

L.N. 155 of 2019

**Merchant Shipping (Local Vessels) (General)
(Amendment) (No. 3) Regulation 2019**

(Made by the Secretary for Transport and Housing under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548))

1. Commencement

This Regulation comes into operation on 23 December 2019.

2. Merchant Shipping (Local Vessels) (General) Regulation amended

The Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) is amended as set out in section 3.

3. Part 10A added

After Part 10—

Add

“Part 10A

**Requirements Relating to Passenger Safety during
Major Events at Sea**

91A. Interpretation

In this Part—

adult (成人), in relation to a child on board a local vessel, does not include the coxswain or a crew member of the vessel;

child (兒童) means a person under the age of 12 years;

infant (嬰兒) means a child under the age of 2 years;

specified area (指明範圍) means an area of the waters of Hong Kong specified by the Director in a notice under section 91C(2)(a);

specified period (指明期間), in relation to a specified area, means the period specified by the Director in a notice under section 91C(2)(b) for that area.

91B. Application of Part 10A

- (1) This Part applies in relation to a local vessel that is licensed to carry passengers.
- (2) However, this Part does not apply in relation to a local vessel that—
 - (a) is made fast to the shore;
 - (b) is in use for a franchised service or licensed service under the Ferry Services Ordinance (Cap. 104); or
 - (c) is berthed, moored, anchored or secured in a typhoon shelter.

91C. Director may issue instructions or directions by way of notice

- (1) The Director may issue instructions or directions by way of a notice for the purposes of a major event at sea.
- (2) The Director may specify in the notice for the purposes of the event—
 - (a) an area of the waters of Hong Kong; and
 - (b) a period in relation to the specified area.

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- (3) The Director must publish the notice on the website of the Marine Department or in any other way appropriate to bring it to the notice of the persons affected by it.
- (4) A notice issued under subsection (1) is not subsidiary legislation.
- (5) In this section—

major event at sea (大型海上活動) means a presence of local vessels in an area of the waters of Hong Kong that, in the opinion of the Director, may substantially increase the risk of a marine accident.

91D. Child to be accompanied by adult to be on board

- (1) This section applies in relation to a local vessel that is present in a specified area during the specified period.
- (2) The coxswain of the vessel must not allow a child to be on board the vessel unless the child is accompanied by an adult.
- (3) The coxswain of a local vessel who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.
- (4) It is a defence for a person charged with an offence under subsection (3) to establish that at the time of the alleged offence the person had a reasonable excuse for the contravention.

91E. Distribution of suitable lifejacket etc.

- (1) This section applies if—

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- (a) a child is on board a local vessel that has been present in a specified area before the specified period and remains in the area when the period begins;
 - (b) a child is on board a local vessel that is to enter a specified area during the specified period; or
 - (c) a child boards a local vessel that is present in a specified area during the specified period.
- (2) The coxswain of the vessel must take the actions specified in subsection (3) in the circumstances referred to in—
- (a) subsection (1)(a)—as soon as practicable after the period begins;
 - (b) subsection (1)(b)—before the vessel enters the area; and
 - (c) subsection (1)(c)—as soon as practicable after the child boards the vessel.
- (3) The actions are—
- (a) in relation to the child on board the vessel—
 - (i) to distribute a lifejacket suitable for the child to an adult accompanying the child; and
 - (ii) to take reasonable steps to demonstrate to the adult how the lifejacket should be worn by the child; and
 - (b) to take reasonable steps to remind the adult of the requirements under section 91F(2) and (3).
- (4) The coxswain of a local vessel who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 2.

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- (5) It is a defence for a person charged with an offence under subsection (4) to establish that at the time of the alleged offence the person had a reasonable excuse for the contravention.

91F. Requirements to be complied with by adult accompanying child on board

- (1) This section applies in relation to a local vessel that is present in a specified area during the specified period.
- (2) If an adult accompanies a child (other than an infant) on board the vessel, the adult must ensure that the child wears a suitable lifejacket on board the vessel at all times.
- (3) If an adult accompanies an infant on board the vessel, the adult must ensure that the safety of the infant would not be prejudiced by not wearing a suitable lifejacket on board the vessel.
- (4) An adult who contravenes subsection (2) or (3) commits an offence and is liable on conviction to a fine at level 2.
- (5) It is a defence for a person charged with an offence under subsection (4) to establish that at the time of the alleged offence the person had a reasonable excuse for the contravention.

91G. List of all persons on board

- (1) For a local vessel that is present in a specified area during the specified period, the coxswain of the vessel must—

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- (a) keep a list that contains, in respect of all persons on board the vessel during the period, the particulars specified in subsection (2); and
 - (b) produce the list for inspection on request by an authorized officer.
- (2) The particulars are—
- (a) for a person who is not a child—the full name of the person; and
 - (b) for a child—the full name and age of the child and—
 - (i) if the child is accompanied by only one adult on board the vessel—the full name of the adult; or
 - (ii) if the child is accompanied by more than one adult on board the vessel—the full name of any one of the adults.
- (3) The coxswain of a local vessel who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 2.
- (4) It is a defence for a person charged with an offence under subsection (3) to establish that at the time of the alleged offence the person had a reasonable excuse for the contravention.

91H. Giving of particular to coxswain or other crew members

- (1) This section applies to a person (other than a child) who—
 - (a) boards or remains on board a local vessel that is present in a specified area during the specified period; or

- (b) seeks to board or remains on board a local vessel that is to be present in a specified area during the specified period.
- (2) The person must give the particular specified in section 91G(2)(a) to the coxswain or a crew member of the vessel if so requested by the coxswain or the crew member.
- (3) A person commits an offence if the person—
 - (a) fails to give the particular in accordance with subsection (2); or
 - (b) in purported compliance with subsection (2), gives any false particular.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 2.
- (5) It is a defence for a person charged with an offence under subsection (3)(a) to establish that at the time of the alleged offence the person had a reasonable excuse for failing to give the particular.
- (6) It is a defence for a person charged with an offence under subsection (3)(b) to establish that at the time of the alleged offence the person had a reasonable excuse for giving the false particular.

91I. Giving of particulars to coxswain or other crew members by adult who accompanies child

- (1) This section applies to an adult who—
 - (a) accompanies a child who boards or remains on board a local vessel that is present in a specified area during the specified period; or

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- (b) seeks to accompany a child who is to board or remains on board a local vessel that is to be present in a specified area during the specified period.
- (2) The adult must, for the child, give the particulars specified in section 91G(2)(b) to the coxswain or a crew member of the vessel if so requested by the coxswain or the crew member.
- (3) An adult commits an offence if the adult—
 - (a) fails to give the particulars in accordance with subsection (2); or
 - (b) in purported compliance with subsection (2), gives any false particulars.
- (4) A person who commits an offence under subsection (3) is liable on conviction to a fine at level 2.
- (5) It is a defence for a person charged with an offence under subsection (3)(a) to establish that at the time of the alleged offence the person had a reasonable excuse for failing to give the particulars.
- (6) It is a defence for a person charged with an offence under subsection (3)(b) to establish that at the time of the alleged offence the person had a reasonable excuse for giving the false particulars.

91J. Not to allow persons to board or to remain on board when particulars are not given

- (1) If a person referred to in section 91H(1) fails to give the particular in accordance with section 91H(2), the coxswain of the vessel must not allow the person—
 - (a) to board the vessel if the person has not boarded the vessel; or

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- (b) to remain on board the vessel if the person has already boarded the vessel.
- (2) If an adult referred to in section 91I(1) fails to give the particulars in accordance with section 91I(2), the coxswain of the vessel must not allow the adult and the child—
 - (a) to board the vessel if they have not boarded the vessel; or
 - (b) to remain on board the vessel if they have already boarded the vessel.
- (3) The coxswain of a local vessel who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 2.
- (4) It is a defence for a person charged with an offence under subsection (3) to establish that at the time of the alleged offence the person had a reasonable excuse for the contravention.

91K. Burden of proof for defence

A person charged with an offence under this Part is taken to have established a matter that needs to be established for a defence under this Part if—

- (a) there is sufficient evidence to raise an issue with respect to the matter; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

Merchant Shipping (Local Vessels) (General) (Amendment) (No. 3) Regulation
2019

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Frank CHAN Fan
Secretary for Transport and
Housing

22 October 2019

Explanatory Note

This Regulation amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548 sub. leg. F) (*principal Regulation*) to add a new Part 10A to the principal Regulation to provide for—

- (a) the issue of a notice in which the Director of Marine may specify an area of the waters of Hong Kong (*specified area*) and a period in relation to the specified area (*specified period*) for the purposes of a major event at sea; and
- (b) requirements relating to passenger safety on local vessels that should be followed in the specified area during the specified period.