

**BERMUDA STATUTORY INSTRUMENT**

**BR 4/1997**

**MARINE BOARD (DIVING) REGULATIONS 1997**

*[made under section 102 of the Marine Board Act 1962 [title 22 item 3] and  
brought into operation on 7 March 1997]*

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**Citation**

1 These Regulations may be cited as the Marine Board Diving Regulations 1997.

**Interpretation**

2 In these Regulations, unless the context otherwise requires,—

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"certified diver" means a person who holds an open water scuba diving qualification from an international scuba diving organisation approved by the Minister;

"diver" means a certified diver who for hire or reward acts, or offers his services, as a diving instructor or as a diving guide;

"diving boat" means any type of craft, raft, float or other device from which diving can be conducted and which is used for that purpose;

"diving code" means the code of safe diving practice issued by the Minister under regulation 19;

"diving equipment" means any equipment, apparatus or device which enables a person to remain under water for an extended period and includes, but is not necessarily restricted to, scuba, pump, compressor, hose, tank, valves, regulator, air-supplied mask, helmet harness, weighted belt, fins, face mask, snorkel and buoyancy compensator;

"diving instructor" means a person who, for hire or reward, undertakes to instruct other persons in diving or in the use of diving equipment and includes a helmet diving instructor;

"diving operation" means an operation in which a scuba diving instructor instructs other persons in diving or in the use of diving equipment;

"diving service" means any trade or business offering instruction in diving or in the use of diving equipment;

"Examining Committee" means an Examining Committee appointed under regulation 16;

"inspecting officer" means a person appointed by the Minister under regulation 7 to inspect divers, diving services and diving equipment;

"licence" means a licence issued by the Minister under regulation 4;

"novice diver" means a person other than a certified diver who is not less than ten years of age;

"prescribed fee" means the fee prescribed under the Government Fees Act 1965 [*title 15 item 18*]; and

"scuba" means self-contained underwater breathing apparatus.

*["novice diver" amended BR34/2001 effective 6 July 2001]*

**Divers, etc. to be licensed**

3 A person shall not operate a diving service, or act, or offer his services, as a diver unless—

- (a) he is at least eighteen years of age;
- (b) he satisfies the Minister as to his competence; and
- (c) he is in possession of a valid licence issued under regulation 4.

**Minister may issue licence**

4 (1) The Minister may, subject to the provisions of this regulation, on application being made to him in the prescribed form and on payment of the prescribed fee issue a licence to the applicant—

- (a) to operate a diving service; or
- (b) to be a diver.

(2) A licence issued under paragraph (1) may be subject to such terms and conditions as the Minister considers appropriate and shall be endorsed with a statement—

- (a) of the functions which the licensee is licensed to perform; and
- (b) of the particular type or types of diving equipment which the licensee is licensed to operate as a diver.

(3) A licence issued under paragraph 1(a) shall, unless cancelled or suspended under these Regulations, be valid for a period of one year commencing on the date of issue of the licence and may be renewed from time to time.

(4) A licence issued under paragraph (1)(b) shall, unless cancelled or suspended under these Regulations—

- (a) be valid for a period of one year commencing on the date of issue of the licence;
- (b) thereafter may, on the payment of the prescribed fee, be extended for a further period of four years; and
- (c) on the expiration of the period of extension, if any, may from time to time, be renewed for a period of five years.

(5) A diving licence issued under regulation 2 of the Marine Board (Aqua Lung) Diving Regulations 1963 [*title 22 item 3h*] and in force on the date of the coming into operation of these Regulations shall, on that date, be deemed to have been issued under these Regulations and unless cancelled or suspended under these Regulations shall remain in force for a period of five years and thereafter may, from time to time, on

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payment of the prescribed fee be renewed for a further period of five years.

(6) Where, for the purposes of regulation 13, a licensee requires more than one licence, the Minister shall, on payment of the prescribed fee in respect of each additional copy, supply the licensee with additional copies of the licence.

### **Powers and duties of divers, etc.**

5 (1) Subject to paragraph (3) the person in charge of a diving operation shall—

- (a) be responsible for the control of all persons taking part in the diving operation and shall ensure that all precautions necessary to secure the safety of those persons are taken; and
- (b) satisfy himself as to the efficacy of all diving equipment prior to such equipment being used in the diving operation; and
- (c) if he is satisfied that it is in the interest of the safety of a person, or otherwise thinks it expedient so to do, require that person not to take part in the diving operation or, if the person is already taking part in the operation, require him to leave the water.

(2) The person in charge of a diving operation shall, before the commencement of the diving operation require all persons intending to take part in the operation to complete and sign a medical questionnaire; and a person shall not be allowed to take part in the operation if—

- (a) he refuses to complete the questionnaire; or
- (b) the person in charge of the diving operation is satisfied after such completion, that it would or might be unsafe to allow that person to take part in the diving operation.

(3) For the purposes of this regulation and regulation 6—

- (a) "person in charge" means a diving instructor or, in the case of more than one diving instructor, the senior diving instructor;
- (b) a diving instructor shall be deemed to be senior to a diving guide; and
- (c) as between diving instructors seniority shall rank in accordance with the date of issue of the diving instructor's licence.

**Diving flags**

6 (1) The person in charge of a diving operation shall, while diving is in progress, cause to be flown from the diving boat, in a clearly visible location, a rectangular red flag having a diagonal white stripe, (in this regulation called "a diving flag").

(2) A diving flag shall be not less than 0.6 metres (24 inches) in length and not less than 0.5 metres (20 inches) in width.

(3) A person approaching an area of water where a diving boat is flying a diving flag shall, within 100 metres of the diving boat—

(a) proceed with caution and, in any event, at a rate of speed not exceeding 5 knots; and

(b) have regard to the safety of persons taking part in the diving operation.

**Minister may appoint inspecting officers**

7 The Minister may from time to time appoint such persons as he considers fit and proper to be inspecting officers.

**Inspection of diving service, etc.**

8 (1) All diving equipment shall, in accordance with the diving code, at all times, be maintained in good working order.

(2) An inspecting officer shall, at intervals not exceeding twelve months, carry out an inspection of a diving service, including all diving equipment appurtenant thereto for the purpose of establishing whether the diving service complies with the diving code.

(3) Subject to paragraph (4), a person shall not, for hire or reward, cause another person to use any diving equipment unless such equipment has been inspected in accordance with paragraph (2).

(4) Paragraph (3) does not apply to new diving equipment where such equipment arrived in Bermuda not later than twelve months prior to its use.

**Inspection fee**

9 The prescribed fee shall be payable in respect of the inspection of a diving service or equipment, or any part of such service or equipment.

**Regulator**

10 No person other than a licensed diving instructor, shall cause or allow a novice diver to use a regulator in a diving operation.

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### **Supply of air**

11 (1) An air cylinder intended for hire or reward shall, before being filled, be tested in accordance with the provisions of the diving code.

(2) A person shall not, for hire or reward, supply air for diving equipment unless the installation which supplies the air has, within the period of twelve months preceeding such supply, been inspected by an inspecting officer.

### **Diving areas**

12 (1) The Minister may, by notice published in the Gazette, declare any area of water to be—

- (i) a prohibited area in which no diving shall be carried out; or
- (ii) an area of water in which diving may be carried out subject to such restrictions as may be specified in such notice.

(2) No person shall dive in an area of water declared to be a prohibited area under this regulation, and no person shall dive in an area of water in contravention of any restriction specified in the notice published in the Gazette in respect of that area of water.

### **Display of licence**

13 (1) The holder of a licence to operate a diving service shall prominently display the licence, or a copy thereof, in all premises connected with the diving service.

(2) Copies of licences issued to an employee shall, at all times, be available on the premises for inspection by an inspecting officer.

### **Offences, etc.**

14 (1) A person who neglects or fails to comply with any provision of these Regulations is guilty of an offence and, subject to paragraph (2), is liable on conviction by a court of summary jurisdiction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

(2) The court may, in addition to any other sentence imposed under paragraph (1), order the licence (if any) to be cancelled or to be suspended for a term not exceeding two years.

### **Revocation of licence**

15 (1) If at any time it is made to appear to the Minister that the holder of a licence issued under these Regulations has ceased to be a fit and proper person to hold such licence, the Minister may, by order,

suspend his licence until such time as the holder of the licence appears before an Examining Committee.

(2) The Examining Committee shall inquire into any allegations made in respect of the holder of a licence and shall take into consideration any reply made by him to the allegation, and then shall make to the Minister such recommendations as it may think appropriate.

(3) Upon receipt of the recommendations of the Examining Committee the Minister may either revoke the order suspending the licence or he may revoke the licence.

**Appointment of Examining Committee**

16 (1) For the purposes of regulation 15 the Minister may from time to time appoint such persons as he considers appropriate, not exceeding three, to be members of an Examining Committee.

**Insurance**

17 No licence shall be issued by the Minister to a diving service unless there is in force in respect of such service a policy of insurance against third party risks liability to a minimum of \$25,000 for every person involved in a diving operation in respect of damage or injury.

**Minister not liable for damages**

18 Nothing in these Regulations shall be construed as imposing on the Minister or on an inspecting officer any liability for damages arising from the issuing of a licence or from the inspection of diving equipment.

**Code of safe diving practice**

19 (1) The Minister shall issue a code of safe diving practice containing such provisions as the Minister considers appropriate to ensure safety and may from time to time amend such code.

(2) A failure on the part of any person to observe any provision of the diving code shall not of itself render him liable to any proceedings; but in any proceedings under these Regulations before a court or the Examining Committee any code of practice issued under this regulation shall be admissible in evidence and if any provision of such a code appears to the Examining Committee or the court to be relevant to any question arising in the proceedings it shall be taken into account in determining that question.

**Revocation of S.R.&O. 10 of 1963**

20 The Marine Board (Aqua Lung) Diving Regulations 1963 [*title 22 item 3h*] are revoked.

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[Amended by:

BR34/2001]