L.N. 155 of 2004

MERCHANT SHIPPING ACT (CAP. 234)

Merchant Shipping (Marine Equipment) Regulations, 2004

IN exercise of the powers conferred by articles 206A to 213 and 374 of the Merchant Shipping Act, the Minister for Competitiveness and Communications has made the following regulations:–

Citation, commencement and scope.

1. (1) These regulations may be cited as the Merchant Shipping (Marine Equipment) Regulations, 2004.

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

(3) These regulations adopt the measures in relation to Maltese ships contained in Council Directive 96/98/EC of 29 December 1996 in its up-to-date version, hereinafter referred to in these regulations as Council Directive 96/98/EC.

Interpretation.

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

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"the Act" means the Merchant Shipping 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;

"Maltese ship" means a ship for which safety certificates are issued by or on behalf of the Government of Malta under international conventions except where such certificates are issued by the Government of Malta at the request of the Administration of a third country;

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

"new ship" means a ship, the keel of which is laid or which is at a similar stage of construction on or after the date of the entry into force of these regulations; for the purposes of this

definition, "a similar stage of construction" means the stage at which:

(a) construction identifiable with a specific ship begins; and

(b) assembly of that ship has commenced, comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is less;

"owner" shall include any person, other than the owner, who manages a ship;

"safety certificates" means the certificates issued by or on behalf of the Government of Malta in accordance with international conventions.

(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 1996/98/EC.

Application.

3. (1) These regulations shall apply to equipment for use on board:

(a) a new Maltese ship whether or not the ship is situated in Malta at the time of construction;

(b) an existing Maltese ship:

(i) where such equipment was not previously carried on board or

(ii) where equipment which was previously carried on board the ship is replaced, except where international conventions permit otherwise,

whether or not the ship is situated in Malta when the equipment is placed on board.

(2) These regulations shall not apply to equipment which on the date of the entry into force of these regulations has already been placed on board a ship.

(3) Notwithstanding the fact that the equipment referred to in sub-regulation (1) hereof may fall within the scope of other legislation for the purpose of free movement, that equipment shall be subject only to these regulations, to the exclusion of all others for those purposes.

Conformity of equipment with regulations.

4. A safety certificate shall not be issued to a Maltese ship and no such certificate shall be renewed unless the equipment on board that ship in respect of which the certificate is being issued or renewed complies with the requirements of these regulations.

Requirements of international instruments.

5. (1) Equipment listed in Annex A.1 *Equipment for which detailed testing standards already exist in international instruments* of Council Directive 96/98/EC that is placed on board a Maltese ship on or after the date of entry into force of these regulations shall meet the applicable requirements of the international instruments referred to in that Annex.

(2) The compliance of equipment with the applicable requirements of the international conventions and of the relevant resolutions and circulars of the International Maritime Organisation shall be demonstrated solely in accordance with the relevant testing standards and the conformity-assessment procedures referred to in Annex A.1 *Equipment for which detailed testing standards already exist in international instruments* of Council Directive 96/98/EC. For items listed in that Annex, where both IEC and ETSI testing standards are given, those standards shall be alternatives and a manufacturer or his authorised representative established within the European Community may determine which of them is to be used.

(3) Equipment listed in Annex A.1 *Equipment for which detailed testing standards already exist in international instruments* of Council Directive 96/98/EC and manufactured before the coming into force of these regulations may also be placed on board a Maltese ship the certificates of which were issued by or on behalf of the Government of Malta during the two years following that date if it was manufactured in accordance with procedures for type-approval already in force in Malta before the date of the adoption of these regulations.

Equipment complying with these regulations.

6. (1) No equipment referred to in Annex A.1 *Equipment for which detailed testing standards already exist in international instruments* of Council Directive 96/98/EC which bears the mark or for other reasons complies with these regulations shall be prohibited from being placed on board a Maltese ship and the issue or renewal of the safety certificates relating thereto shall not be refused.

(2) The relevant safety certificate shall not be issued to a Maltese ship before a radio licence has been issued in accordance with the international radio regulations.

Transfer of a ship from another registry.

7. (1) A new ship which is not registered in a member State but which is to operate as a Maltese ship shall, on registration as a Maltese ship, be subject to inspection as directed by the Registrar-General to verify that the actual condition of its equipment corresponds to its safety certificates and either complies with these

regulations and bears the mark or is equivalent, to the satisfaction of the Registrar-General, to equipment type-approval in accordance with these regulations and, equipment which does not bear the mark or which the Registrar-General does not consider it to be equivalent, shall be replaced.

(2) In the case of equipment which is considered equivalent pursuant to this regulation the Registrar-General shall issue a certificate to be carried at all times with the equipment authorising the equipment to be placed on board the ship imposing any restrictions or laying down any provisions relating to the use of the equipment that he deems necessary.

(3) In the case of radiocommunications equipment the Registrar-General shall require that such equipment does not unduly affect the requirements of the radio-frequency spectrum.

Sample checks.

8. (1) Notwithstanding the provisions of regulation 6 hereof the Registrar-General may take the measures necessary to ensure that sample checks are carried out on equipment bearing the mark which has not yet been placed on board, in order to ensure that it complies with these regulations. The Malta Maritime Authority shall bear the expense for sample checks which are not provided for in the modules for conformity assessment in Annex B *Modules for conformity assessment* of Council Directive 96/98/EC.

(2) Notwithstanding the provisions of regulation 6 hereof, following the installation of equipment which complies with these regulations on board a Maltese ship, the Registrar-General may carry out an evaluation of that equipment when operational on-board performance tests are required by international instruments for safety and, or pollution-prevention purposes, provided that they do not duplicate the conformity-assessment procedures already carried out. The Registrar-General may require the manufacturer of the equipment, his authorised representative established within the European Union or the person responsible for marketing the equipment within the European Union to provide the inspection or testing reports or both the inspection and testing reports.

(3) If the manufacturer or his lawful representative fails, without reasonable cause, to give the assistance, information or inspection and, or testing reports requested pursuant to sub-regulations (1) or (2) hereof, he shall be guilty of an offence and liable to a fine (*multa*) not exceeding one hundred liri.

Equipment which may compromise health and, or safety.

9. (1) Where the Registrar-General, ascertains by inspection or otherwise that, notwithstanding the fact that it bears the mark, a piece of equipment referred to in Annex A.1 *Equipment for which detailed testing standards already exist in international instruments* of Council Directive 96/98/EC, when correctly installed, maintained

and used for its intended purpose, may compromise the health and, or safety of the crew, the passengers or, where applicable, other persons, or adversely affect the marine environment the Registrar-General shall prohibit the equipment from being used on board Maltese ships or restrict the extent to which it may be so used.

(2) The Registrar-General may withdraw or vary any direction, prohibition or restriction issued under sub-regulation (1) hereof if satisfied that the equipment in relation to which the direction, prohibition or restriction was issued, when correctly installed on board a ship, maintained and used for its intended purpose, no longer compromises the health and safety of a ship's crew, passengers, or other persons or adversely affects the marine environment.

(3) The Registrar-General shall inform the other Member States and the European Commission of any restriction or prohibition or any withdrawal of such restriction or prohibition made in terms of sub-regulations (1) and (2) hereof.

Exception for technical innovation.

10. (1) Notwithstanding the provisions of regulation 5 hereof, in exceptional circumstances of technical innovation, the Registrar-General may permit equipment which does not comply with the conformity-assessment procedures to be placed on board a Maltese ship if it is established by trial or otherwise to the satisfaction of the Registrar-General that such equipment is at least as effective as equipment which does comply with the conformity-assessment procedures.

(2) In the case of radiocommunications equipment that such equipment must not unduly affect the requirements of the radio-frequency spectrum.

(3) The trial procedures referred to in sub-regulation (1) hereof shall in no way discriminate on the basis of the origin of the equipment.

(4) The Registrar-General shall issue a certificate in respect of any equipment permitted to be placed on board a ship pursuant to sub-regulation (1) hereof recording the permission for the equipment to be placed on board the ship and specifying any restrictions or any provisions relating to the use of the equipment. Such certificate shall be carried on board the ship with the equipment at all times.

(5) The Registrar-General shall communicate to the Member States and the European Commission the particulars of any equipment permitted to be carried on board a Maltese ship in terms of sub-regulation (1) hereof together with the reports of all relevant trials, assessments and conformity-assessment procedures.

(6) Where a ship with equipment on board which is covered by sub-regulation (1) hereof is to be registered as a Maltese ship, the Registrar-General may undertake the measures necessary, which may include tests and practical demonstrations, to ensure that the equipment is at least as effective as equipment which does comply with the conformity-assessment procedures.

Exceptions for testing or evaluation.

11. (1) Notwithstanding the provisions of regulation 5 hereof, the Registrar-General may allow equipment which does not comply with the conformity-assessment procedures or is not covered by regulation 10 hereof to be placed on board a Maltese ship for reasons of testing or evaluation and, the Registrar-General shall issue a certificate recording the approval of the Registrar-General for the equipment to be placed on board the ship specifying any restrictions or conditions the use of the equipment. Such certificate must be carried with the equipment at all times.

(2) Any permission granted in terms of sub-regulation (1) hereof shall be limited to a short period of time.

(3) Any equipment allowed to be carried in terms of sub-regulation (1) must not be relied on in place of equipment which meets the requirements of these regulations and must not replace such equipment, which must remain on board the Maltese ship in working condition and ready for immediate use.

(4) In the case of radiocommunications equipment, the Registrar-General shall require that such equipment does not unduly affect the requirements of the radio-frequency spectrum.

Replacement of equipment outside Maltese territory.

12. (1) If equipment to which these regulations apply has to be replaced in a port outside the European Community and if it is not practicable for reasons of time, delay or cost to replace the equipment which is EC type-approved, other equipment may be placed on board:

Provided that:

(a) the equipment shall be accompanied by documentation issued by a recognised organisation equivalent to a notified body, where an agreement has been concluded between the European Community and the third country concerned on the mutual recognition of such organisations; and

(b) if it is not possible to comply with sub-paragraph (a) hereof, the equipment shall, subject to the provisions of sub-regulations (2) and (3) hereof, be accompanied by documentation issued by a member State of the International Maritime Organisation which is a party to the relevant

international convention, certifying that the equipment complies with the applicable international standards.

(2) If equipment is replaced on a ship in accordance with sub-regulation (1) hereof, the owner of the ship shall inform the Registrar-General immediately of the nature and characteristics of the equipment and the circumstances rendering it impracticable to place equipment on board which complies with the requirements of regulation 6.

(3) The Registrar-General shall, at the earliest opportunity, ensure that the equipment referred to in sub-regulation (1) hereof, together with its testing documentation, complies with the relevant requirements of the international instruments and of these regulations and, to this end, the Registrar-General may carry out, or cause to be carried out such tests on the equipment as it considers necessary for the purpose.

(4) In the case of radiocommunications equipment, such equipment shall not unduly affect the requirements of the radio-frequency spectrum.

Approvals, directions, prohibitions or restrictions.

13. (1) Any approval, direction, prohibition or restriction given pursuant to these regulations 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.

(2) Failure to respect any direction, prohibition or restriction given pursuant to these regulations shall constitute an offence.

Offences.

14. (1) Any person who in respect of an item of equipment falling under these regulations:

(a) affixes a mark of conformity identification number or symbol in contravention of these regulations;

(b) forges, counterfeits or in any other manner alters or defaces any mark of conformity or identification number of symbol affixed in accordance with these regulations;

(c) removes any mark of conformity or identification number affixed in accordance with these regulations; or

(d) makes any alteration to the equipment after the mark of conformity or identification number or symbol has been affixed to it in accordance with these regulations so that the equipment no longer complies with the applicable international standards,

shall be guilty of an offence:

Provided that a person shall not be guilty of an offence by reason solely of the alteration, defacement or removal of a mark of conformity or identification symbol or number in the course of the removal adjustment or repair of any item of equipment by, or by the duly authorised agent of, a person who is a manufacturer of such equipment or is regularly engaged in the business of the repair of such equipment.

(2) Any person who places on board a Maltese ship the market, supplies or exposes or offers for supply, an item of equipment which to his knowledge:

(a) bears a mark of conformity or identification number of symbol which is a forgery or counterfeit, or which has been transferred from another item of equipment, or which has been altered or defaced otherwise than in accordance with the provisions of these regulations;

(b) does not comply with the applicable international standards by reason of any alteration made to it after any mark of conformity or identification number or symbol was affixed to it in accordance with these regulations

shall be guilty of an offence.

(3) Any equipment in respect of which an offence under these regulations has been committed shall be liable to be forfeited.

(4) Unless provided otherwise in the specific regulation, any person who is guilty of an offence under these regulations shall, in the case of a first offence contrary to these regulations be subject to a fine (*multa*) not exceeding five hundred liri and in the case of a second or subsequent offence to a fine not less than five hundred liri and not more than two thousand liri.

Defence to offences.

15. In any proceedings for an offence under these regulations it shall be a defence for the person charged to prove that he took all reasonable steps to avoid the commission of the offence.

Power to detain.

16. Saving other provisions of these regulations where the equipment on board a ship does not comply with the requirements of these regulations the ship may be considered to be unseaworthy in terms of the provisions of article 278 of the Act and the ship shall be liable to be detained and without prejudice to the other provisions of the Act, articles 281 to 283B of the Act shall apply.

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