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MERCHANT SHIPPING (LOAD LINES) REGULATIONS 2019

A Legislation Drafting Project submitted in partial fulfillment of the requirements for the award of the Degree of Master of Laws (LL.M.) in International Maritime Law at the IMO International Maritime Law Institute

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EXPLANATORY NOTE

INTRODUCTION

The Turks and Caicos Islands is an internally self-governing Overseas Territory (OT) of the United Kingdom (UK). Unless the UK expressly authorises it to do so, an UK Overseas Territory (UKOT) does not have the authority to become party to treaties in its own right.¹ The UK must extend the territorial scope of its ratification of treaties to include it. This is normally done either at the time of ratification, or at some later date, through the Overseas Territories Directorate of the Foreign and Commonwealth Office (FCO). The FCO will send a notification to the depository of the Treaty making body (international organisation) of intention to extend ratification to the UKOT, in this case, the Turks and Caicos Islands. The Treaty making body informs FCO whether this is acceptable and, if it is, the FCO then informs the lead UK Government Department and the Turks and Caicos Islands. It is only then that the treaty will apply to the Turks and Caicos Islands and be given effect when incorporated into domestic law.

The International Convention on Load Lines, 1966 (“the LL Convention”) entered into force in the UK on 21 July 1968² and the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (“the Protocol”) entered into force in the UK on 8 June 2000.³ Over the years amendments have been made to these documents.⁴ Both the LL Convention⁵ and the Protocol⁶ were extended to the Turks and Caicos Islands on 7 July 2004 but there exists no domesticating law in the Turks and Caicos Islands giving effect to this.

¹ Foreign and Commonwealth Office - United Kingdom, ‘Guidelines on Extension of Treaties to Overseas Territories’ (19 March 2013) <<https://www.gov.uk/government/publications/guidelines-on-extension-of-treaties-to-overseas-territories>> accessed 28 February 2019.

² International Convention on Load Lines, 1966 Treaty Series 058/1968: Cmnd 3708 (UK Treaties Online, Foreign and Commonwealth Office - United Kingdom).

³ Protocol of 1988 relating to the International Convention on Load Lines, 1966 Treaty Series 100/2000: Cmnd 4829 (UK Treaties Online, Foreign and Commonwealth Office - United Kingdom).

⁴ See sections 1.3 and 1.4 below.

⁵ International Maritime Organization, ‘LL/Circ.152 - International Convention on Load Lines, 1966: Extension to Bailiwick of Jersey, Falkland Islands, British Virgin Islands, St. Helena, Turks and Caicos Islands by the United Kingdom’ (25 August 2004) <<https://docs.imo.org/Category.aspx?cid=149>> accessed 1 January 2019.

⁶ International Maritime Organization, ‘LL.10/Circ.48 - The Protocol of 1988 relating to the International Convention on Load Lines, 1966: Extension to Bailiwick of Jersey, Falkland Islands, British Virgin Islands, St. Helena, Turks and Caicos Islands by the United Kingdom’ (25 August 2004) <<https://docs.imo.org/Category.aspx?cid=154>> accessed 1 January 2019.

The Merchant Shipping (Load Lines) Regulations 2019 seek to implement into Turks and Caicos Islands law the LL Convention, as amended by the Protocol and all amendments to the LL Convention and Protocol currently in force (“the LL Convention, as amended”), the aim of which is to “*establish uniform principles and rules with respect to the limits to which ships on international voyages may be loaded having regard to the need to for safeguarding life and property at sea*”.⁷ By regulating the depth to which ships may be loaded, these Regulations will assist in ensuring the safety of ships and those on board ships.

These Regulations are modelled after the UK’s Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018, which updated the UK’s laws to reflect all amendments made to the LL Convention as amended. These Regulations also draw reference from other Crown Dependencies and OTs such as the Isle of Man, Cayman Islands and the British Virgin Islands which very closely follow the UK model. This will ensure uniformity and enable the Turks and Caicos Islands to draw upon the experience, practices and any judicial precedents of the UK, thereby allowing for consistency in the application of the LL Convention, as amended.

⁷ International Convention on Load Lines, 1966 (adopted 5 April 1966, entered into force 21 July 1968) 640 UNTS 133, Preamble.

1. THE INTERNATIONAL REGIME

The LL Convention was adopted at the International Conference on Load Lines on 5 April 1966 by the International Maritime Organization (IMO) (Inter-Governmental Maritime Consultative Organization at the time) and entered into force on 21 July 1968⁸.

The main objective of the LL Convention is to make provision for freeboards and the external weathertight and watertight integrity of ships.⁹ It also seeks to reduce the risk of sinking due to overloading, instability and breach of watertight integrity of ships and include provision for survey, inspection and certification of ships for the purpose of ascertaining compliance with the “Regulations for determining load lines” contained in Annex I to the LL Convention. Other Annexes contain Regulations (“Convention Regulations”)¹⁰ setting out the detailed technical requirements that must be fulfilled by States.

1.1 Historical Development

“Let provision be made for painting on the ship’s side ... “the maximum load line,” and that no ship under any circumstances be allowed to leave port unless that line be distinctly visible at or above the water-line; and let this fact be ascertained and communicated to the Board of Trade.”¹¹

In the 19th century, as the UK trade rapidly increased, unscrupulous shipowners were in the practice of overloading ships and performed little or poor maintenance, in order to maximize profits. This led to unsafe working conditions for seafarers and desertion increased. The

⁸ International Maritime Organization, *Load Lines: International Convention on Load Lines, 1966 and Protocol of 1988, as amended in 2003* (Consolidated, 3rd ed. 2005, International Maritime Organization 2005) iii, Foreword.

⁹ International Maritime Organization, ‘International Convention on Load Lines’ (2019) <<http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-on-Load-Lines.aspx>> accessed 29 January 2019.

¹⁰ The Merchant Shipping (Load Lines) Regulations 2019, regulation 2(2) provides that a reference to a Convention Regulation is, unless otherwise stated, a reference to a Regulation in an Annex to the 1966 Convention. For consistency, the Regulations contained in the LL Convention, as amended, shall hereinafter be referred to as “Convention Regulations” to distinguish the latter from the Merchant Shipping (Load Lines) Regulations 2019.

¹¹ Samuel Plimsoll, *Our Seamen: An Appeal* (Virtue & Co. 1873) 80.

condition of ships in some instances gave rise to them being referred to as ‘coffin ships’ referring to the increased risk of sinking due to the loss of freeboard from being heavy laden.¹² It is to be noted that from 1774, Lloyd’s Register of British and Foreign Shipping had recorded the assignment of a load draft in order to ensure ship safety.¹³ However, in 1835, Lloyd’s Register introduced rules regarding the loading of ships to reduce the losses of ships, but this only applied to those ships registered with them.¹⁴

In 1870, Samuel Plimsoll, a British Member of Parliament, recognized that the working conditions on ships needed to be improved and that greater measures were needed to ensure the safety of seafarers.¹⁵ In imploring Parliament to act he stated “it is the duty of society generally to interfere, through the State, to extend to seamen the same degree of care as is bestowed on so many classes of our fellow - subjects.”¹⁶ He also entreated, “think of the enormous saving of life which would ensue from the prevention of overloading, and from the due execution of necessary repairs... Compulsory survey, then, and prevention of overloading, applied to all merchant ships, would result in the saving of all those lives which are lost.”¹⁷ Samuel Plimsoll sponsored the freeboard tables, based on the Lloyd’s Rule (from 1835), which were adopted in 1876 by the Board of Trade and the Merchant Shipping Act, 1894,¹⁸ making load lines compulsory. Through the efforts of Samuel Plimsoll, the load line (also known as the Plimsoll Mark) was adopted.¹⁹ The original Plimsoll Mark was a circular disc with a horizontal line through it which showed the maximum draft (the distance from the underside of the hull to the level of the water) or depth at which a ship could safely navigate.²⁰

¹² UK P&I CLUB, ‘Load Line Rules in South Africa’ (April 2009) <https://www.ukpandi.com/fileadmin/uploads/uk-pi/LP%20Documents/LP_Reports/LoadlineSA.pdf> accessed 30 January 2019.

¹³ R.J. Herd in Royal Institute of Naval Architects | Australian Division - Technical Library, ‘Technical Background to the International Convention on Load Lines, 1966’ <<http://www.rina.org.uk/res/1967-5%20Herd%20RJ%20-%20Technical%20Background%20to%20the%20International%20Conference%20on%20Load%20Lines%201966.pdf>> accessed 30 January 2019.

¹⁴ Ibid.

¹⁵ UK P&I CLUB (n 12).

¹⁶ Samuel Plimsoll (n 11) 80.

¹⁷ Ibid., 82.

¹⁸ Merchant Shipping Act, 1894 57 & 58 Vict. Ch. 60, Section 438.

¹⁹ UK P&I CLUB (n 12).

²⁰ R.J. Herd in Royal Institute of Naval Architects | Australian Division - Technical Library (n 13)

The load line aid in preventing ships from being overloaded and incidents such as the wreck of the *S.S. London* where 220 lives were lost from occurring. According to a historical account of this incident,²¹ the *S.S. London* was a British steamship which sank in the Bay of Biscay on 11 January 1866. It is further recorded that, the ship, only on her third voyage, was overloaded with cargo which included railway iron, merchandise and coal, some of which was said to be stored on deck, which washed about and stopped the scupper holes and prevented drainage of the sea water.

1.2 Purpose of Load Lines

Load lines set the maximum legal limit up to which a ship can be loaded and ensure that the ship has enough freeboard (distance between the waterline to the upper edge of the deck line) so that water cannot enter the vessel. A higher freeboard will increase the distance that the ship is able to roll from side to side before it becomes submerged.²²

Load lines also ensure that there is adequate buoyancy. Buoyancy is the force that enables ships to stay afloat and regulates their stability. The higher the density of water the stronger is the upward buoyant force.²³ The heavier the ship's load the greater the draft length as more water is displaced as the ship will lay lower in the water reducing the freeboard. In other words, the lower the density, the lower the buoyancy and the less load the ship will be able to take. If the vessel rides too low in the water its stability may be in danger and it may sink.²⁴

Since the buoyancy and immersion of the ship largely depend on the type of water she is navigating and its density,²⁵ the LL Convention, as amended, provides for various load lines for different density of water²⁶ and seasonal weather conditions in particular zones.²⁷ Both temperature and salinity affect the buoyancy of the ship.²⁸ Warm water provides less buoyancy,

²¹ National Library of Australia, 'The Mercury, Tuesday, 20 March 1866: Wreck of the S.S. London with Loss of 220 Lives' <<https://trove.nla.gov.au/newspaper/article/8838298>> accessed 30 January 2019.

²² Captain Joseph Zerafa, 'Ship Stability' (Technical Aspects of Shipping, 12 November 2018)

²³ Ibid.

²⁴ Ibid.

²⁵ Ibid.

²⁶ The LL Convention (n 7) Article 12 and Regulation 40 of Annex I.

²⁷ Ibid., Article 11 and Annex II.

²⁸ Captain Joseph Zerafa (n 22).

being less dense than cold water.²⁹ Thus, a ship will sink deeper in the water in warm areas of the tropics than in winter conditions in the North Atlantic. Similarly, fresh water (density 1 tonne per cubic meter) is less dense than salt seawater (density 1.025 tonnes per cubic meter), so a ship will sink deeper in fresh water of a river than in salt seawater.³⁰

1.3 The LL Convention

Consequential to maritime accidents caused by overloading of vessels there was a desire to establish a standard maximum draught to which a ship may be loaded in order to make ships safer. These limits are given in the form of freeboards.

Universal application of load lines came with the first International Load Line Convention which was unanimously adopted in 1930 by delegates from 30 maritime countries.³¹ This was based on the principle of reserve buoyancy although it was recognized then that the freeboard should also ensure adequate stability and avoid excessive stress on the ship's hull as a result of overloading.³²

By the 1960's, with developments in ship design and methods of construction, there was the need for re-examination and amendment of the 1930 Convention. An International Conference on Load Lines was convened in 1966. During the meetings of the Technical Committee of the 1966 International Conference on Load Lines it was decided that the reference to Plimsoll Mark would be replaced with Load Line Mark.³³ The areas for re-examination and amendment included:

- Prevention of the entry of water into the hull;
- Adequate reserve buoyancy;
- Protection of the crew by the consideration of the strength of gangways, guard rails lifelines etc.;

²⁹ Ibid.

³⁰ Ibid.

³¹ R.J. Herd in Royal Institute of Naval Architects | Australian Division - Technical Library (n 13).

³² International Maritime Organization (n 9).

³³ R.J. Herd in Royal Institute of Naval Architects | Australian Division - Technical Library (n 13) 13.

- Adequate structural strength of the hull; and
- Limitation of water on the deck.

At the end of the 1966 Conference, the LL Convention was adopted.

The LL Convention has been amended by means of Assembly resolutions as follows:³⁴

- (1) by Assembly resolution A.231(VII), which was adopted on 12 October 1971;
- (2) by Assembly resolution A.319(IX), which was adopted on 12 November 1975;
- (3) by Assembly resolution A.411(XI), which was adopted on 15 November 1979;
- (4) by Assembly resolution A.513(13), which was adopted on 17 November 1983;
- (5) by Assembly resolution A.784(19), which was adopted on 23 November 1995;
- (6) by Assembly resolution A.972(24), which was adopted on 1 December 2005;
- (7) by Assembly resolution A.1082(28), which was adopted on 4 December 2013;³⁵
and
- (8) by Assembly resolution A.1083(28), which was adopted on 4 December 2013.³⁶

The amendments adopted in 1971, 1975, 1979 and 1983 required positive acceptance by two-thirds of Parties in accordance with Article 29(3) of the LL Convention and never came into force.³⁷ The amendments adopted in 2005 and 2013 allowed for tacit acceptance in accordance with Article 29(2) of the LL Convention, as amended and came into force on 3 February 2010 and 28 February 2018 respectively.³⁸

³⁴ International Maritime Organization, 'Status of IMO Treaties' (18 March 2019) 205 <<http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20-%202019.pdf>> accessed 20 March 2019.

³⁵ Assembly Resolution A.1082(28) reflects amendments to Regulation 47 (Annex II) in respect of the Southern Winter Seasonal Zone, to shift the Winter Seasonal Zone off the southern tip of Africa further southward by 50 miles, which was adopted by the Maritime Safety Committee, at its ninetieth session in accordance with Article 29(3)(a) of the LL Convention.

³⁶ Assembly Resolution A.1083(28) reflects amendments to the LL Convention which were adopted by the Maritime Safety Committee, at its ninety-first session in accordance with Article 29(3)(a) of the LL Convention. The amendments make the use of the IMO Instruments Implementation Code (III Code) mandatory, by adding required definitions to Regulation 3 and a new Annex IV after Annex III on verification of compliance with the provisions of the LL Convention.

³⁷ International Maritime Organization (n 34) 205-212.

³⁸ *Ibid.*, 212-213.

The LL Convention, as amended, comprises Articles and the Convention Regulations. The Articles set out the broad obligations of States in respect of ship safety using load lines. The Articles provide for the scope of application, definitions, exceptions, exemptions, provisions relating to submersion, survey, inspections, markings and certifications, casualties, entry into force, amendment procedures and other mandatory requirements. The LL Convention applies to all ships engaged in international voyages³⁹ save ships listed under Article 5 which includes warships, new ships of less than 24 metres in length, existing ships of less than 150 gross tons, pleasure vessels, fishing vessels and ships solely navigating in specified areas. It also allows States to make exemptions in respect of certain ships in specified circumstances.⁴⁰

In order to ensure ship stability and safety, the LL Convention, as amended, provides ships are not to be submersed below the appropriate load lines considering the zone, season or density of the water (salt or fresh) in which the ship may be sailing.⁴¹ It requires ships to be surveyed and marked and sets out a procedures for surveys which includes an initial survey before a ship is put in service, a renewal survey at intervals not exceeding 5 years and an annual survey within three months before or after each anniversary date of the certificate.⁴² There are two types of certificates that may be issued by the States under Article 16 of the LL Convention, an International Load Line Certificate and International Load Line Exemption Certificate, the form of which is found in Annex III to the LL Convention. Article 17 allows a contracting State to survey and issue an International Load Line Certificate on behalf of another contracting State, if so requested.

Article 19 provides that an International Load Line Certificate is to be issued for a period not exceeding 5 years but makes provision for limited extension and specifies the circumstances when a certificate shall be and cease to be valid. Article 20 stipulates that certificates issued by contracting States in accordance with the LL Convention, as amended, are to be accepted by other contracting States. When in port of another contracting State, officers duly authorized by

³⁹ The LL Convention (n 7) Article 4(2).

⁴⁰ *Ibid.*, Article 6.

⁴¹ *Ibid.*, Article 12.

⁴² *Ibid.*, Articles 13 and 14.

that State may verify that such a certificate is on board ships from another contracting State and exercise the control over the ship in the manner specified in Article 21.

Article 23 requires a contracting State to undertake casualty investigation when it judges that such an investigation may assist in determining whether any changes are needed to the LL Convention, as amended, and to provide the findings of such investigations to the IMO.

Annexes to the LL Convention, as amended, contain mandatory Convention Regulations with various detailed technical requirements which take into account the potential hazards present in different zones and different seasons and provide for the determination of load lines, including details of marking and verification of marks, conditions of assignment of freeboard of ships, subdivision and damage stability calculations and several additional safety measures to ensure the watertight integrity of ships' hulls below the freeboard deck concerning doors, freeing ports and hatchways, special provisions for ships intended for the carriage of timber and the prescribed form of International Load Line Certificates. It now includes a new Annex IV which makes provisions for verification of compliance with the LL Convention. The Convention Regulations are organized under four Annexes.

Annex I contain the Convention Regulations for determining load lines and is divided into four Chapters:

- Chapter I - General;
- Chapter II - Conditions of assignment of freeboard;
- Chapter III - Freeboards;
- Chapter IV - Special requirements for ships assigned timber freeboards.

Annex II covers Zones, areas and seasonal periods.

Annex III provides the form of certificates, including the International Load Line Certificate.

Annex IV⁴³ relates to verification of compliance with the LL Convention.

1.4 The Protocol

The Protocol was adopted on 11 November 1988 by the International Conference on the Harmonized System of Survey and Certification and entered into force on 3 February 2000.⁴⁴ The Protocol modified the LL Convention by bringing its survey and certification requirements into conformity with those contained in the International Convention for the Safety of Life at Sea, 1974⁴⁵ (SOLAS) and the International Convention for the Prevention of Pollution from Ships, 1973⁴⁶ (MARPOL).⁴⁷ It also revised certain Convention Regulations in the technical Annexes to the LL Convention and introduced the tacit amendment procedure in Article VI, so that, as between Parties to the Protocol, amendments adopted will enter into force six months after the deemed date of acceptance unless they are rejected by one-third of Parties. The Protocol has been amended by means of resolutions of the Maritime Safety Committee (MSC)⁴⁸ as follows:

- (1) by resolution MSC.143(77), which was adopted on 5 June 2003;
- (2) by resolution MSC.172(79), which was adopted on 9 December 2004;
- (3) by resolution MSC.223(82), which was adopted on 8 December 2006;
- (4) by resolution MSC.270(85), which was adopted on 4 December 2008;
- (5) by resolution MSC.329(90), which was adopted on 24 May 2012;
- (6) by resolution MSC.345(91), which was adopted on 30 November 2012;
- (7) by resolution MSC.356(92), which was adopted on 21 June 2013; and
- (8) by resolution MSC.375(93), which was adopted on 22 May 2014.

⁴³ This is a new annex added by Assembly resolution A.1083(28), which was adopted on 4 December 2013 and came into force 28 February 2018.

⁴⁴ International Maritime Organization (n 34) 214.

⁴⁵ International Convention for the Safety of Life at Sea, 1974 (adopted 1 November 1974, entry into force 25 May 1980) 1184 UNTS 3.

⁴⁶ International Convention for the Prevention of Pollution from Ships, 1973 (adopted 2 November 1973, entry into force 2 October 1983) 1340 UNTS 61.

⁴⁷ International Maritime Organization, *Load Lines* (n 8).

⁴⁸ International Maritime Organization (n 34) 218-220.

These amendments which were adopted through the tacit acceptance procedure in accordance with paragraph 2 (f)(ii)(bb) of Article VI of the Protocol, have all entered into force.⁴⁹

The 1971, 1975, 1979, 1983 and 1995 amendments to the LL Convention were incorporated into the Protocol, as amended by resolution MSC.143(77). Resolution MSC.143(77) amended Convention Regulation 2 by including a provision that unless expressly provided otherwise, the Convention Regulations of Annex 1 shall apply to ships the keels of which are laid, or which are at a similar stage of construction on or after 1 January 2005. It should also be noted that, from the legal point of view, the Protocol is only applicable to ships entitled to fly the flag of a State which is a party to the Protocol.⁵⁰

The 2005 and 2013 Amendments to the LL Convention have entered into force in the UK. Likewise, all amendments to the Protocol have entered into force in the UK. These are now reflected in the UK's Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018, which form the basis for the Merchant Shipping (Load Lines) Regulations 2019. Given that the UK has extended the LL Convention and the Protocol to the Turks and Caicos Islands, that means that the amendments are also to be given effect in the Turks and Caicos Islands.

1.5 Regulatory Framework of Load Lines

A load line may be simply described as a special marking positioned amidships⁵¹ which depicts the draft of the vessel and the maximum permitted limit in distinct types of waters to which the ship can be submerged.⁵² All new ships of 24 meters and more⁵³ are required to have this load line marking at the centre position of the length of summer load water line. Load lines are marked on both sides of the hull to act as a visual indicator of the limit to which ships could be loaded for specific geographical areas and seasons of the year.⁵⁴

⁴⁹ International Maritime Organization (n 34).

⁵⁰ International Maritime Organization, *Load Lines* (n 8) iv. This is reflected in regulation 4(5) of the Merchant Shipping (Load Lines) Regulations 2019.

⁵¹ The LL Convention (n 7) Regulation 5.

⁵² *Ibid.*, Article 12.

⁵³ *Ibid.*, Article 5(1), which provides that the LL Convention does not apply to new ships under 24 metres.

⁵⁴ *Ibid.*, Article 12 and Regulation 8 of Annex I.

Convention Regulation 6 of Annex I of the LL Convention, as amended, provides for two types of load line markings:

- Standard Load Line marking – This is applicable to all types of vessels.
- Timber Load Line markings – This is applicable to vessels carrying timber cargo.

The location of a load line is determined by a classification society after surveying the ship. Convention Regulation 7 of Annex I of the LL Convention, as amended, provides that the mark of the Assigning Authority may be indicated alongside the load line ring above the horizontal line which passes through the centre of it. In practice it is done by the Classification Society which has been nominated by the Maritime Administration in accordance with Article 13, for example if it is done by Lloyd's Register of Shipping the letters "L" and "R" are marked on each side of the load line ring.

Convention Regulation 8 of Annex I of the LL Convention, as amended, provides that these marks shall be permanently marked on the surface of the hull making it visible even if the ship side paint fades out. The marks shall be painted with white or yellow colour on a dark background or black on a light background. Once a surveyor or officer acting in accordance with Article 13 of the LL Convention, as amended, verifies that these marks are correctly and permanently indicated on the sides of the ship then the International Load Line Certificate will be issued as provided in Convention Regulation 9.

The complete load line markings consist of 3 vital parts:

- i. Deck Line – It is a horizontal line measuring 300mm by 25mm. It passes through the upper surface of the freeboard. In practice it is issued by the Classification Society which has been nominated by the Maritime Administration in accordance with Article 13.⁵⁵

⁵⁵ Ibid. Regulation 4.

- ii. Load Line Ring – It is 300mm diameter and 25mm thick round shaped disc. It is intersected by a horizontal line 450mm in length and 25mm in breadth. The upper edge of the horizontal line passes through the centre of the ring and marks the main Load Line which is ‘Summer salt water line’.⁵⁶ The load line ring is marked amidships directly below the deck line.⁵⁷
- iii. Load Lines – Load lines are horizontal lines extending forward and aft from a vertical line placed at a distance of 540mm from the centre of the ring. They measure 230mm by 25mm.⁵⁸ The upper surfaces of the load lines indicate the maximum depths to which the ships maybe submerged in different seasons and circumstances. Load limits are calculated for each type of operating environment. The load lines are marked in descending order from less dense water to higher dense water. Thus, Tropical Freshwater is less dense than Winter North Atlantic.

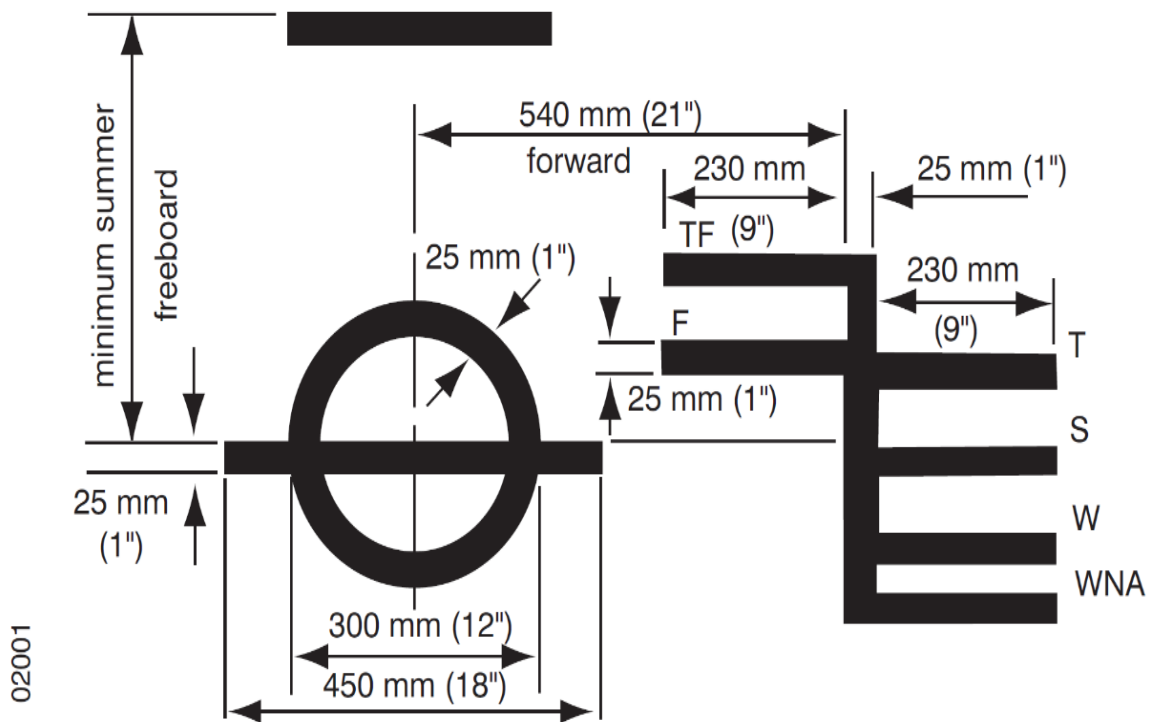


Figure 1 - Load line mark and lines to be used with this mark

Image credits: IMO

⁵⁶ Ibid. Regulation 6(2)(a).

⁵⁷ Ibid. Regulation 5.

⁵⁸ Ibid. Regulation 6.

The load lines are as follows:

S – Summer: It is the basic freeboard line indicated by the upper edge of the load line mark and also by the upper edge of a line marked S. Other load lines are marked based on this Summer freeboard line.

W – Winter: It is indicated by the upper edge of a line marked W. It is 1/48th of summer draft marked below the Summer load line.

WNA – Winter North Atlantic: It is indicated by the upper edge of the line marked WNA. – It is marked 50mm below the Winter load line. This line is not marked on a vessel over 100m in length. It applies to voyages in North Atlantic (above 36 degrees of latitude) during winter months.

T – Tropical: It is indicated by the upper edge of a line marked T. It is 1/48th of summer draft marked above the Summer load line.

F – Fresh Water: It is indicated by the upper edge of a line marked F. It is the summer fresh water load line. The distance between S and F is the Fresh Water Allowance (FWA).⁵⁹

TF – Tropical Fresh Water: It is indicated by the upper edge of the line marked TF. It is the fresh water load line in Tropical. It is marked above the T at an amount equal to FWA.

⁵⁹ The Fresh Water Allowance is the difference in the ships mean draft when it goes from fresh water to salt water and vice versa in the summer.

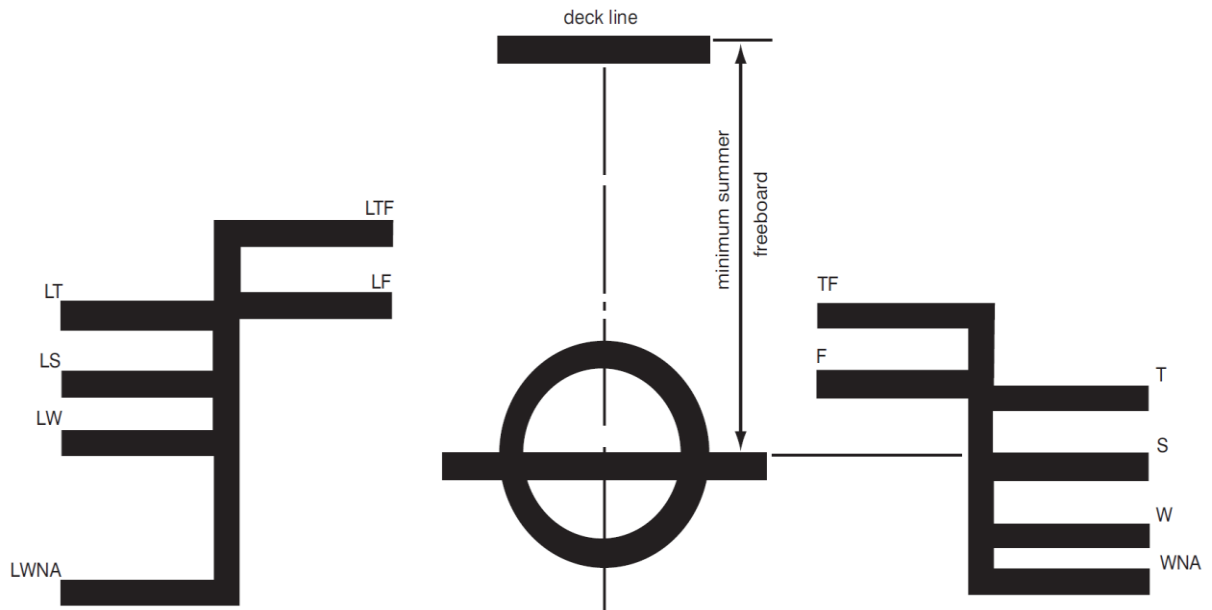


Figure 2 - Timber load line mark and lines to be used with this mark

Image credits: IMO

Timber cargo vessels will have a second set of Load Lines marked similar to the ordinary load lines positioned 540mm abaft the centre load line ring.⁶⁰

The letter marking of the timber load line are different and are prefixed by 'L' meaning 'Lumber'.

LS – Lumber Summer: Its upper edge marks the summer salt water timber load line. It is situated at a specified level above the load line.

LW – Lumber Winter: It is $\frac{1}{36}$ th of the lumber summer draft below LS.

LT – Lumber Tropical: It is $\frac{1}{48}$ th of the lumber summer draft above LS.

LWNA – Lumber Winter North Atlantic: It is at the same level as WNA.

LF – Lumber Fresh water: It is situated above the LS by an amount equal FWA.

LTF – Lumber Tropical Fresh Water: It is positioned above LT by an amount equal to FWA.

⁶⁰ The LL Convention (n 7) Regulation 6(3).

The world has been divided into various “load line zones” and seasonal areas in accordance with Annex II of the LL Convention, as amended. These zones are shown in a chart carried on board the vessel. These zones govern the depth to which a vessel may be loaded. A vessel passing in the course of her voyage from one zone or area into another zone or area, in which another load line applies, must have been loaded in such a way that when she arrives in the zone or area in question, her mean draught will not be in excess of the maximum draught allowed in the second zone or area.

2. NECESSITY FOR THE IMPLEMENTATION OF THE LL CONVENTION, AS AMENDED

With effect from 7 July 2004 the LL Convention and the Protocol were extended to the Turks and Caicos Islands by the UK but have not been transposed into domestic law.

The Turks and Caicos Islands have a limited registry⁶¹ and may only register, as Islands Ships (as defined by the Merchant Shipping Ordinance), passenger ships not intended to be used or engaged in international voyages and ships no more than 400 GT (gross tonnes).⁶² On average 10 to 15 vessels are registered per year.⁶³

As explained, load lines assist making ships safer by indicating the maximum depth to which a ship may be submerged and loaded depending on the geographic conditions that may be prevailing. The LL Convention, as amended, was adopted to ensure universal and standard application of load lines in all ships, to which it applies,⁶⁴ engaged in international voyages.⁶⁵ Given that the UK has extended the LL Convention and the Protocol to the Turks and Caicos Islands, in respect of any Islands Ship which falls under the LL Convention, as amended, the Turks and Caicos Islands will have to ensure that the safety standards are met. There may be a small number of Islands Ships that will need to comply with LL Convention, as amended, given the registry limitations. Nevertheless, as a country that relies heavily on imports and therefore, receives ships engaged in international voyages, the Turks and Caicos Islands must ensure that the laws and other resources are in place to ensure that these ships are in compliance with the safety and other standards contained in the LL Convention, as amended, and are safely and properly loaded having regard to the zone of its next port, before proceeding from a Turks and Caicos Islands port.

⁶¹ Merchant Shipping (Categorisation of Registries of Relevant British Possessions) Order 2003 (10 June 2003 entered in force) UKSI 2003/1248 Article 4 and the Schedule.

⁶² Merchant Shipping (Categorisation of Registries of Relevant British Possessions) (Amendment) Order 2013 (12 June 2013 entered in force) UKSI 2013/1115 Article 2.

⁶³ Email from Director of Maritime, Maritime Department, Ministry of Tourism, Environment, Heritage and Culture to Principal Crown Counsel - International, Attorney General's Chambers (22 January 2019).

⁶⁴ The LL Convention (n 7) Article 5.

⁶⁵ This is subject to the exceptions contained in Article 5 of the LL Convention and any exemptions made in accordance with Article 6 of the LL Convention.

The LL Convention, as amended, is one of the six core IMO instruments which are covered by the IMO Instruments Implementation Code (III Code) which sets out the standard which will be employed in the Mandatory Audit Scheme intended to provide Member States with a comprehensive and objective assessment of how effectively they administer and implement those mandatory IMO instruments.⁶⁶ By Assembly Resolution A.1083(28), adopted on 4 December 2013, the LL Convention was amended to include provisions relating to the Mandatory Audit Scheme. The UK is set to be audited within the next year. The Turks and Caicos Islands as an UKOT will be included in the audit.

⁶⁶ International Maritime Organization, 'Member State Audit Scheme & Implementation Support: Audit Scheme' (2019) <<http://www.imo.org/en/OurWork/MSAS/Pages/AuditScheme.aspx>> accessed 29 January 2019.

3. THE MERCHANT SHIPPING (LOAD LINES) REGULATIONS 2019

Sections 67⁶⁷ and 68⁶⁸ of the Merchant Shipping Ordinance empowers the Governor⁶⁹ to make regulations to secure the safety of Islands ships and persons on them. The LL Convention, as

⁶⁷ So far as is material, section 67 provides:

- PART V
SAFETY AND ENVIRONMENTAL PROTECTION
- Safety and health on ships and control of pollution from ships**
67. (1) The Governor may make Regulations—
- (a) to secure the safety of Islands ships and persons on them;
 - (b) to protect the health of persons on Islands ships;
 - (c) to secure the safety of other ships and persons on them while they are within Islands waters;
 - (d) to protect the health of persons on ships other than Islands ships while they are in Islands waters; and
 - (e) to prevent, reduce or minimize pollution from Islands ships and other ships while they are in Islands waters.
- (2) Regulations under subsection (1)—
- (a) shall not apply in relation to a foreign ship while it is exercising a right of innocent passage, or to persons on it while it is exercising such a right; but
 - (b) shall apply in relation to such a ship, and persons on it, even though the ship is exercising such a right, to the extent that the regulations give effect to provisions of an international agreement, ratified by the United Kingdom on behalf of the Islands.
- ...
- (6) Regulations under the foregoing provision of this section may provide—
- (a) for the Minister or another person to grant, on terms which the Minister or other person may specify, of an exemption for a class of cases or an individual case from a specified provision of the regulations; and
 - (b) for the alteration or cancellation of an exemption granted under the regulations.
- (7) Regulations under the foregoing provisions of this section may provide—
- (a) that where prescribed by the regulations a ship shall be liable to be detained and that any enactment providing for the enforcement of ships shall have effect, with any modifications prescribed by the regulations, in relation to the ship;
 - (b) that a contravention of the regulations shall be an offence punishable with imprisonment for two years and a fine, or such lesser penalty as is prescribed by the regulations; (c) that where prescribed by the regulations, prescribed persons shall each commit an offence created by virtue of sub-paragraph (b).

⁶⁸ So far as is material, section 68 provides:

Provisions supplementary to section 67

68. (1) Regulations under section 67 may—

- (a) be made so as to apply outside the Islands...
- (2) The Governor may, by regulations repeal or modify a provision of another enactment in force in the Islands, or that applies to Islands ships, as he considers appropriate in connection with a repeal or modification made or to be made under section 67(1)(a).
- (3) Nothing in section 67(4) to (6), or in subsection (1) shall be construed as prejudicing the generality of section 67(1).

⁶⁹ The executive authority of the Turks and Caicos Islands is exercised on behalf of Her Majesty Queen Elizabeth the Second, by the Governor in accordance with section 23 of the Constitution of the Turks and Caicos Islands. The Governor's functions and powers are contained in Section II of the Constitution of the Turks and Caicos Islands.

amended, form the basis of these Regulations. In order to implement the LL Convention, as amended, these Regulations have been prepared.

The Merchant Shipping (Load Lines) Regulations 2019 in setting out the Convention framework also create offences and provide for penalties in respect of non-compliance with the requirements of the LL Convention, as amended.

For the purposes of the Merchant Shipping (Load Lines) Regulations 2019, regulation 2(2) clarifies that a reference to a Convention Regulation is, unless otherwise stated, a reference to a Regulation in an Annex to the 1966 Convention. A reference to the internal enumerated regulations of the Merchant Shipping (Load Lines) Regulations 2019 is not capitalized, unless at the beginning of a sentence.

The font, paragraphing, spacing and styles found in the Merchant Shipping (Load Lines) Regulations 2019 follows that presently used by the Legislative Drafting Division of the Attorney General's Chambers of the Turks and Caicos Islands Government. In accordance with the drafting practice of the Turks and Caicos Islands, the full text of International Instruments is not included in legislative instruments which transpose the provisions of such instruments into domestic law.

The LL Convention and the Protocol are available on the FCO treaties database (<http://treaties.fco.gov.uk/treaties/treaty.htm>). The text of the Resolutions amending the Convention and Protocol may also be found on the FCO treaties database (<http://treaties.fco.gov.uk/treaties/treaty.htm>).

Part I - Preliminary

Part I contains preliminary matters such as the definitions in regulation 2. Regulation 3 recognizes the current limitations on manpower and expertise within the Turks and Caicos Islands and enables the Minister responsible for maritime affairs⁷⁰ to authorize any person (including recognized organizations) to act as Assigning Authority on his behalf as allowed under Article 13 and Convention Regulation 2-1 of Annex 1 of the LL Convention, as amended.

Regulation 4 is a combination of Articles 4, 5 and 7 and Convention Regulation 2(7) of the LL Convention, as amended, setting out the scope of application including exceptions. It indicates that these regulations apply to all Islands ships⁷¹ with certain exceptions. They also apply to all sea-going foreign ships within Turks and Caicos Islands waters⁷² to which the LL Convention, as amended, applies.⁷³ It does not apply to ships not subject to the LL Convention, whose presence within Turks and Caicos Islands waters is solely on account of a deviation due to force majeure.

Regulation 5 makes applicable the Convention Regulations in Annex I, Annex II and Annex III of the LL Convention, as amended, to Islands ships and non-Islands ships engaged on international voyages while they are in Turks and Caicos Islands waters. Following the UK approach, regulation 5 provides that amendments to the LL Convention, as amended, shall have automatic application in the Islands (once it is effective in the UK).

Regulation 6 makes provisions for general compliance of a ship before proceeding to sea by being surveyed, marked and in possession of a valid Convention certificate (as defined) and reflects Article 3 of the LL Convention, as amended.

⁷⁰ This is in line with the definition of Minister given in section 2 of the Merchant Shipping Ordinance.

⁷¹ Section 2 of the Merchant Shipping Ordinance provides that Islands ship means a ship registered in the Islands under that Ordinance.

⁷² In accordance with the definition of "Islands waters" in section 2(2) of the Merchant Shipping Ordinance.

⁷³ This is subject to the exceptions contained in Article 5 of the LL Convention and any exemptions made in accordance with Article 6 of the LL Convention.

Regulation 7 reflects Article 6 of the LL Convention, as amended, and gives the Minister responsible for maritime affairs power to make exemptions in respect of certain ships in specified circumstances and in so doing the ability to impose safety requirements as he deems fit. Regulation 8 reflecting Article 8 of the LL Convention, as amended, allows for equivalents and departure from applicable Convention requirements (as defined) in certain circumstances. In respect of repairs, alterations and modifications, Regulation 10, which reflects Article 10, provides for the continuing compliance by the ship with the requirements previously applicable to the ship.

In accordance with Articles 11 and 12 of the LL Convention, as amended, regulations 10 and 11 require ships to abide by the load line requirements applicable to them when sailing in different zones and areas with regard to its submersion in different density of waters.

Part II – Surveys and Certificates

Part II provides for surveys and certification and sets out comprehensive provisions in line with Articles 13-20 of the LL Convention, as amended. Regulation 12 makes provisions for three types of surveys: an initial survey before a ship is put in service, a renewal survey at intervals not exceeding 5 years and an annual survey within three months before or after each anniversary date of the certificate. The requirement that the condition of the ship is maintained after the survey and that no material alteration is made without the approval of the Assigning Authority that issued the Convention certificate is reflected in regulation 13. Regulation 14 provides for the issuance of a Convention certificate, being either an International Load Line Certificate or International Load Line Exemption Certificate. Regulation 15 empowers the Minister to make requests to another Contracting Government (as defined) to survey and issue an International Load Line Certificate and sets out the procedure to be followed in respect of requests by another Contracting Government to survey and issue an International Load Line Certificate on his behalf. Regulation 16 mandates that the form of Convention certificates must reflect that found in Annex III to the LL Convention, as amended.

Regulation 17 encapsulates Article 19(1) and (2) and provides that an International Load Line Certificate is to be issued for a period not exceeding 5 years. It also makes provision for validity of the certificate in certain cases during the renewal process.

Provisions for extension of the validity of an International Load Line Certificate, in specified circumstances and for specified duration, and the circumstances when a certificate shall be and cease to be valid, in accordance with Article 19(3) to (9) and Article 19(11) are contained in regulation 18. Article 19(10) relating to an International Load Line Exemption Certificate and its duration and validity is reflected in regulation 19.

Regulation 20 provides for the procedure to be adopted in respect of an Islands ship when the Assigning Authority determines that, after the issuance of a Convention certificate, it is deficient in meeting the requirements of Annex I to the LL Convention, as amended, or it is not fit to proceed to sea without presenting an unreasonable threat of harm to human life or the marine environment. This includes advising the owner or master of the corrective measures to be undertaken and possibly suspending any certificate issued until this is done.

Regulation 21 specifies that the Minister may cancel an International Load Line Certificate in respect of an Islands ship where he is satisfied that—

- a) the certificate was issued on false or erroneous information;
- b) information on the basis of which freeboards were assigned to the ship was incorrect in a material particular; or
- c) the ship ceases to comply with the conditions of assignment relating to it.

It also provides for the situations which may lead to the surrender of Convention certificates.

Regulation 22 reflects Article 20 and stipulates that certificates issued by a Contracting Government in accordance with the LL Convention, as amended, are to be accepted by the Minister, including those issued at his request in respect of an Islands ship.

In accordance with Article 21, regulation 23 stipulates the control which may be exercised by officers authorised by the Minister over non-Islands ships holding a Convention certificate when in port in the Turks and Caicos Islands. This includes verifying that such a certificate is on board the ships and determining that specified conditions have been met.

Part III – Marks and Conditions of Assignment

Part III contains provisions relating to load lines and marks and the conditions of assignment of freeboards. It sets out and references some of the specific technical requirements contained in the Annexes to the LL Convention, as amended, and the Protocol relating to marking, its position and the method of marking. Convention Regulations 8 and 9 of Annex I to the LL Convention, as amended, are reflected in regulation 24 relating to the owner and master's duty to keep the ship marked and not conceal, remove, alter, deface or obliterate same without authorization from the Assigning Authority.

Convention Regulation 10 of Annex I to the LL Convention, as amended, is replicated in regulation 25 which provides that the record of conditions of assignment must be provided by the Assigning Authority to the ship and be retained on board at all times and available for inspection by authorized persons on request.

Part IV - Miscellaneous

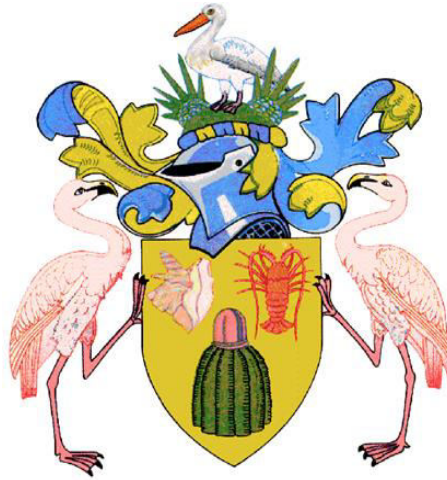
Part IV makes provision for offences, casualties, detention and related matters. Regulation 26 provides for offences and the punishment that they attract which may be fines, imprisonment or both. The fines are expressed as minimums rather than maximums which gives the court the discretion to impose a higher fine if warranted.

Article 23 of the LL Convention, as amended, requires contracting States to undertake casualty investigation and this is reflected in regulation 27, which allows the Minister to appoint a person as an inspector of marine casualties for this purpose. Regulation 27 provides that formal investigations into casualties are to be done by a Board and provides for the composition of the Board and its powers, including cancellation of a ship officer's certificate, making an award and reporting to the Minister. It also provides that where the Minister judges that such an investigation may assist in determining whether any changes are needed to the LL Convention, as amended, he shall provide the findings of such investigation to the IMO.

Regulation 29 sets out mechanisms of redress from an investigation and regulation 30 provides the rules applicable to investigations and appeals. Detailed provisions relating to the powers of inspectors are outlined in regulation 31.

The ability to detain ships in respect of non-compliance with specified requirements of the Regulations and the consequences of acting in conflict with a detention notice is provided for in regulations 32 and 33. Regulation 34 allows for redress by means of arbitration where there has been detention and also provides that an arbitrator when considering the validity of the basis of an opinion which grounded a detention notice shall have the same powers of an inspector in relation to premises and ships as set out regulation 31. Lastly, regulation 35 provides for compensation where there is an invalid detention of a ship.

APPENDIX 1 – MERCHANT SHIPPING (LOAD LINES) REGULATIONS 2019



**CHAPTER 6.02
MERCHANT SHIPPING ORDINANCE**

**MERCHANT SHIPPING
(LOAD LINES) REGULATIONS 2019**
Subsidiary Legislation

**MERCHANT SHIPPING
(LOAD LINES) REGULATIONS 2019**

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MERCHANT SHIPPING (LOAD LINES) REGULATIONS

– SECTIONS 67 AND 68

*(Legal Notice of 2019)***Commencement***[xx xxxx 2019]*

PRELIMINARY

Short title

1. These Regulations may be cited as the Merchant Shipping (Load Lines) Regulations 2019.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires—

“1966 Convention” means the International Convention on Load Lines 1966 as modified by the 1988 Protocol as amended and any amendments that may come into effect for the Turks and Caicos Islands;

“1988 Protocol” means the Protocol of 1988 relating to the 1966 Convention as amended and any amendments that may come into effect for the Turks and Caicos Islands;

“alteration” includes deterioration;

“amidships” in relation to a ship means the middle of the ship’s length;

“Annex” has the meaning given to it in regulation 5;

“anniversary date” in relation to a certificate means the day and the month of each year which corresponds to the date of expiry of the relevant certificate;

“annual survey” means a survey of a ship required under regulation 12(1)(c);

“applicable Convention requirements” means the requirements of the 1966 Convention, except where regulation 4(4) applies;

“appropriate load line” means the line directed to be marked on a ship indicating the maximum depth to which a ship may be loaded in a particular zone or area and seasonal period (as defined in Annex II) and which is calculated in accordance with Annex 1;

“appropriate marks” means the appropriate load lines, the deck-line and the load line mark;

“Assigning Authority” has the meaning given to it in regulation 3;

“conditions of assignment” means the conditions relating to construction, arrangement and stability with which a ship must comply in order to be assigned freeboards;

“constructed” means that the keel of the ship has been laid or is at a similar stage of construction;

- “Contracting Government” means the Government of a State which is a party to the 1966 Convention or to the 1988 Protocol;
- “Convention certificate” means an International Load Line Certificate or an International Load Line Exemption Certificate;
- “Convention country” means a country or territory which is either—
- (a) a country the Government of which is party to the 1966 Convention or to the 1988 Protocol, or
 - (b) a territory to which the 1966 Convention or the 1988 Protocol extends whether or not it is subject to the amendments or reservations to either instrument;
- “deck-line” means the line marked on a ship, the position of which is ascertained in accordance with the provisions of Annex 1;
- “existing ship” means a ship which is not a new ship;
- “fishing vessel” means a ship used for catching fish, whales, seals, walrus or other living resources of the sea;
- “flag State” in relation to a ship, means the State whose flag the ship is entitled to fly;
- “freeboard” means the distance measured vertically downwards at amidships from the upper edge of the deck-line to the upper edge of the related load line;
- “Government” means the Government of the Turks and Caicos Islands;
- “International Load Line Certificate” means an International Load Line Certificate issued under the 1966 Convention;
- “International Load Line Exemption Certificate” means an International Load Line Exemption Certificate issued under the 1966 Convention;
- “international voyage” means a voyage between—
- (a) a port in the Turks and Caicos Islands and a port outside the Turks and Caicos Islands; or
 - (b) a port in a Convention country and a port in any other country or territory (whether a Convention country or not) which is outside the Turks and Caicos Islands;
- “length” in relation to a ship means length as defined by the 1966 Convention;
- “load line” means the line marked on a ship indicating the maximum depth to which a ship may be loaded;
- “load line mark” means a ring with a width of 25 millimetres and an outer diameter of 300 millimetres and a horizontal line with a width of 25 millimetres and a length of 450 millimetres, the upper edge of which bisects the ring, and both of which are placed on the side of a ship at amidships port and starboard such that the assigned summer freeboard corresponds to the distance between the upper edge of the horizontal line and the upper edge of the deck-line;
- “Islands” means the Turks and Caicos Islands and includes the Territorial Sea;
- “Islands ship” means a ship registered in the Turks and Caicos Islands under the Merchant Shipping Ordinance;
- “Islands waters” has the meaning given in section 2 of the Merchant Shipping Ordinance;

“Minister” means the Minister with responsibility for maritime affairs in the Turks and Caicos Islands;

"new ship" means a ship whose keel is laid, or which is at a similar stage of construction, on or after the date of coming into force of the 1966 Convention, or the 1988 Protocol for any State not also a party to the 1966 Convention, for each Contracting Government;

“non-Islands ship” means a ship that is not registered in the Turks and Caicos Islands;

“Organization” means the International Maritime Organization;

“pleasure vessel” has the meaning given in section 2 of the Merchant Shipping Ordinance;

“renewal survey” means a survey of a ship required under regulation 12(1)(b);

“sea” means the sea outside the seaward limits of Turks and Caicos Islands territorial sea established by articles 3 and 4 of the Turks and Caicos Islands (Territorial Sea) Order 1989, as amended;

“valid” in the context of an International Load Line Certificate or an International Load Line Exemption Certificate, means in force.

(2) In these Regulations a reference to a Convention Regulation in an Annex is, unless otherwise stated, a reference to a Regulation in an Annex to the 1966 Convention; and

(3) For the purposes of these Regulations a reference in a regulation to a numbered subregulation is, unless otherwise stated, a reference to the subregulation of that number in that regulation.

Assigning Authorities

3. (1) In these Regulations, “Assigning Authority” means the Minister or any person authorised by the Minister.

(2) Authorisation under subregulation (1) may be given conditionally or unconditionally.

(3) Where the Minister has authorised any person to act as the Assigning Authority that person must comply with Convention Regulation 2-1 of Annex I (authorisation of recognized organizations).

(3) The Assigning Authority must assign freeboards to an Islands ship in accordance with the requirements of these Regulations.

(4) The Assigning Authority must in particular—

- (a) determine the particulars of the freeboards to be assigned;
- (b) determine which of the load lines described in Annex I are to be marked on the sides of the ship in accordance with the requirements of that Annex;
- (c) determine the position where the appropriate marks are to be so marked; and
- (d) complete a record of the conditions of assignment.

(6) Without prejudice to the generality of subregulation (2), conditions may impose limitations on any person's authorisation relating to—

- (a) individual ships;
- (b) classes of ships; and
- (c) the extent of any survey to be carried out by that person.

(7) The Minister may direct, in relation to an individual case or to a class of cases, that a survey, or part of a survey, is carried out by the Minister and not by another Assigning Authority.

(8) An Assigning Authority other than the Minister is not to be regarded as the servant or agent of the Government or as enjoying any status, immunity or privilege of the Government and its property is not to be regarded as property of, or held on behalf of, the Government.

Application

4. (1) Subject to subregulation (2), these Regulations apply to—

- (a) Islands ships engaged on international voyages, and
- (b) Non-Islands ships while they are within Islands waters and engaged on international voyages.

(2) These Regulations do not apply to —

- (a) ships of war;
- (b) new ships of less than 24 metres in length;
- (c) existing ships of less than 150 gross tons;
- (d) pleasure vessels;
- (e) fishing vessels;
- (f) ships solely navigating—
 - (i) the Great Lakes of North America and the River St. Lawrence as far east as a rhumb line drawn from Cap des Rosiers to West Point, Anticosti Island, and, on the north side of Anticosti Island, the meridian of longitude 63 degrees W;
 - (ii) the Caspian Sea; or
 - (iii) the Plate, Parana and Uruguay Rivers as far east as a rhumb line drawn between Punta Rasa (Cabo San Antonio), Argentina, and Punta del Este, Uruguay; and
- (g) a Non-Islands ship which was not subject to the provisions of the 1966 Convention at the time of its departure on any voyage whose presence within Islands waters is solely on account of any deviation from its intended voyage due to stress of weather or any other cause of force majeure.

(3) Subject to subregulation (5), a ship must comply with Annex I.

(4) Where an existing ship requires a reduction in freeboard, that ship must comply with all the requirements under these Regulations applicable to new ships.

(5) New ships constructed on or after 21st July 1968 but before 1st January 2005 must comply with the requirements in Annex I to the 1966 Convention which were applicable to such ships engaged on international voyages and as they applied immediately before 1st January 2005.

(6) Any amendment to the 1966 Convention which relates to the structure of a ship applies only to ships the keels of which are laid, or which are at a similar stage of construction, on or after the date on which the amendment comes into force.

(7) In applying these Regulations, the Minister must give due regard to any deviation or delay caused by any ship owing to stress of weather or any other cause of force majeure.

Ambulatory reference

5. (1) In these Regulations, Annex I, Annex II and Annex III of the 1966 Convention will apply to all Islands ships and all other ships engaged on international voyages while they are in Islands waters and any reference to Annex I, Annex II or Annex III is to be construed—

- (a) as a reference to that Annex as modified from time to time;
- (b) if that Annex is replaced by another instrument, as a reference to that instrument.

(2) For the purposes of subregulation (1) an Annex is modified if—

- (a) omissions, additions or other alterations to the text take effect in accordance with Article 29 of the 1966 Convention or with Article VI of the 1988 Protocol; or
- (b) supplementary provision made under Article 29 of the 1966 Convention or under Article VI of the 1988 Protocol takes effect.

(3) A modification to or a replacement of an Annex by virtue of subregulation (1) has effect at the time such modification or replacement comes into force in accordance with paragraph (4) of Article 28 of the 1966 Convention or Article VI of the 1988 Protocol and has effect in the United Kingdom.

(4) No modification or replacement of a reference to an Annex by virtue of subregulation (1) affects any right or liability arising before the date on which the modification or replacement has effect in the Turks and Caicos Islands.

(5) This regulation does not apply to regulation 4(5).

General compliance

6. (1) Subject to subregulation (2), a ship must not proceed, or attempt to proceed, to sea unless—

- (a) it has been surveyed in accordance with Part II of these Regulations;
- (b) it is marked with the appropriate marks where required;

- (c) it has a valid Convention certificate;
- (d) it complies with the conditions of assignment applicable to it; and
- (e) the information required under Convention Regulation 10 of Annex I is provided by the owner of the ship to the master.

(2) Subregulation (1) does not apply to a non-Islands ship in respect of which a valid Convention certificate is produced.

(3) An Assigning Authority may assign a freeboard greater than the minimum freeboard prescribed by Chapter III of Annex 1.

Exemptions

7. (1) Subject to subregulation (2) below the Minister may exempt from these Regulations —

- (a) ships engaged on an international voyage between near neighbouring ports so long as —
 - (i) it remains on such voyage; and
 - (ii) the Minister and the governments of the States in which such ports are situated are satisfied that the sheltered nature or conditions of such voyage between such ports make it unreasonable or impracticable to apply the provisions of these Regulations;
- (b) a ship which embodies features of a novel kind of research into the development of those features and their incorporation in ships engaged on international voyages may be seriously impeded if the ship had to comply with all the requirements of these Regulations; and
- (c) any ship which does not normally engage on international voyages but is, in exceptional circumstances, required to undertake a single international voyage.

(2) An exemption under subregulation (1) may be granted subject to such safety requirements as the Minister thinks fit to ensure the overall safety of the ship.

(3) Where an exemption is granted subject to safety requirements, the exemption ceases to have effect if those requirements are not complied with.

(4) Where any exemption is granted the Minister must communicate to the Organization particulars of the exemption and the reasons thereof.

Equivalentents

8. (1) The Minister, or any other Assigning Authority with the Minister's approval, may—

- (a) allow any fitting, material, appliance or apparatus to be fitted in a ship, or allow other provisions to be made in a ship, if satisfied by trial or otherwise that such fitting, material, appliance, apparatus or provision is at least as effective as that so required by the applicable Convention requirements; or

- (b) allow in an exceptional case departure from the applicable Convention requirements on condition that the freeboards to be assigned to the ship are increased to such an extent as to satisfy the Minister that the safety of the ship and protection afforded to the crew will be no less effective than would be the case if the ship fully complied with those requirements and there were no such increase of freeboards.

(2) The Minister where he allows such provisions to be made in a ship, must communicate to the Organization particulars thereof.

Repairs, alterations and modifications

9. (1) A ship which undergoes repairs, alterations, modifications and any related outfitting must continue to comply with the requirements previously applicable to the ship.

(2) Repairs, alterations and modifications of a major character and any related outfitting made to an existing ship must meet such requirements for a new ship as the Assigning Authority deems reasonable and practicable.

(3) A ship which has undergone an alteration will continue to comply with its conditions of assignment if—

- (a) amended freeboards appropriate to the condition of the ship have been assigned, the ship has been marked with appropriate load lines and a new International Load Line Certificate has been issued to the owner of the ship; or
- (b) the alteration has been inspected by an Assigning Authority and the Assigning Authority is satisfied that the alteration is not such as to require any change in the freeboards assigned to the ship, and full particulars of the alteration have been endorsed by the Assigning Authority on the record referred to in regulation 25.

Zones and areas

10. A ship must comply with the load line requirements applicable to it under these Regulations in the zones and areas described in Annex II.

Submersion

11. (1) Except as provided for in subregulations (3) and (4), a ship must not be so loaded that the appropriate load lines on the sides of the ship—

- (a) are submerged when the ship is in salt water and has no list; or
- (b) would be submerged if the ship were in salt water and had no list.

(2) A ship must not proceed to sea when it is in contravention of subregulation (1).

(3) When a ship is in fresh water of a density of one tonne per cubic metre the appropriate load line may be submerged by the amount of the fresh water allowance shown on the International Load Line Certificate.

(4) When a ship is in water of a density other than one tonne per cubic metre, an allowance is to be made proportional to the difference between salt water density of 1.025 tonnes per cubic metre and the actual density.

SURVEYS AND CERTIFICATES

Initial, renewal and annual surveys

12. (1) A Islands ship must be subjected to—
- (a) an initial survey before the ship is put into service, which includes a complete inspection of its structure and equipment to ensure the ship complies with the applicable Convention requirements;
 - (b) a renewal survey at intervals not exceeding five years (except where regulation 17(3) and regulations 18(4) and (7) apply) to ensure the ship complies with the applicable Convention requirements; and
 - (c) an annual survey within three months before or after each anniversary date of the Convention certificate to ensure that—
 - (i) alterations have not been made to the hull or superstructures which would affect the calculations determining the position of the load line;
 - (ii) the fittings and appliances for the protection of openings, guard rails, freeing ports and means of access to crew's quarters are maintained in an effective condition;
 - (iii) the freeboard marks are correctly and permanently indicated; and
 - (iv) the information required by Convention Regulation 10 of Annex I is provided to the master of the ship.
- (2) After a satisfactory annual survey, the Assigning Authority must endorse the Convention certificate accordingly.

Maintenance of conditions after survey

13. The owner and master must ensure that after completion of any survey required under regulation 12, no material alteration is made to the ship, its structure, equipment, arrangements, material or scantlings covered by the survey without the approval of the Assigning Authority that issued the Convention certificate.

Issue of Convention certificates

14. Upon satisfactory completion of an initial or renewal survey to a Islands ship, and upon payment of any appropriate fee, the Assigning Authority must issue a Convention certificate in respect of the ship.

Issue or endorsement of International Load Line Certificates by another Government and on behalf of other Contracting Governments

15. (1) The Minister may request a Contracting Government—
- (a) to survey a Islands ship to which these Regulations apply, and

- (b) to issue, or authorise the issue of, or endorse, or authorise the endorsement of, an International Load Line Certificate in accordance with the requirements of the 1966 Convention in respect of that ship if the Contracting Government is satisfied that the ship complies with the applicable Convention requirements.

(2) Where an International Load Line Certificate is issued pursuant to subregulation (1) the Minister is to be treated as the Assigning Authority in relation to it.

- (3) When requested to do so by a Contracting Government, the Minister—
 - (a) may cause a survey to be carried out in respect of a ship to which these Regulations apply, and
 - (b) must, subject to payment of any appropriate fee, issue or endorse an International Load Line Certificate in respect of that ship, in accordance with the applicable Convention requirements, if the Minister is satisfied that the ship complies with the applicable Convention requirements.

(4) An International Load Line Certificate issued pursuant to subregulation (3) must contain a statement that it has been issued at the request of the Contracting Government and that it has the same effect as a certificate issued by the Contracting Government who made the request referred to in subregulation (3).

(5) The Minister must send as soon as possible to the Contracting Government who made the request referred to in subregulation (3) a copy of—

- (a) the International Load Line Certificate,
- (b) the survey report used for computing the freeboard, and
- (c) a copy of the computations.

(6) The Minister must not issue an International Load Line Certificate in respect of a ship which—

- (a) is registered in a country whose government is not a Contracting Government, or
- (b) is not registered, but is entitled to fly the flag of a country whose government is not a Contracting Government.

Form of Convention certificates

16. A Convention certificate must be in the form prescribed by Annex III.

Duration and validity of an International Load Line Certificate

17. (1) Subject to the following subregulations and to regulation 18, the duration of an International Load Line Certificate is for such period as is specified in the certificate, not exceeding five years beginning with the date of completion of the initial or renewal survey.

(2) Subject to regulation 18(9), where a renewal survey is completed within three months before the expiry of the existing certificate, the new certificate is valid

for a period beginning with the date of completion of the renewal survey and ending on a date which does not exceed five years from the expiry of the existing certificate.

(3) Subject to regulation 18(9), where a renewal survey is completed after the expiry of the existing certificate, the new certificate is valid for a period beginning with the date of completion of the renewal survey and ending on a date which does not exceed five years from the expiry of the existing certificate.

(4) Subject to regulation 18(9), where a renewal survey is completed more than three months before the expiry of the existing certificate, the new certificate is valid for a period beginning with the date of completion of the renewal survey and ending on a date which does not exceed five years from the date of completion of that renewal survey.

Extension of periods of validity of an International Load Line Certificate

18. (1) If an International Load Line Certificate is issued for a period of less than five years, the Assigning Authority may extend the validity of the certificate beyond the expiry date to a period not exceeding five years beginning with the date of completion of the initial or renewal survey, provided that the annual surveys applicable when a certificate is issued for a period of five years are carried out as appropriate.

(2) If, after the renewal survey, a new certificate cannot be issued to the ship before the expiry of the existing certificate, the Assigning Authority may extend the validity of the existing certificate for a period which must not exceed five months, if the Assigning Authority is satisfied that there have been no alterations in the structure, equipment, arrangements, materials or scantlings which affect the ship's freeboard.

(3) Where an extension is granted pursuant to subregulation (2), the Assigning Authority must endorse the extension on the existing certificate.

(4) If, at the time when a certificate expires, a ship is not in the port in which it is to be surveyed, the Assigning Authority may extend the validity of the certificate for a period no longer than three months beginning with the date of expiry of the certificate if—

- (a) the Assigning Authority is satisfied that it is proper and reasonable to extend the validity of the certificate for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and
- (b) the Assigning Authority, if not the Minister, has the authority of the Minister to grant such an extension.

(5) Where a ship has been granted an extension pursuant to subregulation (4), on its arrival in the port in which it is to be surveyed, the ship must be subject to a renewal survey.

(6) Subject to subregulation (9), a certificate issued following a renewal survey referred to in subregulation (5) must have an expiry date not exceeding five years from the date of expiry of the previous certificate before the extension was granted pursuant to subregulation (4).

(7) Where a certificate has been issued to a ship engaged on short voyages and the validity of that certificate has not been extended pursuant to subregulation (1), (2) or (4), the Assigning Authority may extend the validity of that certificate for a period of not more than one month beginning with the date of its expiry.

(8) Subject to subregulation (9), where a renewal survey is completed following an extension granted pursuant to subregulation (7), the Assigning Authority must ensure that the new certificate is valid for a period ending on a date which does not exceed five years from the expiry of the previous certificate before the extension was granted.

(9) In special circumstances, as determined by the Assigning Authority, a new certificate need not be dated from the expiry of the existing certificate as required by subregulations (4) and (6) to (8) and may instead be valid for a period ending on a date which is not more than five years from the date of completion of the renewal survey.

(10) If an annual survey is completed before the period specified in regulation 12(1)(c) then—

- (a) the Assigning Authority must endorse a new anniversary date on the certificate which is not more than three months later than the date on which the annual survey was completed;
- (b) the Assigning Authority must complete the subsequent annual survey at the intervals prescribed by regulation 12(1)(c) using the new anniversary date;
- (c) the Assigning Authority may permit the expiry date to remain unchanged provided one or more annual surveys are carried out so that the maximum intervals between surveys prescribed by regulation 12(1)(c) are not exceeded.

(11) An International Load Line Certificate issued in respect of a Islands ship ceases to be valid where—

- (a) material alterations have taken place in the hull or superstructures such as would necessitate the assignment of an increased freeboard;
- (b) the fittings and appliances mentioned in regulation 12(1)(c)(ii) are not maintained in an effective condition;
- (c) the certificate is not endorsed in accordance with regulation 12(2) to show the ship has been surveyed in accordance with regulation 12(1)(c);
- (d) the structural strength of the ship is lowered to such an extent that the ship is unsafe;
- (e) the ship ceases to be a Islands ship.

(12) In this regulation “short voyages” means voyages where neither the distance from the port in which a voyage begins and the final port of destination nor the return voyage exceeds 200 nautical miles.

Duration and validity of an International Load Line Exemption Certificate

19. (1) The duration of an International Load Line Exemption Certificate issued in respect of a ship to which regulation 7(1)(a) or 7(1)(b) applies, is for such period as specified in the certificate, not exceeding five years beginning with the date of completion of the initial survey or most recent renewal survey, as appropriate.

(2) The duration of an International Load Line Exemption Certificate issued in respect of a ship to which regulation 7(1)(c) applies, is limited to the single voyage for which it is issued.

(3) Except for regulation 17(1), regulations 17 and 18 apply in relation to an International Load Line Exemption Certificate as they apply in relation to an International Load Line Certificate.

Procedure to be adopted when a ship is deficient

20. (1) This regulation applies where an Assigning Authority determines that—

- (a) the condition of a Islands ship or its equipment does not correspond substantially with the requirements applicable to it under Annex I and in relation to which a Convention certificate has been issued in respect of that ship, or
- (b) an Islands ship is not fit to proceed to sea without presenting an unreasonable threat of harm to human life or the marine environment.

(2) In the circumstances described in subregulation (1), the Assigning Authority must advise the owner or master of the corrective action which in the opinion of the Assigning Authority is required to be taken.

(3) Where a Convention certificate has been issued in respect of the ship and is still valid, the Assigning Authority may suspend the validity of the certificate until the corrective action has been taken.

(4) Where the Assigning Authority suspends the validity of a certificate issued in respect of an Islands ship, it must immediately give notice in writing of such suspension—

- (a) to the owner of the ship, and
- (b) where the ship is in a port outside the Turks and Caicos Islands, to the appropriate maritime authorities of the country in which the port is situated.

(5) Where the owner of the ship is given notice of suspension, that owner must notify the master of the ship in question of the suspension.

(6) The requirement that the notification referred to in subregulation (4) must be in writing is satisfied where the text of a notification is—

- (a) transmitted by electronic means,
- (b) received in legible form, and
- (c) capable of being used for subsequent reference.

Cancellation of International Load Line Certificates and surrender of Convention certificates

21. (1) The Minister may cancel an International Load Line Certificate issued in respect of a Islands ship where the Minister is satisfied that—

- (a) the certificate was issued on false or erroneous information;
- (b) information on the basis of which freeboards were assigned to the ship was incorrect in a material particular; or
- (c) the ship ceases to comply with the conditions of assignment relating to it.

(2) Where the Minister proposes to cancel a certificate, the Minister must first notify the owner in writing, specifying the ground for the proposed cancellation.

(3) Subject to subregulation (4), the Minister must not cancel the certificate until the owner has been given a reasonable opportunity to make representations, and the Minister has considered any such representations made.

(4) Subregulation (3) does not apply where the Minister considers that urgent safety considerations require immediate cancellation of the certificate.

(5) The Minister may direct any Convention certificate issued under these Regulations which has expired, ceased to be valid, or been cancelled, to be surrendered.

(6) The requirement that the notification referred to in subregulation (2) must be in writing is satisfied where the text of a notification is—

- (a) transmitted by electronic means,
- (b) received in legible form, and
- (c) capable of being used for subsequent reference.

Acceptance of Convention certificates

22. (1) The Minister must accept a valid Convention certificate issued by a Contracting Government in respect of a non-Islands ship.

(2) The Minister must accept a valid Convention certificate issued in respect of a Islands ship by another Contracting Government under regulation 15(1).

Control of non-Islands ships holding a valid Convention certificate

23. (1) A non-Islands ship holding a valid Convention certificate is subject to the control of officers authorised by the Minister when it is in an Islands port.

(2) So far as is reasonable and practicable, the control that authorised officers may exercise over a non-Islands ship purporting to hold a valid Convention certificate when such ship is in an Islands port is for the purpose of verifying whether or not there is on board that ship a valid Convention certificate relating to it.

(3) If there is a valid International Load Line Convention certificate on board the ship, such control must be limited to the purpose of determining that—

- (a) the ship is not loaded beyond the limits allowed by the certificate;
- (b) the position of the load line of the ship corresponds with the certificate; and
- (c) the ship has not been so materially altered in respect of the matters set out in article 19(9)(a), (b) and (d) of the 1966 Convention that the ship is manifestly unfit to proceed to sea without danger to human life.

(4) If there is a valid International Load Line Exemption Certificate on board the ship, the control exercised must be for the purpose of determining that any conditions stipulated in that certificate are complied with.

(5) If control is exercised to determine the matters described under subregulation (3)(c), it must only be exercised in so far as it may be necessary to ensure that the ship does not sail until it can proceed to sea without danger to passengers or the crew.

(6) In the event of the control provided for in this regulation giving rise to intervention of any kind, the Minister must immediately inform the ship's flag administration or diplomatic representative of the ship's flag State in writing of the intervention and of all the circumstances in which the intervention was deemed necessary.

(7) The requirement that the notification referred to in subregulation (6) must be in writing is satisfied where the text of a notification is—

- (a) transmitted by electronic means,
- (b) received in legible form, and
- (c) capable of being used for subsequent reference.

MARKS AND CONDITIONS OF ASSIGNMENT

Authorisation of removal etc., of appropriate marks

24. After the appropriate marks have been made on a ship—

- (a) it is the duty of the owner and master to keep the ship so marked; and
- (b) the marks must not be concealed, removed, altered, defaced or obliterated except with the authority of the Assigning Authority.

Record of conditions of assignment

25. (1) A record containing the conditions of assignment required by the Assigning Authority must be provided by the Assigning Authority to the ship and be—

- (a) retained on board at all times, and
- (b) available for inspection by an authorised person on request.

(2) A ship ceases to comply with the conditions of assignment if the record is not on board and available for inspection in accordance with subregulation (1).

MISCELLANEOUS

Offences

26. (1) Any contravention of regulation 6(1)(a), (b), (d) or (e) is an offence by each of the master and the owner.

(2) Any contravention of regulation 6(1)(c) is an offence by the master.

(3) Any person who commits an offence under subregulations (1) and (2) is liable—

- (a) on summary conviction to a fine being not less than \$10,000; or
- (b) on conviction on indictment to a fine being not less than \$25,000.

(4) Any contravention of regulation 11(1) is an offence by each of the owner and master.

(5) Any person who commits an offence under subregulation (4) is liable—

- (a) on summary conviction to a fine being not less than \$10,000 and to such additional fine, not exceeding an amount calculated in accordance with subregulation (6), as the court thinks fit, having regard to the extent to which the earning capacity of the ship was increased by reason of the contravention, and
- (b) on conviction on indictment to a fine being not less than \$25,000.

(6) Any additional fine imposed under subregulation (5)(a) must not exceed \$2,000 for each complete centimetre by which—

- (a) in a case falling within regulation 11(1)(a), the appropriate load line on each side of the ship was submerged; or
- (b) in a case falling within regulation 11(1)(b), the appropriate load line on each side of the ship would have been submerged.

(7) In any proceedings for a contravention of regulation 11(1), it is a defence for the person charged to prove the contravention was due solely to deviation or delay and that the deviation or delay was caused solely by stress of weather or other circumstances which neither the master nor the owner nor the charterer (if any) could have prevented or forestalled.

(8) Any contravention of regulation 11(2) is an offence by the master and any other person who, having reason to believe that the ship is so loaded, sends, or is party to sending, the ship to sea.

(9) Any person who commits an offence under subregulation (8) is liable (without prejudice to any liability for a fine in respect of an offence under subregulation (4))—

- (a) on summary conviction to a fine being not less than \$10,000; or
- (b) on conviction on indictment to a fine being not less than \$25,000.

(10) Any contravention of regulation 24(a) is an offence by both the owner and the master and each is liable on summary conviction to a fine being not less than \$10,000.

(11) Any contravention of regulation 24(b) by any person is an offence and such person is liable on summary conviction to a fine being not less than \$10,000.

(12) It is a defence for a person charged with an offence under subregulation (10) or (11) to show that the person had reasonable excuse for the contravention.

(13) It is an offence to—

- (a) intentionally alter a certificate referred to in these Regulations;
- (b) falsely make a certificate referred to in these Regulations;
- (c) in connection with any survey required by these Regulations knowingly or recklessly furnish false information;
- (d) with intent to deceive, use, lend, or allow to be used by another, a certificate referred to in these Regulations; or
- (e) fail to surrender as directed a certificate required to be surrendered under regulation 21(5).

(14) Any person who commits an offence under subregulation (13) is liable—

- (a) on summary conviction to a fine being not less than \$10,000; or
- (b) on conviction on indictment to a fine being not less than \$25,000 or by imprisonment for a term of six months, or both.

Casualty Investigations

27. The Minister may, for the purpose of the investigation of any casualty involving an Islands ship or a non-Islands ship in Islands waters, to which the 1966 Convention applies, appoint a person as an inspector of marine casualties who will have the powers specified in regulation 31.

Formal investigation into casualties

28. (1) Whether or not an investigation into any casualty has been held under regulation 27, the Minister may cause a formal investigation to be held by a Board appointed for that purpose.

(2) A Board holding a formal investigation into a shipping casualty under sub-regulation (1) must consist of a judge of the Supreme Court or a magistrate who will be assisted by one or more assessors appointed by the Minister; such assessors being persons with requisite skills and knowledge in maritime matters.

(3) Where in any investigation, any question as to the cancellation or suspension of the certificate issued to an officer of a ship in pursuance of any regulations made under section 67 or 68 of the Merchant Shipping Ordinance is likely to arise, there must be not less than two assessors.

(4) If as a result of the investigation the Board is satisfied, with respect to any officer of a ship, that the officer—

- (a) was not fit to discharge his duties; or
- (b) was seriously negligent in the discharge of his duties,

and that it caused or contributed to the accident, the Board may cancel, or suspend any certificate issued to the officer under regulations made pursuant to 67 or 68 of the Merchant Shipping Ordinance or censure the officer, and if it cancels or suspends the certificate the officer must deliver it forthwith to Board or the Minister.

(5) If a person fails to deliver a certificate as required under sub-regulation (4) he commits an offence and is liable on summary conviction to a fine of \$2,000.

(6) Where a certificate has been cancelled or suspended under this regulation, the Minister, if of the opinion that the justice of the case requires it, may re-issue the certificate or, as the case may be, reduce the period of suspension and return the certificate, or may grant a new certificate of the same or a lower grade in place of the cancelled or suspended certificate.

(7) The Board may make such awards as it thinks just with regard to the costs or, as the case may be, expenses of the investigation, and with regard to the parties by whom those costs or expenses are to be paid, and any such award of the Board may, on the application of any party named in it, be made an order of the Supreme Court.

(8) Any costs or expenses directed by an award to be paid in full will be taxable.

(9) The Board must make a report on the investigation to the Minister.

(10) Where the Minister is of the view that the findings of an investigation may assist in determining whether any changes are needed to the 1966 Convention he must communicate to the Organization the particulars thereof.

Rehearing of and appeal from investigations

29. (1) Where a formal investigation has been held under regulation 28, the Minister may order the whole or part of the case to be reheard, and must do so—

- (a) if new and important evidence which could not be produced at the investigation has been discovered; or
- (b) if there appear to the Minister to be other grounds for suspecting that a miscarriage of justice may have occurred.

(2) An order under sub-regulation (1) may provide for the rehearing to be made by the Board which held the investigation or by the Supreme Court.

(3) Any rehearing under this regulation must be conducted in accordance with rules made under regulation 30, and regulation 28 will apply in relation to a rehearing of an investigation by a Board as it applies in relation to the holding of an investigation.

(4) Where the Board holding the investigation has decided to cancel or suspend the certificate of a person or has found a person at fault, then if no application for an order under sub-regulation (1) has been made or if such application has been

refused, that person or any other person who, having an interest in the investigation, has appeared at the hearing and is affected by the decision or finding, may appeal to the Supreme Court.

(5) Regulation 28(7) applies for the purposes of this regulation as it applies for the purposes of that regulation.

Rules relating to investigations and appeals

30. (1) The Minister may make rules for the conduct of formal investigations under regulation 27, and for the conduct of any rehearing under regulation 29 which is not held by the Supreme Court.

(2) Without prejudice to sub-regulation (1), rules under this regulation may provide for the appointment and summoning of assessors, the manner in which any facts may be proved, the persons allowed to appear and the notices to be given to persons affected.

(3) Rules of the court made for the purpose of rehearings under regulation 29 which are held by the Supreme Court, or of appeals to the Court of Appeal, may require the Court, subject to such exceptions, if any, as may be allowed by the rules, to hold such a rehearing or hear such an appeal with the assistance of one or more assessors.

Powers of inspectors in relation to premises and ships

31. (1) The powers conferred by this regulation are conferred in relation to—

- (a) any premises in the Islands; or
- (b) Islands ship wherever it may be and any other ship which is present in the Islands or in Islands waters;
- (c) and are available to any inspector appointed under regulation 27, for the purpose of performing his functions.

(2) Such an inspector—

- (a) may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time)—
 - (i) enter any premises, or
 - (ii) board any ship,

if the inspector has reason to believe that it is necessary for the inspector to do so;

- (b) may, on entering any premises by virtue of subregulation 2(a) above or on boarding a ship by virtue of that subregulation, be accompanied by any other person authorised for the purpose by the Minister and any equipment or materials the inspector requires;
- (c) may make such examination and investigation as the inspector considers necessary;
- (d) may give a direction requiring that the premises or ship or any part of the premises or ship or anything in the premises or ship or such a part must be left undisturbed (whether generally or in

- particular respects) for so long as is reasonably necessary for the purposes of any examination or investigation under subregulation 2(c);
- (e) may take such measurements and photographs and make such recordings as the inspector considers necessary for the purpose of any examination or investigation under subregulation 2(c);
 - (f) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;
 - (g) may, in the case of any article or substance which the inspector finds in the premises or ship and which appears to the inspector to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it unless that is in the circumstances necessary);
 - (h) may, in the case of any such article or substance as is mentioned in subregulation 2(g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it and do to it anything which the inspector has power to do under that subregulation,
 - (ii) to ensure that it is not tampered with before his examination of it is completed,
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under these Regulations;
 - (i) may require any person who the inspector has reasonable cause to believe is able to give any information relevant to any examination or investigation under subregulation 2 (c) above—
 - (i) to attend at a place and time specified by the inspector, and
 - (ii) to answer (in the absence of persons other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed) such questions as the inspector thinks fit to ask, and
 - (iii) to sign a declaration of the truth of his answers;
 - (j) may require the production of, and inspect and take copies of or of any entry in,—
 - (i) any books or documents which by virtue of any provision of these Regulations are required to be kept; and
 - (ii) any other books or documents which the inspector considers is necessary for him to see for the purposes of any examination or investigation under subregulation 2(c) above;
 - (k) may require any person to afford the inspector such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has

responsibilities as the inspector considers are necessary to enable the inspector to exercise any of the powers conferred on the inspector by this subsection.

(3) It is hereby declared that nothing in the preceding provisions of this regulation authorises a person unnecessarily to prevent a ship from proceeding on a voyage.

(4) The Governor may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subregulation (2)(f) above and subregulation (9) below and provision as to the way in which samples that have been so taken are to be dealt with.

(5) Where an inspector proposes to exercise the power conferred by subregulation (2)(g) above in the case of an article or substance found in any premises or ship, the inspector must, if so requested by a person who at the time is present in and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(6) Before exercising the power conferred by subsection (2)(g) above, an inspector must consult such persons as appear to the inspector appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which the inspector proposes to do under that power.

(7) Where under the power conferred by subregulation (2)(h) above an inspector takes possession of any article or substance found in any premises or ship, he must leave there, either with a responsible person or, if that is impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector must, if it is practicable for the inspector to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

(8) No answer given by a person in pursuance of a requirement imposed under subregulation (2)(i) above will be admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in the said subregulation (2)(i) will be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

Detention

32. (1) Any ship which, in contravention of regulation 6(1), proceeds or attempts to proceed to sea without being surveyed and marked will be detained until it has been so surveyed and marked.

(2) Any ship which does not comply with the conditions of assignment applicable to it and does not retain on board the record issued by the Assigning

Authority detailing the conditions of assignment, is liable to be detained until it complies.

(3) Any ship which is loaded so as to submerge the load line will be detained until it ceases to be so loaded.

Enforcing detention of ship

33. (1) Where a ship is liable to be detained any of the following officers may detain the ship –

- (a) any police officer of the rank of Inspector or above;
- (b) any surveyor of ships authorised by the Minister for the purpose;
- (c) any officer authorised by the Minister for the purpose; and
- (d) any British consular officer.

(2) 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 the prevention of pollution in which the master may move his ship from that place, anchorage or berth.

(3) If a ship, which has been detained or, as respects which, notice of detention has been served on the master, proceeds to sea before it is released by a competent authority, the master of the ship commits an offence.

(4) If a ship as respects which notice of detention has been served on the master fails to comply with a direction given under subregulation (2)(a), the master of the ship will be guilty of an offence.

(5) A person guilty of an offence under subregulation (3) or (4) will be liable —

- (a) on summary conviction, to a fine being not less than \$75,000; or
- (b) on conviction on indictment, to a fine being not less than \$150,000.

(6) The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under subregulation (3) or (4) will, if party or privy to the offence, also be guilty of an offence under that subregulation and liable accordingly.

(7) Where a ship proceeding to sea in contravention of subregulation (3) or failing to comply with a direction given under subregulation (2)(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 subregulation (1) to detain the ship, or
- (b) any surveyor of ships authorised by the Minister for the purpose

the owner and master of the ship will each -

- (i) be liable to pay all expenses of, and incidental to, the officer being so taken to sea; and
- (ii) be deemed to have committed an offence.

(8) A person who commits an offence under subregulation (7), will be liable

- (a) on summary conviction, to a fine being not less than \$10,000;
- (b) on conviction on indictment, to a fine being not less than \$50,000.

References of detention notices to arbitration

34. (1) Any question as to whether any of the matters specified in relation to a ship in a detention notice in pursuance of regulation 33 in connection with any opinion formed by the person issuing the detention notice constituted a valid basis for that opinion must, if the master or owner of the ship so requires by a notice given to the person issuing the detention notice 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 a notice is given by the master or owner of the ship in accordance with subregulation (1), the giving of the notice will not suspend the operation of the detention order unless, on the application of the person requiring the reference, the arbitrator so directs.

(3) Where on a reference under this regulation the arbitrator decides that in all the circumstances there was no valid basis for issuance of the detention order the arbitrator must either cancel the detention order or affirm it with such modifications as the arbitrator may in the circumstances think fit; and in any other case the arbitrator must affirm the notice in its original form.

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

(5) A person will not be qualified for appointment as an arbitrator under this section unless such person is—

- (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;
- (c) a person falling within subregulation (6); or
- (d) a person with special experience of shipping matters, of the fishing industry, or of activities carried on in ports.

(6) For the purposes of subregulation (5)(c) a person falls within this subsection if such person is an attorney of at least 10 years' standing and admitted to practice in the Islands or has been called to the bar or admitted as a solicitor or an attorney in any commonwealth jurisdiction or the Republic of Ireland.

(7) In connection with his functions under this regulation an arbitrator will have the powers conferred on an inspector by regulation 31.

Compensation in connection with invalid detention of ship

35. (1) If on a reference under regulation 34 relating to a detention order in relation to a ship—

- (a) the arbitrator decides that any matter did not constitute a valid basis for the person issuing the detention notice's opinion, and
- (b) it appears to the arbitrator that there were no reasonable grounds for the person issuing the detention order to form that opinion;

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

(2) Any compensation awarded under this section will be payable by the Government.

MADE this day of 2019.

Dr. John Freeman
GOVERNOR