

2013 No. (Consultation draft)

MERCHANT SHIPPING

**The Merchant Shipping (Maritime Labour Convention)
(Minimum Age) Regulations 2013**

Made - - - -

Laid before Parliament

Coming into force - -

The Secretary of State is a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to the safety of ships and the health and safety of persons on them.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 85(1)(a) and (b), (1A), (1B), (3) and (5) to (7) and section 86(1) and (2) of the Merchant Shipping Act 1995(b), and section 2(2) of the European Communities Act 1972(c).

In accordance with section 86(4) of the Merchant Shipping Act 1995 the Secretary of State has consulted the persons referred to in that section.

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Minimum Age) Regulations 2013.

(2) These Regulations come into force on [date Convention comes into force].

Revocation

2. Regulations 10 and 20(3) of the Merchant Shipping (Hours of Work) Regulations 2002(d) are revoked.

Interpretation

3.—(1) In these Regulations—

“the Act” means the Merchant Shipping Act 1995;

(a) S.I. 1993/595.

(b) 1995 c. 21. Sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), and are applied to hovercraft by the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350).

(c) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7). The Maritime and Labour Convention is specified as one of the Community Treaties by the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757).

(d) S.I. 2002/2125.

“Declaration of Maritime Labour Compliance” means , in relation to a ship, the valid Part 1 and Part 2 documents drawn up and issued in accordance with the Maritime Labour Convention, in a form corresponding to the relevant model given in Appendix A5-II of the Convention and having the contents, duration and validity specified in regulation 5.1.3 and standard A5.1.3 of the Convention;

“Maritime Labour Certificate” and “interim Maritime Labour Certificate” mean, in relation to a ship, a valid certificate of that name issued in accordance with the Maritime Labour Convention, in a form corresponding to the relevant model given in Appendix A5-II of the Convention and having the contents, duration and validity specified in regulation 5.1.3 and standard A5.1.3 of the Convention;

“Maritime Labour Convention” means the Convention adopted on 23rd February 2006 by the General Conference of the International Labour Organisation(a);

“the MCA” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

“Merchant Shipping Notice” means a notice described as such and issued by the MCA, and any reference to any particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time;

“relevant inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act;

“seafarer” means any person, including a master, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on a ship;

“sea-going” in relation to a United Kingdom ship means—

- (a) a ship in respect of which the Merchant Shipping (Survey and Certification) Regulations 1995(b) apply and in respect of which no exemption granted under regulation 2(2) of those Regulations applies, or
- (b) a high speed craft in respect of which a permit to operate outside waters of Categories A, B, C or D is required to be in force in accordance with the Merchant Shipping (High Speed Craft) Regulations 2004(c);

“ship” includes hovercraft;

“shipowner” means—

- (a) in relation to a ship which has a valid Maritime Labour Certificate, the person identified as the shipowner on that Certificate,
- (b) in relation to any other ship, the owner of the ship or, if different, any other organisation or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner; and

“United Kingdom ship” means a ship which is—

- (a) a United Kingdom ship within the meaning of section 85(2) of the Act,
- (b) a Government ship within the meaning of section 308(4) of the Act which is ordinarily engaged in commercial maritime operations, or
- (c) a hovercraft registered under the Hovercraft Act 1968(d).

(2) In the application of these Regulations to a hovercraft, a reference to the master of a ship includes a reference to the captain of the hovercraft.

(a) Cmd. 7049.

(b) S.I. 1994/1210, amended by S.I. 1996/2418, S.I. 2000/1334 and 2687, S.I. 2002/1473, S.I. 2003/771, S.I. 2004/302, 1107 and 2883, S.I. 2005/2114, S.I. 2009/1604, S.I. 2010/1075, S.I. 2011/1043 and S.I. 2012/2636.

(c) S.I. 2004/302, amended by S.I. 2004/2883, S.I. 2005/2114 and S.I. 2006/2055.

(d) 1968 c.59.

Meaning of “pleasure vessel”

4.—(1) For the purposes of these Regulations a “pleasure vessel” is—

- (a) a vessel which at the time it is being used is —
 - (i) (aa) in the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or
 - (bb) in the case of a vessel owned by a body corporate, used only for sport or pleasure and on which the persons on board are employees or officers of the body corporate, or their immediate family or friends, and
- (ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or
- (b) any vessel wholly owned by or on behalf of a members’ club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate families, and for the use of which any charges levied are paid into the funds and applied for the general use the club;

provided that in the case of any vessel referred to in paragraph (a) or (b) no other payments are made by or on behalf of users of the vessel, other than the owner.

(2) In this regulation -

“immediate family” means, in relation to an individual, the spouse or civil partner of the individual, and a relative of the individual or the individual’s spouse or civil partner, and

“relative” means brother, sister, ancestor or lineal descendant.

Amendment of section 55 of the Merchant Shipping Act 1995

5. In the Act, after section 55(5) insert—

“(6) In this section a “United Kingdom ship” does not include any ship to which regulation 6 of the Merchant Shipping (Maritime Labour Convention) (Minimum Age) Regulations 2013 applies any of those regulations.

Application

6.—(1) Subject to paragraph (4), regulations 7 to 11, apply to sea-going United Kingdom ships wherever they may be,

(2) Subject to paragraph (4), regulations 12 to 14 apply to a sea-going ship, which is not a United Kingdom ship, while that ship is in the United Kingdom or United Kingdom waters if —

- (a) the Maritime Labour Convention is in force in the State whose flag the ship is entitled to fly, and
- (b) the ship carries—
 - (i) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached, or
 - (ii) an interim Maritime Labour Certificate.

(3) Subject to paragraph (4), regulations 7 to 11 apply to a sea-going ship which is not a United Kingdom ship, while that ship is in United Kingdom waters if—

- (a) the Maritime Labour Convention has not come into force for the State whose flag the ship is entitled to fly; or
- (b) the Maritime Labour Convention has come into force for the State whose flag the ship is entitled to fly, but the ship does not carry—

- (i) a Maritime Labour Certificate to which a declaration of Maritime Labour Compliance is attached; or
 - (ii) an interim Maritime Labour Certificate.
- (4) Regulations 7 to 14 do not apply to—
- (a) pleasure vessels,
 - (b) fishing vessels,
 - (c) ships of traditional build,
 - (d) warships or naval auxiliaries

Seafarer to be of minimum age

7.—(1) No person may be a seafarer on a United Kingdom ship unless that person is of at least 16 years of age.

(2) No person may employ or engage another person as a seafarer on a United Kingdom ship unless that other person is of at least 16 years of age.

Young persons on night duty

8.—(1) Subject to paragraph (3), no person under the age of 18 may work as a seafarer at night on a United Kingdom ship.

(2) Subject to paragraph (3), no person may employ a person under the age of 18 to work as a seafarer at night on a United Kingdom ship.

(3) Paragraphs (1) and (2) do not apply where—

- (a) the effective training of the seafarer, in accordance with established programmes and schedules, would be impaired by its application, and
- (b) the specific nature of the duty of the seafarer or of a recognised training programme requires that the seafarer performs duties at night and the work to be carried out is specified in Merchant Shipping Notice xxxx as not being detrimental to the health and well-being of seafarers under the age of 18.

(4) In this regulation, “night” means a period—

- (a) the duration of which is not less than nine consecutive hours, and
- (b) which includes the period between midnight and 5 a.m. (local time).

Offences and penalties

9.—(1) A contravention of regulation 7 or 8 is an offence by the shipowner, the master and the employer of the person under the age of 16 or 18 (as appropriate) punishable on summary conviction by a fine of an amount not exceeding level 5 on the standard scale.

(2) In any proceedings for an offence under this regulation it is a defence for the person charged to show that all reasonable steps had been taken by that person to ensure compliance with the requirements of the provision in question.

Inspection of United Kingdom ships and certain other ships

10.—(1) For the purpose of checking compliance with these Regulations, a relevant inspector (or, in the case of a United Kingdom ship, a proper officer as defined in section 313(1) of the Act (definitions)) may at all reasonable times go on board a ship to which this regulation applies and inspect the ship, its equipment, any article on board the ship and any document carried on the ship.

(2) Subsections (1A), (3) and (5) of section 258 of the Act (supplementary provisions relating to powers to inspect ships and their equipment) apply in relation to paragraph (1) as if references in those subsections to “subsection (1) above” and “this section” were references to paragraph (1).

(3) Sections 259(1), (2), (5), (7) and (9) to (12) and 260(1) to (3) and (5) of the Act (powers of inspectors in relation to premises and ships, and supplementary provisions) apply in relation to the inspection of a ship to which this regulation applies for the purpose of checking compliance with these Regulations as if—

- (a) references in those sections to “this Act” were to these Regulations;
- (b) for section 259(1)(b) there were substituted a reference to any ship to which this regulation applies;
- (c) in section 259(2)(h)(iii) the words “or any instrument made under it” were omitted; and
- (d) in section 259(5) the reference to “subsections (2) and (4) above for the purposes of Chapter II of Part VI” were to “subsection (2) above”, and the reference to “those subsections” were to “that subsection”.

(4) Any Regulations made under subsection (8) of section 259 or subsection (3) of section 260 of the Act apply for the purposes of the provisions of those sections as applied by paragraphs (2) and (3) as they apply for the purposes of the Act.

(5) Sections 261 to 266 of the Act (improvement notices and prohibition notices) apply in relation to a ship to which this regulation applies as if references in those sections to the relevant statutory provisions included regulations 7 to 15.

Detention of United Kingdom ships and other ships without Maritime labour Certificates

11.—(1) As regards a ship to which this regulation applies, where a relevant inspector has clear grounds for believing that—

- (a) the ship is not in compliance with these Regulations; and
- (b) (i) the conditions on board are clearly hazardous to the safety, health or security of seafarers, or
- (ii) the non-compliance represents a serious or the latest in a series of repeated breaches of these Regulations or the requirements of the maritime Labour Convention (or the rights of seafarers referred to in Articles III or IV of the Maritime Labour Convention which are secured by it);

that ship is liable to be detained.

(2) The power under this regulation to detain a ship may only be exercised if the ship in question is—

- (a) a United Kingdom ship;
- (b) in a port or shipyard in the United Kingdom; or
- (c) at an offshore terminal in United Kingdom waters or controlled waters.

(3) Section 284 of the Act^(a) (enforcing detention of a ship) applies where a ship is liable to be detained under this regulation as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and
- (b) subsection (7) were omitted.

(4) Where a ship is liable to be detained under this regulation, the person detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds for the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 284(1) of the Act.

(a) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, section 9 and Schedule 1.

(5) Where a ship other than a United Kingdom ship is detained, the Secretary of State must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(6) Where a ship is detained under paragraph (1) but the failure to comply referred to in that paragraph has ceased, a person having power to detain the ship must, at the request of the shipowner or master, immediately release the ship—

- (a) if no proceedings for an offence under regulation 9 are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the shipowner or master being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security; or
 - (ii) security which, in the opinion of the Secretary of State, is satisfactory and is for an amount not less than £30,000 is given to the Secretary of State,by or on behalf of the shipowner or master;
- (d) where the shipowner or master is convicted of an offence under one or more of those regulations, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea^(a), and any bond or other financial security ordered by such court or tribunal is posted.

(7) The Secretary of State must repay any sum paid in pursuance of paragraph (6)(c) or release any security so given—

- (a) if no proceedings for an offence under regulation 9 are instituted within the period of seven days beginning with the day on which the sum is paid or the security is given;
- (b) if proceedings for an offence under that regulation, having been instituted within that period, are concluded without the shipowner or master being convicted.

(8) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (6)(c) and the shipowner or master is convicted of an offence under regulation 9, the sum so paid or the amount made available under the security must be applied as follows—

- (a) first in payment of any costs or expenses ordered by the court to be paid by the shipowner or master; and
- (b) next in payment of any fine imposed by the court,

and any balance must be repaid to the first-mentioned person.

(9) Section 145 of the Act (interpretation of section 144) applies for the purposes of paragraphs (6) to (8) as if references to an offence under section 131 were references to an offence under regulation 9.

Minimum Age requirements for non-United Kingdom ships with Maritime Labour Certificates

12.—(1) The shipowner, the master and the employer of a seafarer on a ship to which this regulation applies must comply with the requirements of Regulation 1.1 and Standard A1.1 of the Maritime Labour Convention.

(2) If a ship to which this regulation applies proceeds to sea in United Kingdom waters or attempts to proceed to sea or on a voyage or excursion in United Kingdom waters without complying with the requirements of paragraph (1), the shipowner, the master and the employer of

(a) Cmnd. 8941.

a seafarer under the age of 16 or 18 (as appropriate) is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(3) In any proceedings for an offence under this regulation, it is a defence for the person charged to prove that all reasonable steps had been taken by that person to ensure compliance with the provision in question.

Inspection of non-United Kingdom ships with Maritime Labour Certificates

13.—(1) A relevant inspector may as respects a ship to which this regulation applies—

- (a) review the ship's Maritime Labour Certificate and Declaration of Maritime Labour Compliance or the ship's interim Maritime Labour Certificate, and
- (b) where Standard A5.2.1 of the Maritime Labour Convention applies, carry out a more detailed inspection, in accordance with that Standard.

(2) Where a relevant inspector has power to inspect a ship under paragraph (1)(b), paragraphs (2) to (5) of regulation 11 apply to that ship.

Detention of non-United Kingdom ships with Maritime Labour Certificates

14.—(1) As regards a ship to which this regulation applies, where a relevant inspector inspects a ship under regulation 13(1)(b) and has clear grounds for believing that, in relation to that ship—

- (a) the ship does not comply with the requirements of Regulation 1.1 and Standard A1.1 of the Maritime Labour Convention, and
- (b) (i) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
(ii) the non-compliance represents a serious or the latest in a series of repeated breaches of the requirements of the Maritime Labour Convention (or the rights of seafarers referred to in Articles III or IV of the Maritime Labour Convention);

that ship is liable to be detained.

(2) The power under this regulation to detain a ship may only be exercised if the ship in question is—

- (a) in a port or shipyard in the United Kingdom, or
- (b) at an offshore terminal in United Kingdom waters or controlled waters.

(3) Where a ship is liable to be detained under this regulation, section 284 of the Act has effect in relation to that ship as if—

- (a) references to detention of a ship under the Act were references to detention of the ship in question under this regulation, and
- (b) subsection (7) were omitted.

(4) Where a ship is detained under this regulation, the Secretary of State must immediately inform the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the appropriate maritime authorities of that State.

(5) Where a ship is detained under this regulation but the failure to comply referred to in paragraph (1) has ceased, a person having power to detain the ship must, at the request of the shipowner or master, immediately release the ship.

Review

15.—(1) The Secretary of State must from time to time—

- (a) carry out a review of regulations 6 to 14,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Maritime Labour Convention is implemented in other States.

(3) The report must in particular—

- (a) set out the objectives to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system which imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Transport

Date

Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Regulation 1.1 of the Maritime Labour Convention, 2006 (Cmd. 7049) and Clauses 6 and 11 of the Annex to Directive 1999/63/EC (O.J. No.L167, 02.07.1999, p.33) as amended by Directive 2009/13/EC (O.J. No. L124, 20.05.2009, p.30). They apply to sea-going United Kingdom ships wherever they may be and to other sea-going ships in United Kingdom waters, excepting certain pleasure, fishing and other vessels prescribed by regulation 7.

Regulation 7 prohibits a person under the age of 16 from working, or being employed, as a seafarer. *Regulation 8* prohibits a person under the age of 18 from working, or being employed, as a seafarer at night, subject to a provision regarding effective training. .

Regulations 9 to 11 make provision as to offences and penalties and powers of inspection and detention in relation to United Kingdom and other ships apart from those non-United Kingdom ships to which regulation 12 applies.

Regulation 12 sets out the minimum age requirements for non-United Kingdom ships which are subject to the Maritime Labour Convention and hold valid certification under that Convention and makes provision for offences, penalties and defences in relation to those requirements.

Regulations 13 and 14 provide for powers of inspection and detention in relation to such non-United Kingdom ships.

The Regulations are made under sections 85(1)(a) and (b), (1A), (1B), (3) and (5) to (7) and 86(1) of the Merchant Shipping Act 1995 except in so far as they relate to government ships. Section 2(2) of the European Communities Act 1972 is used to extend the application of the Regulations to government ships, in order to implement the obligations of Regulation 3.1 of the Maritime Labour Convention, 2006 as respects such ships.

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An impact assessment has been produced and is annexed to the Explanatory Memorandum, which has been placed in the libraries of both Houses of Parliament and is available alongside the Regulations on the OPSI website at www.opsi.gov.uk.