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Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,586, 6 ta' Ġunju, 2016
Taqsima B

L.N. 212 of 2016

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Marine Equipment) Regulations, 2016

In exercise of the powers conferred by articles 206A to 213 and 374 of the Merchant Shipping Act, the Minister for Transport and Infrastructure has made the following regulations:-

Citation and commencement.

1. (1) The title of these regulations is the Merchant Shipping (Marine Equipment) Regulations, 2016.

(2) These regulations shall come into force on the 18 September 2016.

(3) These regulations adopt the measures, in relation to Maltese ships, contained in Directive 2014/90/EU of the European Parliament and of the Council of 23 July 2014 on marine equipment and repealing Council Directive 96/98/EC in its up-to-date version, hereinafter referred to in these regulations as "the Directive".

Interpretation.

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

Cap. 234.
Cap. 499.

"the Act" means the Merchant Shipping Act;

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

"conformity assessment procedures" mean the procedures as set out in Article 15 and in Annex II of the Directive;

"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;

"Registrar-General" shall have the same meaning as is assigned to it in the Act.

(2) Unless otherwise defined in these regulations or unless the context otherwise requires, words and expressions used in these

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regulations shall have the same meaning assigned to them in the Directive.

Application.

3. (1) These regulations shall apply to equipment placed or to be placed on board a Maltese ship and for which the approval of the flag State administration, is required by international instruments, regardless of whether the ship is situated in Malta at the time when it is fitted with the equipment.

(2) Notwithstanding the fact that the equipment referred to in sub-regulation (1) may fall within the scope of other legislation, that equipment shall be subject only to these regulations.

Requirements for marine equipment.

4. (1) Marine equipment that is placed on board a Maltese ship on or after 18 September, 2016 shall meet the design, construction and performance requirements of the international instruments as applicable at the time when that equipment is placed on board.

(2) Compliance of marine equipment with the requirements referred to in sub-regulation (1) shall be demonstrated solely in accordance with the testing standards and by means of the conformity assessment procedures.

Compliance with requirements of these regulations.

5. (1) No certificates as required by the international conventions shall be issued to a Maltese ship and no such certificate shall be renewed or endorsed unless the marine equipment on board that ship complies with the requirements of these regulations.

(2) Marine equipment on board Maltese ships shall comply with the requirements in the international instruments which are applicable to equipment already placed on board.

(3) Marine equipment which complies with these regulations shall not be prohibited from being placed on board a Maltese ship and the issue or renewal of the certificates relating thereto shall not be refused.

Declaration of conformity.

6. When marine equipment is placed on board a Maltese ship, a copy of the EU declaration of conformity covering the equipment concerned shall be provided to the ship, and shall be kept on board until the said equipment is removed from the ship. It shall be translated by the manufacturer into the English language.

Transfer of a ship from another registry.

7. (1) In the case of a ship which is not registered in a Member State but which is to operate as a Maltese ship, that ship shall, during transfer, be subject to inspection as directed by the Registrar-General to verify that the actual condition of its marine

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equipment corresponds to its safety certificates and either complies with these regulations and bears the wheel mark or is equivalent, to the satisfaction of the Registrar-General, to marine equipment certified in accordance with these regulations.

(2) In cases where the date of installation on board of marine equipment cannot be established, the Registrar-General may determine satisfactory requirements of equivalence, taking into account relevant international instruments.

(3) Unless the equipment either bears the wheel mark or the Registrar-General considers it to be equivalent, it shall be replaced.

(4) Marine equipment which is considered equivalent pursuant to this regulation shall be issued with a certificate by the Registrar-General which shall at all times be carried with the equipment. That certificate shall give the Registrar-General's permission for the equipment to be retained on board the ship imposing any restrictions relating to the use of the equipment, that he deems necessary.

Exemptions for technical innovation.

8. (1) In exceptional circumstances of technical innovation, the Registrar-General may permit marine 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 meets the objectives of these regulations.

(2) The trial procedures shall in no way discriminate between marine equipment on the basis of the origin of the equipment.

(3) 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) 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.

(4) 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) together with the reports of all relevant trials, assessments and conformity assessment procedures.

(5) Where a ship with equipment on board which is covered by sub-regulation (1) 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

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conformity assessment procedures.

Exemptions for testing or evaluation.

9. (1) The Registrar-General may permit marine equipment which does not comply with the conformity assessment procedures or which is not covered by regulation 8 to be placed on board a Maltese ship for reasons of testing or evaluation and, a certificate recording the approval is issued by the Registrar General for the equipment to be placed on board the ship specifying any restrictions or conditions for the use of the equipment. Such certificate shall be carried with the equipment at all times.

(2) Any permission granted in terms of sub-regulation (1) 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.

Exemptions in exceptional circumstances.

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

Provided that:

(a) the equipment shall be accompanied by documentation issued by a Member State of the International Maritime Organization (IMO) which is a party to the relevant conventions, certifying compliance with the relevant IMO requirements; and

(b) the Registrar-General shall be informed at once of the nature and characteristics of such other marine equipment; and

(c) at the earliest opportunity, it shall be ensured that the marine equipment referred to in sub-regulation (1), along with its testing documentation, complies with the relevant requirements of the international instruments and of these regulations.

(2) Where it has been demonstrated that specific marine equipment bearing the wheel mark is not available on the market, the Registrar-General may authorise other marine equipment to be placed on board.

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(3) The authorised marine equipment shall comply, as much as possible, with the requirements and testing standards referred to in regulation 4.

(4) The marine equipment placed on board shall be accompanied by an interim certificate of approval issued by the Registrar-General or by another Member State, stating the following:

(a) the equipment bearing the wheel mark which the certified equipment is due to replace;

(b) the exact circumstances under which the certificate of approval has been issued, and in particular the unavailability in the market of equipment bearing the wheel mark;

(c) the exact design, construction and performance requirements against which the equipment has been approved by the certifying Member State; and

(d) the testing standards applied, if any, in the relevant approval procedures.

Offences.

11. (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.

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(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; or

(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 one thousand and five hundred euro (€1,500) and in the case of a second or subsequent offence to a fine not less than one thousand and five hundred euro (€1,500) and not more than five thousand euro (€5,000).

Defence to offences.

12. 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.

13. 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.

Revokes S.L.234.40

14. The Merchant Shipping (Marine Equipment) Regulations are hereby revoked.

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