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Taqsima B

L.N. 345 of 2019

MERCHANT SHIPPING ACT
(CAP. 234)

Merchant Shipping (Safe Operation of Ro-Ro Passenger Ships and High-Speed Passenger Craft in Regular Service) Regulations, 2019

IN EXERCISE of the powers conferred by articles 154 and 374 of the Merchant Shipping Act, the Minister for Transport, Infrastructure and Capital Projects has made the following regulations:

Citation, scope and commencement.

1. (1) The title of these regulations is the Merchant Shipping (Safe Operation of Ro-Ro Passenger Ships and High-Speed Passenger Craft in Regular Service) Regulations, 2019.

(2) These regulations partially transpose the measures contained in Directive (EU) 2017/2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and repealing Council Directive 1999/35/EC.

(3) These regulations shall come into force on 21 December 2019.

Definitions.

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

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

"company" means the organisation or person who has agreed to take over all the duties and responsibilities imposed by the International Management Code for Safe Operation of Ships and for Pollution Prevention (the ISM Code) in its up-to- date version or, in cases where Chapter IX of SOLAS 74 does not apply, the owner of the ro-ro passenger ship or the high-speed passenger craft or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ro-ro passenger ship or the high-speed passenger craft from its owner;

"Directive (EU) 2017/2110" means Directive (EU) 2017/ 2110 of the European Parliament and of the Council of 15 November 2017 on a system of inspections for the safe operation of ro-ro passenger ships and high-speed passenger craft in regular service and amending Directive 2009/16/EC and

repealing Council Directive 1999/35/EC, in its up-to-date version, hereinafter referred to as Directive (EU) 2017/2110;

"competent authority" means the Registrar-General of Shipping and Seamen appointed in terms of article 363 of the Act and includes any person acting under his authority;

"HSSC" means the International Maritime Organisation Survey Guidelines under the Harmonized System of Survey and Certification, in its up-to-date version;

"inspector" means an appropriate inspector in terms of Article 154 of the Act;

"SOLAS 74" means the 1974 International Convention for the Safety of Life at Sea, including Protocols and amendments thereto, in its up-to-date version;

"third country" means a State other than a member State of the European Union or of the European Economic Area.

(2) Unless otherwise defined in the Act or 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 Directive (EU) 2017/2110.

Application.

3. These regulations shall apply to ro-ro passenger ships and high-speed passenger craft registered in terms of Article 3 of the Act, and operating on a regular service between a port in Malta and a port in a third country:

Provided that these regulations shall not apply to ro-ro passenger ships and high-speed passenger craft falling within the scope of Directive 2009/16/EC on port State control.

Pre-commencement inspections.

4. (1) Before a ro-ro passenger ship or high-speed passenger craft starts to operate on a regular service covered by these regulations, the competent authority shall carry out a pre-commencement inspection, consisting of:

(a) verification of the compliance with the requirements laid down in Annex I of Directive (EU) 2017/2110; and

(b) an inspection, in accordance with Annex II of Directive (EU) 2017/2110, to satisfy themselves that the ro-ro passenger ship or high-speed craft fulfils the necessary requirements for safe operation of a regular service.

(2) When requested by the competent authority, companies shall provide evidence of compliance with the requirements of Annex I of (EU) Directive 2017/2110 in advance of but not earlier than one month before the pre-commencement inspection.

Exceptions to pre-commencement inspections.

5. (1) In the case of pre-commencement inspections, the competent authority may decide not to apply certain requirements or procedures in Annexes I and II of Directive (EU) 2017/2110 relevant to any annual flag State survey or inspection carried out within the previous six months, provided that relevant procedures and guidelines for surveys specified in HSSC or procedures designed to achieve the same goal have been followed.

(2) When a ro-ro passenger ship or high-speed passenger craft is to be engaged on a regular service, the competent authority may take into account inspections and surveys previously carried out in respect of that ro-ro passenger ship or high-speed passenger craft for operation on another regular service covered by these regulations. Provided that the competent authority is satisfied with those previous inspections and surveys and that they are relevant to the new operational conditions, the inspections provided for in regulation 4(1) do not need to be applied before the ro-ro passenger ship or high-speed passenger craft starts operating on the new regular service.

(3) Where, due to unforeseen circumstances, there is an urgent need for the rapid introduction of a replacement ro-ro passenger ship or high-speed passenger craft to ensure continuity of service, and sub-regulation (2) is not applicable, the competent authority may allow the ro-ro passenger ship or craft to start operating provided that:

(a) a visual inspection and document check raises no concerns that the ro-ro passenger ship or high-speed passenger craft does not fulfil the necessary requirements for safe operation; and

(b) the pre-commencement inspection provided for in regulation 4(1) is completed within one month.

Regular inspections.

6. (1) Once in every twelve month period, a ro-ro passenger ship or high-speed passenger craft covered by these regulations shall be subject to:

(a) an inspection in accordance with Annex II of Directive (EU) 2017/2110, provided that a pre-commencement inspection in accordance with regulation 4 shall be considered as such inspection; and

(b) an inspection during a regular service, taking place

not before four months but not later than eight months after the inspection referred to in paragraph (a) of this sub-regulation and covering the items listed in Annex III of Directive (EU) 2017/2110 and what, in the professional judgment of the inspector, constitutes a sufficient number of the items listed in Annexes I and II of Directive 2017/2110 to ensure that the ro-ro passenger ship or high-speed passenger craft continues to fulfill all the necessary requirements for safe operation.

(2) The inspection referred to in sub-regulation (1)(a) may, be carried out at the same time as, or in conjunction with, the annual flag State survey provided that the relevant procedures and guidelines for surveys as specified in HSSC or procedures designed to achieve the same goal are followed.

(3) Each time the ro-ro passenger ship or high-speed passenger craft undergoes repairs, alterations and modifications of a major character, or when there is a change of management, or a transfer of class, an inspection shall be carried out in accordance with Annex II of Directive (EU) 2017/2110:

Provided that the competent authority may exempt the ro-ro passenger ship or high-speed craft from such inspection in the case of a change of management, or transfer of class, after taking account of inspections previously carried out in respect of the ro-ro passenger ship or high speed passenger craft, and provided further that the safe operation of the ro-ro passenger ship or craft is not affected by such change or transfer.

Inspection report.

7. On completion of any inspection carried out in accordance with these regulations, the inspector shall draw up a report in accordance with Annex IX to Directive 2009/16/EC on port State control, and a copy of the inspection report shall be provided to the ship’s master.

Prohibition of departure.

8. (1) The company shall ensure that any deficiencies confirmed or revealed by an inspection carried out in accordance with these regulations are rectified.

(2) Where the deficiencies are clearly hazardous to health or safety or pose an immediate danger to health or life, the ro-ro passenger ship or high-speed passenger craft, its crew and passengers, the competent authority shall issue an order prohibiting the departure of the ro-ro passenger ship or high-speed passenger craft (hereinafter referred to as "a prohibition of departure order"). The master shall be provided with a copy of that order.

(3) The prohibition of departure order shall not be lifted until

the deficiency has been rectified and the hazard has been removed to the satisfaction of the competent authority or until the competent authority has established that the ship or craft can, subject to any necessary conditions, proceed to sea or resume operation without risk to the safety and health of passengers or crew, or risk to the ro-ro passenger ship or high-speed passenger craft or other ships.

(4) If a deficiency referred to in sub-regulation (2) cannot be readily rectified in the port in which the deficiency has been confirmed or revealed, the competent authority may agree to allow the ship or craft to proceed to an appropriate repair yard where the deficiency can be readily rectified.

(5) In exceptional circumstances, where the overall condition of a ro-ro passenger ship or high-speed passenger craft is obviously substandard, the competent authority may suspend the inspection of that ship or craft until the company takes the steps necessary to ensure that the ro-ro passenger ship or high-speed passenger craft is no longer clearly hazardous to safety or health or no longer poses an immediate danger to the life of its crew and passengers or to ensure that it complies with the relevant requirements of applicable international conventions.

(6) Where the competent authority suspends the inspection in accordance with sub-regulation (5), the ro-ro passenger ship or high-speed passenger craft shall be automatically placed under a prohibition of departure order. The prohibition of departure order shall be lifted where the inspection has been resumed and successfully completed and where the conditions set out in sub-regulation (3) and in regulation 10(2) have been complied with.

Right of appeal.

9. (1) The company shall have a right of appeal against a prohibition of departure order issued by the competent authority. An appeal shall not cause the prohibition of departure order to be suspended.

(2) The competent authority shall inform the master of the ro-ro passenger ship or high-speed passenger craft subject to a prohibition of departure order of the right of appeal and the applicable procedures.

(3) An appeal against a prohibition of departure order may be made before the Courts of Justice, in accordance with the provisions of the Code of Organization and Civil Procedure. Cap. 12.

Costs.

10. (1) Where the inspections referred to in regulations 4 and 6 confirm or reveal deficiencies warranting a prohibition of departure order, all costs relating to the inspections shall be covered by the company.

(2) The prohibition of departure order shall not be lifted until full payment is made or a sufficient guarantee is given for reimbursement of the costs.

Offences and penalties.

11. (1) It shall be the duty of the company to ensure that the ro-ro passenger ship or high-speed passenger craft 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 thousand units.

(2) If a ro-ro passenger ship or high-speed passenger craft proceeds or attempts to proceed to sea or on any voyage or excursion in contravention of these regulations, the company shall, without prejudice to any other penalty or remedy under the Act, be liable to a fine (multa) not exceeding five thousand units.

Repeal. S.L. 234.35.

12. The Merchant Shipping (Safe Operation of Regular Ro-Ro Ferry and High-Speed Passenger Craft Services) Regulations are hereby repealed.

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