course of which the deficiencies have been revealed to be stopped.

(b) A detention order or an order for the stoppage of an operation may include a direction that a ship shall remain in a particular place, or shall move to a particular anchorage or berth, and may also specify circumstances when the master of a ship may move his ship from a specified place for reasons of safety or prevention of pollution.

(c) The detention order or the order for the stoppage of an operation shall not be lifted until the hazard is removed or until

the competent authority establishes 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.

(d) Where deficiencies as referred to in this sub-regulation are found and cannot be rectified in the port of detention, the relevant provisions of regulation 13 shall apply.

(3) When exercising his professional judgment as to whether or not a ship should be detained, the inspector shall apply the criteria set out in Annex VI *Criteria For Detention Of A Ship* to Council Directive 95/21/EC.

(4) A ship shall be detained if not equipped with a functioning voyage data recorder system, when its use is compulsory in accordance with Annex XII *International And Community Requirements Concerning Voyage Data Recorder Systems* to Council Directive 95/21/EC. If this deficiency cannot be readily rectified in the port of detention, the competent authority may allow the ship to proceed to the nearest appropriate port where it shall be readily rectified or require that the deficiency is rectified within a maximum period of thirty days. For these purposes, the procedures laid down in regulation 13 shall apply.

(5) In exceptional circumstances, where the overall condition of a ship is obviously substandard, the inspector may suspend the inspection of that ship until the responsible parties have taken the steps necessary to ensure that it complies with the relevant requirements of the Conventions, and in the meantime the ship shall be considered to be detained.

(6) Without prejudice to any other requirement in the Convention enactments, in the event that an inspection referred to in sub-regulation 4(2) or regulation 6 hereof gives rise to detention, the competent authority shall immediately inform, in writing and including the report of inspection, the flag administration, or when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of the State of the flag administration of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognised organisations responsible for the issue of class, radio or other certificates issued on behalf of the State of the flag administration in accordance with international Conventions shall also be notified where relevant.

(7) The provisions of these regulations shall be without prejudice to the additional requirements of the Conventions concerning notification and reporting procedures related to port State control.

(8) When exercising port State control under these regulations, all possible efforts shall be made to avoid a ship being unduly detained or delayed.

(9) If a ship is unduly detained or delayed, the owner or operator shall be entitled to compensation for any actual loss or damage suffered. In any instance of alleged undue detention or delay the burden of proof shall lie with the owner or operator of the ship.

Procedure applicable in the absence of ISM Certificates.

11. (1) Where the inspection reveals that the copy of the document of compliance or the safety management certificate issued in accordance with the ISM Code are missing on board a ship to which, within the European Community the ISM Code is applicable at the date of the inspection, the competent authority shall order that the ship in question be detained.

(2) Notwithstanding the absence of the documentation referred to in sub-regulation (1) hereof, if the inspection finds no other deficiencies warranting detention, the competent authority may, in order to avoid port congestion, lift the detention order. Whenever such a decision is taken, the competent authority shall immediately inform the competent authorities of the other recognised States thereof.

(3) A ship which has been authorised to leave a port in a recognised State under circumstances analogous to those referred to in sub-regulation (2) hereof, shall be refused access to all ports in Malta, except in the situations referred to in sub-regulation 13(9) hereof, until the owner or operator of the vessel has demonstrated, to the satisfaction of the competent authority of that recognised State in which detention was ordered, that the ship has valid certificates issued in accordance with the ISM Code.

(4) Where deficiencies as referred to in sub-regulation 10(2)(a) are found and cannot be rectified in Malta the relevant provisions of regulation 13 shall also apply.

Right of appeal.

12. (1) Subject to the provisions of this is regulation, the owner or the operator of a ship or his representative in Malta shall have a right of appeal against a decision for detention or stoppage of operation or refusal of access taken by the competent authority.

(2) The competent authority shall properly inform the master of a ship referred to in sub-regulation (1) hereof, of the right of appeal.

(3) An appeal shall not cause the detention or stoppage of operation or refusal of access to be suspended.

(4) An appeal against a decision for detention or stoppage of operation or refusal of access may be made by means of an application before the Court of Appeal (Inferior Jurisdiction).

(5) An appeal for the purpose of sub-regulation (4) hereof shall be filed within twenty days of the service of the order of detention or stoppage of operation or the day of refusal of access, as the case may be, and shall be served on the Executive Director who shall reply thereto within ten days of notification.

(6) If the owner or the operator of a ship or his representative in Malta shows to the satisfaction of the Court that:

(a) the matter did not constitute a valid basis for the relevant inspector's opinion, and

(b) there were no reasonable grounds for the inspector to form that opinion,

the Court may award the owner such compensation in respect of any actual loss suffered by him in consequence of the detention or stoppage of operation or refusal of access as it deems fit.

(7) The burden of satisfying the Court as to the matters specified in sub-regulation 6 hereof, shall lie with the owner or the operator of a ship or his representative in Malta, as the case may be.

(8) The Court shall also have regard, in coming to its decision, to any matters not specified in the order of detention or stoppage of operation or in the refusal of access order that appears to it to be relevant as to whether the ship was or was not liable to be detained or refused access.

(9) Where the Court decides, that the matter did not constitute a valid basis for the inspector's opinion, it shall either cancel the order of detention or refusal of access or shall affirm the order with such modifications as it may in the circumstances deem fit.

(10) The Court shall include in its findings whether there was or not a valid basis for the order of detention or refusal of access.

Follow up to inspections and detention.

13. (1) Where deficiencies as referred to in sub-regulation 10(2)(a) hereof cannot be rectified in Malta, the competent authority may allow the ship concerned to proceed to the nearest appropriate repair yard available, as chosen by the master and the authorities concerned, provided that the conditions determined by the competent authority of the flag State and agreed to by the competent authority are complied with. 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.

(2) In the circumstances referred to in sub-regulation (1) hereof, the competent authority shall notify the competent authority of the State where the repair yard is situated, the parties mentioned in sub-regulation 10(6) and any other authority as appropriate of all the conditions for the voyage.

(3) The notification of the parties referred to in sub-regulation (2) hereof shall be in accordance with Annex 2 to the MOU.

(4) When the competent authority receives a notification analogous to the one referred to in sub-regulation (1) hereof from the competent authority of another recognised State it shall inform the notifying authority of the action taken.

(5) The competent authority shall take measures to ensure that ships that proceed to sea from a port in any recognised State in circumstances analogous to those referred to in sub-regulation (1) hereof:

(a) without complying with the conditions determined by the competent authority in the port of inspection; or

(b) which refuse to comply with the applicable requirements of the Conventions by not calling into the indicated repair yard,

are refused access to any port in Malta, until the owner or operator has provided evidence to the satisfaction of the competent authority of the port of inspection where the ship was found to be deficient that the ship fully complies with all applicable requirements of the Conventions.

(6) If a ship proceeds to sea from a port in Malta without complying with the conditions determined by the competent authority in accordance with sub-regulation (5)(a) hereof, the competent authority

shall immediately alert the competent authorities of all the other recognised States.

(7) If a ship to which sub-regulation 5(b) hereof applies is to proceed to a repair yard in Malta, but fails to call into the indicated repair yard, the competent authority shall immediately alert the competent authorities of all the other recognised States.

(8) Before denying entry pursuant to circumstances analogous to those referred to in sub-regulations (6) and (7) hereof, the competent authority may request consultations with the flag administration of the ship concerned.

(9) Notwithstanding the provisions of sub-regulation (5) hereof, access to a port in Malta may be permitted by the competent authority in the event of *force majeure* or overriding safety considerations, or to reduce or minimize the risk of pollution or to have deficiencies rectified, provided adequate measures to the satisfaction of the competent authority have been implemented by the owner, the operator or the master of the ship to ensure safe entry.

Professional profile of inspectors.

14. (1) Inspections under these regulations shall be carried out only by inspectors who fulfil the qualification criteria specified in Annex VII *Minimum Criteria For Inspectors* to Council Directive 95/21/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.

(2) When the required professional expertise cannot be provided by the competent authority, the inspector may be assisted by any person with the required expertise.

(3) The inspectors carrying out port State control and the persons assisting them shall have no commercial interest either in the port of inspection or in the ships inspected, nor shall the inspectors be employed by or undertake work on behalf of non-governmental organisations which issue statutory and classification certificates or which carry out the surveys necessary for the issue of those certificates to ships.

(4) Each inspector shall carry a personal document in the form of an identity card issued by the Executive Director indicating that the inspector is authorised to carry out inspections.

Reports from pilots and port authorities.

15. (1) Pilots of Malta, engaged in berthing or unberthing ships or engaged on ships bound for or out of a port in Malta shall immediately inform the competent authority whenever they learn in the course of their normal duties that there are deficiencies which may prejudice the safe navigation of the ship, or which may pose a threat of harm to the marine environment.

(2) If port authorities, when exercising their normal duties, learn that a ship within their port has deficiencies which may prejudice the safety of the ship or poses an unreasonable threat of harm to the marine environment, such authority shall immediately inform the competent authority about such deficiencies.

Cooperation and exchange of information.

16. (1) The port authorities, other relevant authorities and commercial organisations shall cooperate with the competent authority in order that the competent authority obtains all relevant information on ships calling at and leaving Malta.

(2) The competent authority shall set up the necessary structure for the exchange of information and cooperation with the competent authorities of other recognised States and shall maintain the established operational link with the European Commission and the Sirenac information system set up by the MOU.

(3) The information referred to in sub-regulation (1) hereof is that specified in Annex 4 to the MOU and that required to comply with the provisions of regulation 17 hereof.

(4) For the purposes of carrying out the inspections referred to in sub-regulations 4(2) and regulation 6 hereof, inspectors shall consult the public and private databases relating to ship inspection accessible through the Equasis information system.

Release of information.

17. (1) The competent authority shall take necessary measures in order to ensure that the information listed in Annex VIII *Publication Of Information Related To Detentions And Inspections In Ports Of Member States* Part I to Council Directive 95/21/EC concerning ships which have been detained in, or which are subject to refusal of access to a port in Malta during the previous month, is published at least on a monthly basis.

(2) The provisions of this regulation shall be without prejudice to any provision concerning liability under the laws of Malta.

Data to monitor implementation.

18. The competent authority shall provide the European Commission with the information listed in Annex X *Data Provided In The Context Of Monitoring Implementation In Application Of Article* 17 of Council Directive 95/21/EC at the intervals stated therein.

Reimbursement of costs.

19. (1) In the event that the inspections referred to in regulations 5 and 6 confirm or reveal deficiencies in relation to the requirements of a Convention warranting the detention of a ship, all costs relating to the inspections in any normal accounting period shall be borne by the owner or the operator of a ship or by his representative in Malta.

(2) All costs relating to inspections carried out by the competent authority under the provisions of sub-regulation 13(5) hereof shall be charged to the owner or operator of the ship.

(3) In the case of detention of a vessel for deficiencies or lack of valid certificates as laid down in regulation 10 hereof and in Annex VI *Criteria For Detention Of A Ship* to Council Directive 95/21/EC, all costs relating to the detention in port shall be borne by the owner or operator of the ship.

(4) The detention or stoppage of operation shall not be lifted until full payment has been made or a sufficient guarantee has been given for the reimbursement and payment of the costs.

Offences and penalties.

20. (1) Where any order for the detention of a ship or for stoppage of operation of a ship is breached, the owner or operator of a ship and her master shall each be guilty of an offence and shall for each offence be liable to a fine (*multa*) not exceeding one thousand units.

(2) Where a ship:

(a) fails to proceed to a repair yard as specified in accordance with sub-regulation 13(1) or breaches any of the conditions which may have been imposed thereunder, or

(b) enters a port in breach of a refusal of access to enter port,

the owner or operator of the ship and her master shall each be guilty of an offence and shall for each offence be liable to a fine (*multa*) not exceeding one thousand units.

(3) Any person who obstructs an inspector or any person assisting the inspector shall be guilty of an offence and shall for each offence be liable to a fine (*multa*) not exceeding five hundred units.