

Maritime Transport (Class Exemption — Lifting Appliances and Loose Cargo Gear) Notice 2024

Pursuant to section 40AA(1)(b) of the Maritime Transport Act 1994, the Director of Maritime New Zealand, being satisfied of the matters set out in section 40AA(2) of that Act, gives the following notice.

Notice

1. Title

This notice is the Maritime Transport (Class Exemption — Lifting Appliances and Loose Cargo Gear) Notice 2024.

2. Commencement

This notice comes into force on **10 May 2024**.

3. Interpretation

(1) In this notice, unless the context otherwise requires—

Act means the Maritime Transport Act 1994

Competent person has the same meaning as set out in Maritime Rule 49.2

Decked ship means a fully decked boat or a partially decked boat (both as defined in Maritime Rule 40C.2)

Open boat has the same meaning as set out in Rule 40C.2

Responsible person means a member of the ship's complement that the master of the ship has deemed competent to undertake detailed visual examinations of lifting appliances and loose cargo gear required under this notice and is appointed to perform that function

Rules means the following Maritime Rules Parts—

- a. *Part 40C: Design, Construction and Equipment – Non-passenger Ships that are not SOLAS Ships;*
- b. *Part 49: Ships' Lifting Appliances*

SOLAS ship means a ship to which the International Convention for the Safety of Life at Sea 1974 applies; namely—

- a. *a passenger ship engaged on an international voyage; or*
- b. *a non-passenger ship of 500 gross tonnage or more engaged on an international voyage*

(2) Any term or expression that is defined in the Act or the rules and used, but not defined, in this notice has the same meaning as in the Act or the rules.

4. Exemptions for open boat fitted with or carrying a deck crane or other lifting device

(1) The class of ship described in subclause (2) is exempt from the requirements specified in rule 40C.13(3) of the Maritime Rules, *Part 40C: Design, Construction and Equipment – Non-passenger Ships that are not SOLAS Ships*, that a ship fitted with or carrying a deck crane or other lifting device must be a decked ship and meet the intact stability requirements of Appendix 1.

(2) The class of ship is an open boat fitted with or carrying a deck crane or other lifting device that is non-luffing and non-extendable with a safe working load of less than 300 kilograms, that is not a ship specified in subclause (3) or subclause (4).

(3) A New Zealand ship that is a commercial ship and that is—

- a. a SOLAS ship; or
- b. a passenger ship of 45 metres or more in length that proceeds beyond restricted limits; or
- c. a non-passenger ship of 45 metres or more in length that proceeds beyond restricted limits.
- d. a self-propelled mobile offshore drilling unit of 500 gross tonnage or more.

(4) A foreign ship that is—

- a. a non-passenger ship of 500 gross tonnage or more which is at a New Zealand port or offshore terminal; or
- b. a passenger ship which is at a New Zealand port or offshore terminal; or
- c. a self-propelled mobile offshore drilling unit of 500 gross tonnage or more which is at a New Zealand port or offshore terminal or is operating in New Zealand continental waters.

5. Conditions of Exemptions in Clause 4

(1) The exemptions in clause 4 are granted subject to the conditions set out in this clause.

(2) The ship must be subjected to a practical test with the ship in its worst anticipated service load condition to establish the angle of heel with the deck crane or other lifting device operating at its maximum load moment.

(3) With the deck crane or other lifting device operating at its maximum load moment, the angle of heel must not exceed 7°.

6. Exemptions for examination of lifting appliances and loose cargo gear

(1) The class of person described in subclause (2) is exempt from the requirements specified in rule 49.6(1) of the Maritime Rules, *Part 49: Ships' Lifting Appliances*, to ensure that every lifting appliance on the ship and every item of loose cargo gear carried by the ship is thoroughly examined by a competent person at least once in every 12 months.

(2) The class of person is every owner or master of a ship fitted with a non-luffing and non-extendable lifting appliance (and its associated loose cargo gear) with a safe working load of less than 300 kilograms that is not a ship specified in subclause (3) or subclause (4).

(3) A New Zealand ship that is a commercial ship and that is—

- a. a SOLAS ship; or
- b. a passenger ship of 45 metres or more in length that proceeds beyond restricted limits; or
- c. a non-passenger ship of 45 metres or more in length that proceeds beyond restricted limits.
- d. a self-propelled mobile offshore drilling unit of 500 gross tonnage or more.

(4) A foreign ship that is—

- a. a non-passenger ship of 500 gross tonnage or more which is at a New Zealand port or offshore terminal; or
- b. a passenger ship which is at a New Zealand port or offshore terminal; or
- c. a self-propelled mobile offshore drilling unit of 500 gross tonnage or more which is at a New Zealand port or offshore terminal or is operating in New Zealand continental waters.

7. Conditions of Exemptions in Clause 6

(1) The exemptions in clause 6 are granted subject to the conditions set out in this clause.

(2) The owner and master of the ship must ensure that—

- a. every non-luffing and non-extendable lifting appliance on the ship with a safe working load of less than 300 kilograms and its associated loose cargo gear is thoroughly examined by a competent person at least once in every 5 years; and
- b. every non-luffing and non-extendable lifting appliance on the ship with a safe working load of less than 300 kilograms and its associated loose cargo gear undergoes a detailed visual examination by a responsible person at least once in every 12 months, supplemented, if necessary, by other means or measures of examination in order to arrive at a reliable conclusion as to the safety of the lifting appliance or item of loose cargo gear examined; and
- c. the completion of a satisfactory detailed visual examination by a responsible person required under this notice is recorded by the responsible person in the register of equipment required by rule 49.9; and
- d. if on completion of a detailed visual examination, the responsible person considers the lifting appliance or item of loose cargo gear is unsatisfactory, that lifting appliance or item of loose cargo gear is not used until any defect is remedied to the satisfaction of a competent person.

(3) The competent person must ensure that the satisfactory remedy of any defect under subclause (2)(d) is recorded in the register of equipment required by rule 49.9.

8. Expiry of Exemptions

(1) The exemptions in clauses 4 and 6 expire on the sooner of:

- a. the date that the exemptions in clauses 4 and 6 are replaced or revoked; or
- b. 10 May 2029.

Dated at Wellington this 27th day of March 2024.

KIRSTIE HEWLETT, Director, Maritime New Zealand.

Statement of Reasons

This notice exempts a class of ship from compliance with specified requirements in Maritime Rules Part 40C, and also

exempts owners and masters in relation to that class of ship from compliance with specified requirements under Part 49 (see section 40AA(1)(b) of the Act).

General provisions relating to the exemptions

The exemptions in clauses 4 and 6 of this notice relate to rules 40C.13(3) and 49.6(1) respectively.

Rule 40C.13(3) requires that a ship fitted with or carrying a deck crane or other lifting device must be a decked ship and must meet specified intact stability requirements set out in Appendix 1 of Part 40C. The exemptions from these requirements, in clause 4(1), and the conditions imposed, in clause 5, make the stability requirements more relevant for open boats carrying a deck crane or other lifting device.

The exemptions from the requirements specified in rule 40C.13(3), will apply to the class of ship specified in clause 4(2) of this notice.

Maritime Rules Part 49 reflects requirements from the International Labour Organization's Occupational Safety and Health (Dock Work) Convention 1979, No. 152 (ILO C152), which is the current international standard covering lifting and working of ships' cargo.

Rule 49.6(1) requires the owner or master of a ship to ensure that every lifting appliance on the ship and every item of loose cargo gear carried by the ship is thoroughly examined by a competent person at least once in every 12 months. The exemptions from these requirements in clause 6(1), and the conditions imposed in clause 7, mean that a competent person will still be required to conduct the examination at least once in every 5 years, and, in accordance with rule 49.6(2), to record the outcome of that examination in the register of equipment required by rule 49.9. Further, a responsible person, will be required to undertake a detailed visual examination of lifting appliances and loose cargo at least once in every 12 months, and record the results of that examination in the register of equipment.

The exemptions from the requirements specified in rule 49.6(1), will apply to every owner or master as specified in clause 6(2) of this notice.

The ships described in clauses 4(3) and 4(4), and clauses 6(3) and 6(4) are not included in the class exemptions.

The exemptions come into force on 10 May 2024 and will expire in accordance with the provisions of clause 8 of this notice.

Director may grant exemptions from maritime rules

The Director of Maritime New Zealand, being satisfied as to the matters set out in section 40AA of the Act, thinks it appropriate to grant the class exemptions because:

- The Part 49 rules are primarily directed at large cargo ships. Examination requirements that are appropriate for large ships and large complex lifting appliances are quite inappropriate for small simple lifting appliances used on small ships. Therefore a more nuanced approach is considered appropriate.
- Requiring small and simple lifting devices to be proof load tested and re-examined every 5 years by a competent person, while leaving the annual examinations to a responsible person is reasonable. This approach is consistent with Australia which has a similar examination regime for lifting devices on vessels that are not 'in class' (i.e. not required to be surveyed to the standards of a classification society – these are generally smaller domestic vessels).
- Removing the requirement that all ships fitted with or carrying deck cranes or other lifting devices must be a decked ship means that open boats can carry these devices and meet an appropriate stability requirement.

The Director is further satisfied that the exemption meets the criteria in section 40AA(2) of the Act and conditions are appropriate as:

- **No breach of international convention requirements:**
 - Although Part 49 reflects requirements from ILO C152, that Convention has not been ratified by New Zealand. Therefore granting the exemptions from Rule 49.6(1) will not breach New Zealand's obligations under any convention (section 40AA(2)(a)).
 - Rule 40C.13(3) is purely a domestic requirement. Rules in other jurisdictions, such as the United Kingdom, include similar requirements to rule 40C.13(3) regarding the design and stability of vessels fitted with lifting devices while also allowing for the relevant body to permit exemptions to those requirements in certain circumstances.
- **One of the criteria in section 40AA(2)(b) applies:**

(iii) the requirement is clearly unreasonable or inappropriate in this particular case

- Requiring a competent person to attend every 12 months to examine a simple and small lifting device (when no other survey is due) is clearly inappropriate when the type of lifting appliance this exemption applies to is much lower risk than a large complex cargo crane. Small and simple appliances could be safely examined by a proficient member of crew rather than a competent person. This approach provides oversight that is more appropriate and proportionate to the design and safe working load of the appliance.
- Prohibiting open boats with lifting appliances from operating is clearly inappropriate because it is disproportionate to the safety risk they pose. Although the risk of capsize on an open boat with a lifting appliance is higher than a decked ship if down-flooding occurs, Maritime New Zealand considers that limiting the load limit of the lifting appliance and the movement of the appliance on open boats (which reduces the forces on the vessel that cause it to heel) will mitigate this risk, as will the limit on the angle of heel when operating at maximum load.

- **Risk of harm to the marine environment:**

- There are no specific or unique environmental risks related to the examination and stability requirements for ships with lifting appliances. Therefore granting the exemptions will not significantly increase risk of harm to the marine environment (section 40AA(2)(c)).

- **Risk to safety:**

- The alternative examination requirements for small and simple lifting appliances meets the intent of the rules and provides assurance that lifting appliances and loose cargo gear will be appropriately examined proportionate to their complexity and safe working load. Therefore granting the exemption will not significantly increase risk to safety (section 40AA(2)(d)).
- Enabling open boats to have lifting appliances will not increase risks to safety because they will:
 - be required to meet the stability requirements set out in the conditions of the exemption; and
 - only be exempt where the lifting appliances are of a certain size and movement range so that there is lower impact on the vessel's stability.