



BERMUDA

MERCHANT SHIPPING (CARRIAGE OF PASSENGERS BY SEA) ORDER 2018

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 179(3)(b) of the Merchant Shipping Act 2002, makes the following Order:

Citation

1 This Order may be cited as the Merchant Shipping (Carriage of Passengers by Sea) Order 2018.

Interpretation

2 In this Order—

“Bermuda ship” means a ship registered in Bermuda under Part IV of the Act;

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“insurance” means insurance or other financial security satisfying the requirements of Article 4bis of the Athens Convention relating to the carriage of passengers and their luggage by sea (see Schedule 5 to the Act);

“proper officer” has the meaning ascribed to it in section 2(1) of the Act;

“State Party” means a country in respect of which the Athens Convention is in force.

Application

3 (1) Subject to paragraph 4, this Order applies to ships and persons engaged in the carriage of passengers by sea.

(2) This Order does not apply to warships, auxiliary warships or other State owned or operated ships used for non-commercial public service.

(3) This Order does not apply to any ship licensed under Regulation 4 of the Marine Board (Island Boats) Regulations 1965 and engaged in the carriage of passengers by sea solely within Bermuda waters.

Requirement to have insurance

4 (1) A ship must not enter or leave a port in Bermuda, and if the ship is a Bermuda ship, a port in any other country, unless there is insurance in force in respect of that ship and a certificate complying with paragraph 5.

(2) The requirement for the ship to have insurance does not apply to any ship which is not licensed to carry more than 12 passengers.

Insurance certificates

5 (1) The existence of the insurance required under paragraph 4 is to be proved by a certificate—

- (a) in the form prescribed in the Annex to the Athens Convention; or
- (b) showing that there is in force in respect of the ship insurance satisfying those requirements.

(2) The certificate must be—

- (a) if the ship is a Bermuda ship, a certificate issued by the Minister;
- (b) if the ship is registered in a State Party (other than Bermuda), a certificate issued by or under the authority of the government of that State Party;
- (c) if the ship is registered in a country which is not a State Party, a certificate issued by the Minister or under the authority of any State Party; and
- (d) if the ship is registered in a country which is not a State Party but which is a Member State, a certificate issued by, or under the authority of that Member State.

(3) The certificate must—

- (a) be carried onboard the ship; and

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- (b) be produced on demand by the master to—
 - (i) the Minister or to any proper officer, where the ship is a Bermuda ship; or
 - (ii) the Minister, in the case of any other ship.

Issue of certificates by the Minister

6 (1) Subject to subparagraph (2), if the Minister is satisfied on the application for such a certificate as is mentioned in paragraph 5 in respect of—

- (a) a Bermuda ship; or
- (b) a ship registered in any country that is not a State Party,

that there will be insurance in force throughout the period for which the certificate is to be issued, the Minister may issue such a certificate to the carrier or performing carrier.

(2) If the Minister is of the opinion that there is doubt whether the person providing the insurance will be able to meet his obligations thereunder, the Minister may, after taking into account any other matters which appear to be relevant, refuse to issue the certificate.

(3) Where, at any time while a certificate is in force, the person to whom the certificate has been issued ceases to be the performing carrier in relation to the ship to which the certificate relates, the certificate shall be delivered up forthwith to the Minister or to a proper officer and in such case shall be cancelled by the Minister.

(4) Where, at any time while a certificate is in force, it is established that the contract of insurance in respect of which the certificate is issued is or may be treated as invalid, the certificate may be cancelled by the Minister and if so cancelled, shall on demand be delivered up to the Minister by the person to whom it was issued.

(5) Where at any time while a certificate is in force, circumstances arise in relation to the insurer or guarantor named in the certificate (or where more than one is so named, any of them) such that if the certificate were applied for at that time, the Minister would have been entitled to refuse the application under subparagraph (2), the certificate may be cancelled by the Minister and if so cancelled, the certificate shall on demand be delivered up to the Minister by the person to whom it was issued.

(6) The Minister shall send a copy of any certificate issued under this paragraph, in respect of a Bermuda ship, to the Registrar of Shipping and the Registrar shall make the copy available for public inspection.

Offences

- 7 (1) A carrier or performing carrier commits an offence if—
- (a) a relevant ship enters or leaves a port in contravention of paragraph 4; or
 - (b) anyone attempts to navigate that ship into or out of a port in contravention of that paragraph.
- (2) A person found guilty of an offence under subparagraph (1), is liable—

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- (a) on summary conviction, to a fine not exceeding \$10,000; or
- (b) on conviction on indictment, to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(3) A master who fails to comply with paragraph 5(3) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(4) A person required by paragraph 6(3) to (5) to deliver up a certificate, who fails to do so is liable on summary conviction to a fine not exceeding \$10,000.

(5) Any document required or authorised by virtue of any statutory provision to be served on a foreign company for the purposes of or the institution of (or otherwise in connection with the institution of) proceedings for an offence under paragraph 5 against the company as owner of the ship is to be treated as served on the company, if the document is served on the master of the ship.

(6) In this paragraph, foreign company means a company or body which is not one to which Section 62(A) of the Companies Act 1981 applies so as to authorise the service of the document in question.

Power to detain

8 (1) A ship may be detained if anyone attempts to navigate it out of port in contravention of paragraph 4.

(2) Section 242 of the Act (which relates to the detention of a ship) is to have effect in relation to the ship, subject to the modification that, for—

- (a) “this Act” there were substituted “the Merchant Shipping (Carriage of Passengers by Sea) Order 2018”; and
- (b) “owner” there were substituted “carrier or performing carrier”.

(3) An officer detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the reason for the detention; and
- (b) requires the ship to comply with the terms of the detention notice until it is released by a competent authority.

(4) Where a ship which is not a Bermuda ship is detained, the Minister must immediately inform in writing the ship’s flag state administration, or if this is not possible—

- (a) the Consul of the State of the flag administration; or
- (b) in the Consul’s absence, the nearest diplomatic representative of the State of the flag administration.

(5) The written information referred to in subparagraph (4) must set out all the circumstances of the decision to detain the ship.

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(6) Where subparagraph (4) applies, the Minister must notify all relevant—

- (a) nominated surveyors; or
- (b) recognised organisations;

responsible for the issue of classification certificates.

(7) In this paragraph, “competent authority” means any officer mentioned in section 242(1) of the Act.

Arbitration

9 (1) Any question as to whether the matters specified in relation to a ship in a detention notice constituted a valid basis for the officer’s opinion must, if the master of the ship or the carrier or performing carrier so requires by 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 the arbitrator.

(2) Where notice is given by the master of the ship or the carrier or performing carrier in accordance with subparagraph (1), the giving of a notice does not suspend operation of the detention notice.

(3) The arbitrator may have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether or not the ship was or was not liable to be detained.

(4) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the officer’s opinion, the arbitrator must—

- (a) cancel the detention notice; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(5) In any case other than one described in subparagraph (4), the arbitrator must affirm the detention notice in its original form.

(6) The decision of the arbitrator must include a finding whether there was or was not a valid basis for the detention of the ship.

(7) To be qualified for appointment as an arbitrator under this paragraph, a person must be—

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect; or
- (c) a person with special experience of shipping matters, or of activities carried on within ports.

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Compensation for unjustified detention

10 (1) If, on a reference under paragraph 9 relating to a detention notice, the arbitrator decides that the person making the reference has proved that—

- (a) the matter complained of did not constitute a valid basis for the officer's opinion; and
- (b) there were no reasonable grounds for the issue of the detention notice,

the arbitrator must award the owner of the ship such compensation in respect of any loss suffered in consequence of the detention of the ship, as the arbitrator thinks fit.

(2) Any compensation awarded under this paragraph is payable by the Minister.

Provision of information to passengers

11 A carrier or performing carrier which fails to supply a passenger with the information specifying his rights under the Convention commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Fees

12 (1) The Minister may charge a fee for the issue of a certificate mentioned in paragraph 6(1).

(2) The fee for the issue of a certificate in subparagraph (1) shall be such fee as may be prescribed under the Government Fees Act 1965.

Order binds the Crown

13 This Order binds the Crown.

Made this 12th day of December 2018

Minister of Tourism and Transport

[Operative Date: 15 February 2019]