



Shipping (Infringement Deficiency) Regulations 2014

His Excellency, Tom Marsters

Queen's Representative

Order in Executive Council

At Avarua, Rarotonga this 16th day of December 2014

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to sections 48 and 50 of the Ship Registration Act 2007, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

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Schedule

Regulations

- 1 **Title**
These regulations are the Shipping (Infringement Deficiency) Regulations 2014.

2 Commencement

These regulations come into force on 1 January 2015.

3 Interpretation

- (1) In these Regulations, terms used have the same meaning set out in the Act unless the context otherwise requires—

Act means the Ship Registration Act 2007

Convention for the purposes of these regulations means any bilateral or multilateral treaty, convention, code, agreement or understanding relating to maritime transport, security or pollution to the extent the Cook Islands is party or has agreed to adopt and enforce

Rules means maritime Rules and marine protection Rules made under the Maritime Transport Act 2008

Seafarer—

- (a) means a person who—
- (i) is employed or engaged on any vessel in any capacity for hire or reward; or
 - (ii) works on any vessel for gain or reward otherwise than under a contract of employment; but
- (b) does not include a pilot or any person temporarily employed on a vessel while it is in port or Special Personnel as defined in the Code of Safety for Special Purpose Ships 2008.
- (2) The purpose of these regulations is to enforce the standards required for safety, protection of the environment against pollution, security and the welfare of seafarers as provided for in the Rules.

4 Application

These Regulations apply to—

- (a) all vessels registered on the Cook Islands Ships Register; and
- (b) all seafarers who are employed on vessels referred to in paragraph (a) of this Regulation; and
- (c) all owners, charterers and masters of vessels referred to in paragraph (a) of this Regulation.

*Compliance***5 Responsibility for compliance**

- (1) It is the responsibility of an owner, charterer and master of a vessel to ensure that the vessel and each seafarer employed on the vessel comply at all times with,—
- (a) all Rules applicable to the vessel or a seafarer;
 - (b) all conventions applicable to the vessel or a seafarer.
- (2) An owner, charterer and master of a vessel who fails to ensure that the vessel and each seafarer employed on the vessel complies with paragraphs (a), and (b), as the case may be, is guilty of an infringement deficiency and is liable,—
- (a) to an infringement fine for each infringement deficiency not exceeding \$30,000.00 as shall be determined and imposed by the Registrar; and

- (b) if the infringement is a continuing one, to a further infringement fine as determined and imposed by the Registrar not exceeding \$5,000.00 for each day that the infringement continues; and
- (c) to have the registration of the vessel cancelled under section 17 of the Act.

Infringement Notices

6 Infringement notices

- (1) If the Registrar, or any person duly authorised by the Registrar, has reasonable cause to believe that there has been a contravention of regulation 4, the Registrar or a person so authorised may issue and serve an infringement notice in respect of the infringement deficiency to the owner, charterer or master of the vessel.
- (2) An infringement notice must—
 - (a) be addressed to the owner, charterer or master of the vessel; and
 - (b) describe each infringement deficiency in sufficient detail so as to fairly inform a person of the time, place, and nature of the deficiency; and
 - (c) set out the amount of the infringement fine for each infringement deficiency as determined by the Registrar; and
 - (d) provide an address at which the infringement fine is to be paid; and
 - (e) specify the time and date (being not less than 7 days from the date of service of the infringement notice) before which the infringement fine must be paid; and
 - (f) contain a statement of the right of persons affected by the infringement notice to dispute a determination of the Registrar set out in the notice; and
 - (g) contain a statement of the right of persons dissatisfied with the result of an inquiry under Regulation 7 to appeal to the High Court against that result; and
 - (h) comply generally with form 1 of the Schedule.
- (3) An infringement notice may be served in accordance with section 49 of the Act.

7 Infringement fines

All infringement fines imposed under Regulation 4(2) until paid, are a first charge in priority to any other charge against the vessel and if there is more than one such fine shall rank equally and be recoverable from the vessel and its owner in the name of the Registrar.

Notice of dispute

8 Notice of dispute and inquiry

- (1) A person who is affected by, and dissatisfied with, an infringement notice may, by notice to the Registrar, dispute the infringement notice not later than 7 days after the date of service of the infringement notice.

- (2) A notice of dispute must be in form 2 of the Schedule and shall set out the grounds upon which the infringement notice is disputed, the evidence relied upon and all relevant documentation in support thereof.
- (3) A notice of dispute does not excuse or stay the requirement that the infringement fine imposed be paid on or before the date and time specified in the infringement notice.
- (4) On receipt of a notice of dispute, the Registrar or a person appointed by the Registrar for the purpose, must inquire into the grounds upon which the infringement notice is disputed, the evidence relied upon and any documentation in support and after due enquiry may, having regard to the result of the enquiry—
 - (a) dismiss the notice of dispute and affirm the decision of the Registrar to issue the infringement notice and impose the infringement fine; or
 - (b) revoke the infringement notice and cancel any infringement fine imposed; or
 - (c) vary the infringement notice and impose the same or another infringement fine for the infringement notice as varied.
- (5) The Registrar must give notice to the person who has disputed the infringement notice, the result of the inquiry and the reasons therefore as soon as practicable thereafter in accordance with section 49 of the Act.

Rights of appeal

9 Rights of appeal

A person who has lodged a notice of dispute with the Registrar in accordance with Regulation 7(1) and who is dissatisfied with the result of the inquiry under Regulation 7(4) may appeal to the High Court against the result.

10 Procedure

- (1) Every appeal under Regulation 8 shall be brought, by originating application and filed in the High court within 14 days after the date on which the Registrar shall give notice of the result of the inquiry under Regulation 7(5) or within such further period as the High Court may allow.
- (2) In determining an appeal the High Court may—
 - (a) hear all evidence tendered and representations made by or on behalf of any party to the appeal, whether or not that evidence would be otherwise admissible in that Court; and
 - (b) either—
 - (i) confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Registrar as may be necessary to give effect to the Court's decision; or
 - (ii) refer the matter back to the Registrar with directions to reconsider the whole or any specified part of the matter.
- (3) Any appeal under this section is to be heard by way of rehearing.
- (4) Subject to this regulation, every such appeal must be made and determined in accordance with the Rules of Court.

11 Evidence and proof

- (1) In any proceedings for an appeal under Regulation 8, the following provisions apply—
- (a) a copy of any maritime document or marine protection document or permit which is certified correct by the Registrar shall be sufficient, in the absence of proof to the contrary, to prove that document;
 - (b) the production of a certificate signed by the Registrar to the effect that on a specified date a person or organisation was or was not the holder of any maritime document or marine protection document or any permit or any specified type of maritime document or marine protection document shall be sufficient evidence of the matter certified until the contrary is proved;
 - (c) the production of a certificate signed by the Secretary of Foreign Affairs to the effect that the Cook Islands is party to a convention or that the Cook Islands has agreed to adopt a convention shall be sufficient evidence of the matter certified until the contrary is proved.
- (2) Without limiting any other method of proof, the production in any proceedings of a copy of—
- (a) a Rule purporting to have been made by the Minister or the Secretary under the Maritime Transport Act 2008; or
 - (b) a convention to which it is claimed the Cook Islands is party,
- is, in the absence of proof to the contrary, be sufficient evidence of the fact (as the case may be) that the Rule has been made in accordance with the relevant provisions of the Maritime Transport Act 2008 or the Cook Islands is a party to the convention.

Regulation 6(2)(h) and 8(2)

Schedule

Form 1

INFRINGEMENT NOTICE

(Number)

(Cook Islands Crest)

To (Owner, Charterer or Master)

Vessel (description)

The Registrar has reasonable cause to believe that there has been a contravention of
Maritime Rule (refer to the relevant Rule)

Or

The Convention (refer to the Convention and provision)

The circumstance of the contravention are that on (date time) at (place)

(describe the infringement deficiency)

The contravention described above amounts to an infringement deficiency under the
SHIPPING (INFRINGEMENT DEFICIENCY) REGULATIONS 2014.

Pursuant to Regulation 4 where the Registrar has reasonable cause to believe there has
been a contravention of a Maritime Rule or a convention the registrar may impose a
fine not exceeding New Zealand Dollars 30,000.

The Registrar has determined to impose a infringement fine of \$ for the
infringement deficiency described above.

The infringement fine is to be paid to (name and address)

The infringement fine is to be paid by (date)

If you dispute this Infringement Notice you must lodge with the Registrar a Notice of
Dispute not later than 7 days of the date that this Infringement Notice was served on
you. A Notice of Dispute must be lodged with the registrar by (date 7 days from the
date of service).

If you lodge a Notice of Dispute you must still pay the infringement fine of \$
by (date);

If you lodge a Notice of Dispute the Registrar, or a person appointed by the Registrar, will inquire into the Notice of Dispute and advise you of the result and the reasons for that result. If you are not satisfied with the result of the inquiry you may appeal to the High Court of the Cook Islands within 14 days after the date on which the Registrar shall give notice of the result of the inquiry.

Registrar of Ships

Form 2

NOTICE OF DISPUTE

To The Registrar of Ships
Cook Islands Ship Registry
Rarotonga

From Name
Address
Contact Details – Ph fax E-mail

I dispute the Notice of Infringement Number _____ for the following reasons -

(set out the reasons and attach any evidence relied upon and documents in support)

Signed

Aukino Tairea

Clerk of the Executive Council

These regulations are administered by the Ministry of Transport.
These regulations were made on the _____ day of December 2014.