

**MERCHANT SHIPPING (SPECIAL MEASURES TO ENHANCE
MARITIME SECURITY) REGULATIONS 2004**

BR 40/2004

MERCHANT SHIPPING ACT 2002

2002 : 35

**MERCHANT SHIPPING (SPECIAL MEASURES TO ENHANCE
MARITIME SECURITY) REGULATIONS 2004**

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The Minister of Transport, in exercise of the powers conferred upon him by section 121A of the Merchant Shipping Act 2002, makes the following Regulations:—

Citation and commencement

1 These Regulations may be cited as the Merchant Shipping (Special Measures to Enhance Maritime Security) Regulations 2004 and shall come into operation on 1st July 2004.

Interpretation

2 (1) In these Regulations —

"Act" means the Merchant Shipping Act 2002;

"Administration" —

- (a) in relation to a Bermuda ship means the Department of Maritime Administration;
- (b) in relation to a foreign ship, means the authority responsible for administering the register of ships in the country where the ship is registered;

"bulk carrier" means a ship which is constructed generally with single deck, top-side tanks and hopper side tanks in cargo spaces, and is intended primarily to carry dry cargo in bulk, and includes such types as ore carriers and combination carriers;

"cargo ship" means a ship other than —

- (a) a passenger ship;
- (b) a ship of war;
- (c) a fishing vessel; or
- (d) a pleasure vessel;

"Chapter XI-1" means Chapter XI-1 of the annex to the SOLAS Convention;

"Chapter XI-2" means Chapter XI-2 of the annex to the SOLAS Convention;

"chemical tanker" means a cargo ship constructed or adapted and used for the carriage in bulk of any liquid product listed in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk adopted by the Maritime Safety Committee of IMO by resolution MSC.4 (48), as amended;

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"company" means the owner of a ship or any other organization or person including the manager, or the charterer by demise, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code adopted by IMO by resolution A.741 (18);

"competent authority" has the meaning given in paragraph (2);

"continuous synopsis record" means an on-board record of the history of the ship with respect to the information recorded therein issued by the Administration to each ship that is entitled to fly its flag;

"Contracting Government" means the Government of a country which has agreed to be bound by the SOLAS Convention;

"gas carrier" means a cargo ship constructed or adapted and used for the carriage in bulk of any liquefied gas or other product listed in chapter 19 of the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk adopted by the Maritime Safety Committee of IMO by resolution MSC.5 (48);

"High-Speed Craft Code 2000" means the International Code of Safety for High-Speed Craft, 2000 adopted by the Maritime Safety Committee of IMO by resolution MSC.97 (73), as may be amended by IMO, provided that such amendments are adopted, brought into force and take effect in accordance with the provisions of article VIII of the SOLAS Convention concerning the amendment procedures applicable to the Annex other than chapter I;

"high-speed craft" means a craft capable of a maximum speed, in metres per second (m/s) equal to or exceeding —

$$3.7 (\text{displ})^{0.1667}$$

where:

displ = volume of displacement corresponding to the design waterline (M^3),

excluding craft the hull of which is supported completely clear above the water surface in non-displacement mode by aerodynamic forces generated by ground effect;

"International Ship Security Certificate" means a Certificate issued pursuant to regulation 6;

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"international voyage" means a voyage from a port in a country to which the SOLAS Convention applies to a port outside that country, or conversely;

"ISPS Code" means the International Ship and Port Facility Security Code comprising Part A (the provisions of which are treated as mandatory) and part B (the provisions of which are treated as recommendatory), as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments to the International Convention for the Safety of Life at Sea, 1974 as may be amended by IMO;

"mobile offshore drilling unit" means a vessel capable of engaging in drilling operations for the exploration for or exploitation of resources beneath the sea-bed such as liquid or gaseous hydrocarbons, sulphur or salt;

"MRCC Falmouth" means the United Kingdom Maritime Rescue Co-ordination Centre (Falmouth);

"oil tanker" means a ship constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes a combination carrier and any chemical tanker;

"passenger ship" means a ship carrying more than 12 passengers, and for the purposes of this definition a passenger is every person other than —

- (a) the master and the members of the crew or other persons employed or engaged in any capacity on board a ship on the business of that ship;
- (b) a child under one year of age; and
- (c) persons who are on board the ship by reason of force majeure or in consequence of the obligation laid upon the master to carry shipwrecked or other persons;

"pleasure vessel" means —

- (a) any vessel which is —
 - (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
 - (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends;

and is on a voyage or excursion which is one for which the owner is not paid for or in connection with operating

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the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

- (b) any vessel which is wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club;

and no payments other than those mentioned above are made by or on behalf of users of the vessel, other than by the owner, and in this definition, "immediate family" means, in relation to an individual, the husband or the wife of the individual, and a brother, sister, ancestor or lineal descendant of that individual or that individual's husband or wife;

"port facility" means the location, as determined by the Contracting Government, where the ship/port interface takes place including anchorages, waiting berths and approaches from seaward, as appropriate;

"RCC Bermuda" means the Rescue and Co-ordination Centre-Bermuda Harbour Radio;

"security incident" means any suspicious act or circumstance threatening the security of a ship, including a mobile offshore drilling unit and a high speed craft, or of a port facility or of any ship/port interface or any ship to ship activity;

"security level" means the qualification of the degree of risk that a security incident will be attempted or will occur;

"ship/port interface" means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provisions of port services to or from the ship;

"ship to ship activity" means any activity not related to a port facility that involves the transfer of goods or persons from one ship to another;

"the SOLAS Convention" means the International Convention for the Safety of Life at Sea, 1974 as amended;

"IMO" means the International Maritime Organization;

(2) References to "competent authority" in relation to Bermuda and Bermuda ships means —

- (a) a reference to an organization listed in the Schedule; or

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- (b) such other organization including the company, which is approved by the Administration as an organization qualified to receive and act in response to a ship to shore alert.

Application

3 (1) These Regulations apply to the following Bermuda ships engaged on international voyages —

- (a) passenger ships, including those subject to the high-speed craft code; and
- (b) cargo ships, including those subject to the High-Speed Craft Code 2000, of 500 gross tonnage and upwards.

(2) These Regulations also apply to all other ships while they are within Bermuda waters.

(3) These Regulations do not apply to —

- (a) pleasure vessels;
- (b) warships or naval auxiliaries; or
- (c) ships, other than Bermuda ships, which are owned or operated by a Contracting Government and used only on government non-commercial service.

(4) These Regulations apply to a company which has assumed responsibility for the operation of any ship to which these Regulations apply.

Requirements for companies and ships

4 (1) Every company shall comply with the requirements of the ISPS Code as it applies to that company and to any ship owned by it or for which it has responsibility.

(2) Prior to entering a port or whilst in a port within the territorial waters of Bermuda or of a Contracting State, a ship shall comply with the requirements for the security level set by the Government of Bermuda or the Contracting Government, if such security level is higher than the security level set by the Administration for that ship.

(3) The master of a ship shall respond without undue delay to any change to a higher security level.

(4) Where a ship is not in compliance with the requirements of these Regulations or of part A of the ISPS Code, or cannot comply with the requirements of the security level set by the Government of Bermuda or by another Contracting Government and applicable to that ship, then the master of the ship shall notify the competent authority prior to

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conducting any ship/port interface or prior to entry into port, whichever occurs earlier.

Specific responsibility of companies and masters

5 (1) A company shall ensure that the master has available on board, at all times, information through which officers duly authorised by the Minister can establish —

- (a) the person responsible for appointing the members of the crew or other persons currently employed or engaged on board the ship in any capacity on the business of that ship;
- (b) the person responsible for deciding the employment of the ship; and
- (c) in cases where the ship is employed under the terms of a charterparty, the parties to such charterparty.

(2) Where a company is the competent authority for a Bermuda ship —

- (a) it shall upon receipt of a ship-to-shore security alert in the first instance immediately notify MRCC Falmouth or RCC Bermuda of —
 - (i) the identity of the ship;
 - (ii) its location; and
 - (iii) that the security of the ship is under threat or has been compromised; and
- (b) as soon as practicable, and in any case within 24 hours of receiving the alert the company shall also notify the Administration of the matter.

(3) Notification of any other persons of the information in paragraph (2)(a) shall not delay or hinder in any way the immediate notification of MRCC Falmouth or RCC Bermuda.

(4) The company and master of every ship shall ensure that —

- (a) there is in force in relation to the ship a valid International Ship Security Certificate; and
- (b) there is carried on board the ship a current continuous synopsis record.

Issue of International Ship Security Certificates

6 (1) An application for an International Ship Security Certificate may be made to the Minister by the company.

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(2) If the Minister is satisfied that in respect of a ship for which application is made —

- (a) the security system and any associated equipment on board the ship fully complies with the applicable requirements of Chapter XI-2 and Part A of the ISPS Code; and
- (b) the ship is otherwise in a satisfactory condition and is fit for the service for which it is intended;

he shall issue to that ship an International Ship Security Certificate.

(3) An International Ship Security Certificate issued pursuant to paragraph (2) shall be valid for such term not exceeding five years as the Minister shall determine, and may be renewed.

(4) If a Certificate is issued for a term of less than five years, the Minister may, on the application of the company, extend the duration of the Certificate to a date not exceeding five years from the date of issue of the existing Certificate as the Minister may determine.

Renewal of International Ship Security Certificates

7 (1) An application for the renewal of an International Ship Security Certificate may be made to the Minister by the company.

(2) The Minister may renew a Certificate if he is satisfied that in respect of a ship for which an application is made the conditions specified in regulations 6(2)(a) and (b) are met.

(3) Where a Certificate is renewed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of the renewal to a date not later than five years from the date of expiry of the existing Certificate as the Minister may determine.

(4) Where a Certificate is renewed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of the renewal to a date not later than five years from the date of the renewal as the Minister may determine.

(5) Where, in relation to an application for renewal, the Minister is satisfied of the matters set out in paragraph (2) but a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the Minister may extend the validity of the existing Certificate for a period not exceeding five months from its expiry date and endorse the existing Certificate accordingly.

(6) If a Certificate expires at a time when a ship is not in a port in which it is to be verified for compliance, the Minister may extend the validity of the Certificate, but this extension shall only be granted for the purpose of allowing the ship to complete its voyage to the port in which it

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is to be verified, and then only in cases where it appears proper and reasonable to do so.

(7) In relation to a ship engaged on short voyages, if at a time whilst it is so engaged its Certificate expires without being renewed, the Minister may extend the validity of the Certificate for a period of grace of up to one month from the date of the expiry of the Certificate.

(8) If a Certificate which has been extended under paragraph (6) or (7) is renewed following verification, such renewal shall be valid for such term not exceeding five years from the date of the original expiry of the Certificate, as the Minister may determine.

Interim certification

8 (1) An application for an Interim International Ship Security Certificate may be made to the Minister in respect of ships falling within the following cases —

- (a) a ship without a Certificate, on delivery or prior to its entry or re-entry into service; or
- (b) a company assuming the responsibility for the operation of a ship not previously operated by the company.

(2) The Minister shall only issue an Interim International Ship Security Certificate when he is satisfied that —

- (a) the ship security assessment required by Part A of the ISPS Code has been completed;
- (b) a copy of the ship security plan meeting the requirements of Chapter XI-2 and part A of the ISPS Code is provided on board, has been submitted for review and approval, and is being implemented on the ship;
- (c) the ship is provided with a ship security alert system;
- (d) the company security officer —
 - (i) has ensured —
 - (a) the review of the ship security plan for compliance with Part A of the ISPS Code;
 - (b) that the plan has been submitted for approval; and
 - (c) that the plan is being implemented on the ship; and
 - (ii) has established the necessary arrangements, including arrangements for drills, exercises and

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internal audits, through which the company security officer is satisfied that the ship will successfully complete the required verification within six months;

- (e) arrangements have been made for carrying out the required verifications;
- (f) the master, the ship security officer and other ship's personnel with specific security duties are familiar with their duties and responsibilities as specified in Part A of the ISPS Code; and with the relevant provisions of the ship security plan placed on board; and have been provided such information in the working language of the ship's personnel or languages understood by them; and
- (g) the ship security officer meets the requirements of Part A of the ISPS Code.

(3) An Interim Ship Security Certificate shall be valid for six months, or until the Certificate required by regulation 6 is issued, whichever comes first, and shall not be extended.

Approved ship security plan

9 (1) Every company shall ensure that an approved ship security plan is carried on board each ship to which these Regulations apply.

(2) No changes shall be made to an approved ship security plan without the prior approval of the Minister.

Ship security alert system

10 (1) Every company shall ensure that a ship security alert system is installed on each of its ships constructed on or after 1 July 2004; and in respect of ships constructed before that date, the following time limits specified for each category of ship shall apply —

- (a) passenger ships, including high-speed passenger craft, not later than the first survey of the radio installation after 1 July 2004;
- (b) oil tankers, chemical tankers, gas carriers, bulk carriers and cargo high speed craft, of 500 gross tonnage and upwards, not later than the first survey of the radio installation after 1 July 2004; and
- (c) other cargo ships of 500 gross tonnage and upward not later than the first survey of the radio installation after 1 July 2006.

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(2) The ship security alert system when activated shall initiate and transmit a ship-to-shore security alert to a competent authority.

(3) The ship security alert system shall conform to performance standards not inferior to those adopted by the IMO and shall —

(a) be capable of being activated from the navigation bridge and from one or more other locations;

(b) when activated —

(i) identify the ship and its location, and indicate that the security of the ship is under threat or that it has been compromised;

(ii) not send a security alert to any other ship;

(iii) not raise any alarm on-board the ship; and

(iv) continue to send an alert until deactivated or reset or both.

(4) The ship security alert system activation points shall be of such design as would prevent the inadvertent initiation of a ship security alert.

(5) The requirements of this regulation for a ship security alert system are also satisfied where there is installed on a ship a radio installation complying with the requirements of Chapter IV of the Annex to the SOLAS Convention, if such radio is capable of operating the security alert system in the manner required by paragraphs (2), (3) and (4).

Master's discretion for ship safety and security

11 (1) The master shall not be constrained by the company, the charterer or any other person from taking or executing any decision which, in his professional judgement, is necessary to maintain the safety and security of the ship.

(2) This includes denial of access to persons (except those identified as duly authorized by the Minister), or their effects and refusal to load cargo, including containers or other closed cargo transport units.

(3) If, in the professional judgement of the master, a conflict between any safety and security requirements applicable to the ship arises during its operations, the master shall give effect to those requirements that are necessary to maintain the safety of the ship.

(4) In such cases the master may implement temporary security measures and shall forthwith inform the Administration and, if appropriate, the Contracting Government in whose port the ship is operating or intends to enter.

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(5) Any such temporary security measures under this regulation shall, to the highest possible degree, be commensurate with the prevailing security level.

Control and compliance measures

12 (1) Every ship intending to enter a port in Bermuda shall hold a valid International Ship Security Certificate.

(2) Before the ship enters a port in Bermuda, the master of the ship shall provide particulars of the following matters to RCC Bermuda

- (a) particulars of the International Ship Security Certificate and the name of the issuing authority;
- (b) the security level at which the ship is currently operating;
- (c) the security level at which the ship operated in any previous port where it has conducted a ship/port interface;
- (d) any special or additional security measures that were taken by the ship in any previous port where it has conducted a ship/port interface;
- (e) confirmation that the appropriate ship security procedures were maintained during any ship to ship activity; and
- (f) other practical security related information (but not details of the ship security plan), taking into account the guidance given in part B of the ISPS Code.

(3) The master of a ship or the company, as the case may be, shall provide an officer of the Department of Maritime Administration particulars of any of the matters referred to in paragraphs (2)(a) to (f) that such officer may request.

(4) The master of every Bermuda ship intending to enter the port of another Contracting Government shall provide the information described in paragraph (2) that an officer authorized in that behalf by that Government may request.

(5) Where the request is in relation to the information referred to in paragraph (2) (c), (d) and (e), the master of every Bermuda ship shall provide that information in respect of the last 10 calls at port facilities.

Measures for non-compliance

13 (1) Where it appears to inspectors that a ship is in breach of these Regulations or part A of the ISPS Code, the inspector shall in the

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first instance attempt to establish communication with the ship and the Administration in order to rectify the breach.

(2) If such communication does not result in rectification of the breach, or if such inspector is satisfied that the ship continues to be in breach of these Regulations or part A of the ISPS Code, he may take the measures specified in paragraph (3).

(3) These measures are —

- (a) a requirement for the rectification of the breach within a specified time;
- (b) a requirement that the ship proceed to a location specified in the territorial sea or internal waters of Bermuda;
- (c) inspection of the ship, if the ship is in the territorial sea or internal waters of Bermuda;
- (d) detention of the ship, if the ship is in the territorial sea or internal waters of Bermuda;
- (e) denying the ship entry into port.

(4) In this regulation, "inspectors" means inspectors appointed by the Minister under section 217 of the Act.

Power to detain

14 (1) This regulation applies in any case where a ship is liable to be detained.

(2) Any of the following officers may detain the ship —

- (a) a commissioned naval or military officer;
- (b) a officer of the Department of Maritime Administration who is authorised by the Minister either generally or in a particular case, to exercise powers under this regulation;
- (c) an officer of customs; and
- (d) a British consular officer.

(3) Subject to paragraph (4) the power of detention is exercisable in relation both to Bermuda ships and foreign ships.

(4) The power of detention conferred by paragraph (1) is not exercisable in relation to a qualifying foreign ship while the ship is exercising the right of innocent passage.

(5) The officer detaining the ship shall serve on the master of the ship a detention notice which shall —

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- (a) state that he is of the opinion that the ship is in breach of provisions of these Regulations or Part A of the ISPS Code; and
 - (b) specify the matters which, in his opinion, constitute such breach.
- (6) A notice of detention may —
- (a) include a direction that the ship —
 - (i) must remain in a particular place; or
 - (ii) must be moved to a particular anchorage or berth; and
 - (b) if it includes such a direction, may specify circumstances relating to safety or security in which the master may move his ship from that place, anchorage or berth.
- (7) If a ship as respects which notice of detention has been served on the master proceeds to sea, otherwise than in accordance with such notice, before it is released by the detaining officer, the master of the ship shall be guilty of an offence.
- (8) If a ship as respects which notice of detention has been served on the master fails to comply with a direction given under paragraph (6)(a), the master of the ship shall be guilty of an offence.
- (9) A person guilty of an offence under paragraph (7) or (8) shall be liable —
- (a) on summary conviction, to a fine of \$10,000;
 - (b) on conviction on indictment, to a fine of \$50,000 or imprisonment for a term of two years or both.
- (10) A company, and any person who sends to sea a ship, as respects which an offence is committed under paragraph (7) or (8) shall, if party or privy to the offence, also be guilty of an offence under that paragraph and liable accordingly.
- (11) Where a ship proceeding to sea in contravention of paragraph (7) or failing to comply with a direction given under paragraph (6)(a) carries away without his consent any of the following who is on board the ship in the execution of his duty, namely —
- (a) any officer authorised by paragraph (2) to detain the ship; or
 - (b) any surveyor of ships;
- the company and master of the ship shall each —

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- (i) be liable to pay all expenses of and incidental to the officer or surveyor being so carried away; and
- (ii) be guilty of an offence.

(12) A person guilty of an offence under paragraph (11) shall be liable —

- (a) on summary conviction, to a fine of \$10,000;
- (b) on conviction on indictment, to a fine of \$50,000.

(13) Any reference in this regulation to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea, and references to sending or taking to sea shall be construed accordingly.

References of detention notices to arbitration

15 (1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of regulation 14(5) in connection with any opinion formed by the officer constituted a valid basis for that opinion shall if the company or master of the ship so requires, by a notice given to the officer within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

(2) Where a notice is given by the company or master of the ship in accordance with paragraph (1), the giving of the notice shall not suspend the operation of the detention notice unless, on the application of the person requiring the reference, the arbitrator so directs.

(3) The arbitrator shall have regard, in coming to his decision, to any other matters not specified in the detention notice which appear to him to be relevant to whether the ship was or was not a non-compliant ship.

(4) Where on a reference under this regulation the arbitrator decides as respects any matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the officer's opinion he shall either cancel the detention notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(5) The arbitrator shall include in his decision a finding whether there was or was not a valid basis for the detention of the ship as a non-compliant ship.

(6) A person shall not be qualified for appointment as an arbitrator under this regulation unless he is —

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a

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person holding a certificate equivalent to any such certificate;

(b) a naval architect;

(c) a person falling within paragraph (7); or

(d) a person with special experience of shipping matters, or of activities carried on in ports.

(7) For the purposes of paragraph (6)(c) a person falls within this paragraph if he is a barrister or solicitor of 10 years standing entitled to practice in Bermuda or in any commonwealth jurisdiction.

(8) In connection with his functions under this regulation an arbitrator shall have the powers conferred on an inspector by section 220 of the Act.

Compensation in connection with detention notices

16 Section 105 of the Act shall apply to a reference under regulation 15 as it applies to a reference under section 104 of the Act.

Equivalent security arrangements

17 (1) A Bermuda ship may apply to the Minister to implement other security measures equivalent to those prescribed in these Regulations or in Part A of the ISPS Code.

(2) The Minister, if satisfied that the other security measures are as effective as those prescribed in these Regulations or part A of the ISPS Code, may authorise the ship to implement the other security measures.

Offences

18 Except where otherwise provided, a company or the master of any ship who contravenes any provision of these Regulations shall be guilty of an offence and liable on summary conviction to a fine of \$10,000 and on conviction on indictment to a fine of \$50,000 or imprisonment for a term of two years, or both.

Schedule

(Regulation 2(2))

Competent Authority

1. RCC Bermuda
Fort George Hill - St. George's
Bermuda GE 02

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2. MRCC Falmouth
Western Region
HM Coastguard Pendennis Point
Castle Drive
Falmouth Cornwall TR11 4WZ

Made this 21st day of June, 2004

Minister of Transport