

20xx No.

MERCHANT SHIPPING

**The Merchant Shipping (Maritime Labour Convention) (Health
& Safety [Title 4.3]) Regulations 20xx**

Post Second Lawyer Check

<i>Made</i>	- - - -	***
<i>Laid before Parliament</i>		***
<i>Coming into force</i>	- -	***

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

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

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

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Health & Safety [Title 4.3]) Regulations 20xx

(2) These Regulations come into force on xxx.

Amendments to the Merchant Shipping and Fishing Vessels (Health and Safety at Work Regulations) 1997

2.—(1) The 1997 Regulations are amended as follows.

(2) In regulation 2(2)—

(a) after the definition of “health and safety” insert—

(a) S.I. 1993/595.

(b) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and section 3 of the European Union (Amendment) Act 2008 (c.7). The Maritime and Labour Convention is regarded as one of the Community Treaties for the purposes of section 1(2) of the European Communities Act 1972 by virtue of the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757).

(c) 1995 c.21.

““Marine Guidance Note” means a notice described as such and issued by the Maritime and Coastguard Agency, an executive agency of the Department for Transport, and any reference to a particular Marine Guidance Note includes a reference to a Marine Guidance Note amending or replacing that Note which is considered by the Secretary of State to be relevant from time to time;

“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 Maritime Labour Convention, 2006(a);”;

- (b) for the definition of “Merchant Shipping Notice” substitute—

““Merchant Shipping Notice” means a notice described as such and issued by the Maritime and Coastguard Agency, an executive agency of the Department for Transport, and any reference to a 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;”;

- (c) after the definition of “new or expectant mother” insert—

““pleasure vessel” means—

- (a) any 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 family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club;

where, in the case of any vessel referred to in paragraphs (a) or (b) above, no other payments are made by or on behalf of users of the vessel, other than by the owner; and in this definition “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;”

- (d) for the definition of “sea-going”, substitute—

““sea-going” means—

- (a) in relation to a United Kingdom ship which is not a fishing vessel, that the ship is—

(i) a ship to 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

(a) Cmd. 7049.

(b) S.I. 1995/1210, 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.

- (ii) 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(a);
- (b) in relation to any other ship, that the ship is operating outside Category A-D waters as defined in Merchant Shipping Notice No. 1827.”
- (e) after the definition of “sea-going”, insert—
 - ““seafarer” means any person, including a master, who is employed or engaged or works in any capacity on board a ship which is not a fishing vessel and whose normal place of work is on such a ship;
 - “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;”.
- (3) In regulation 3(1) at the beginning insert “Subject to paragraph (2A),”.
- (4) After regulation 3(1), insert—

“(1A) Subject to paragraphs (1B) and (2A), the following provisions shall, insofar as they apply to workers, also apply to seafarers who are not workers and shall, insofar as they apply to employers, also apply to shipowners—

 - (a) regulation 4(1)(a);
 - (b) regulation 5(1);
 - (c) regulation 7;
 - (d) regulation 12(1) and (2);
 - (e) regulation 16(1)(b)(iii);
 - (f) regulation 18(b) and (c);
 - (g) regulation 19(1)(b)(ii);
 - (h) regulation 20.

(1B) In relation to seafarers who are not workers, any obligation imposed by the provisions mentioned in paragraph (1A) that would, by virtue of that paragraph, otherwise apply to employers and shipowners shall apply to shipowners only.”
- (5) In regulation 3(2)—
 - (a) at the beginning insert “Subject to paragraph (2A)”; and
 - (b) for the words from “ships other” to the end, substitute “fishing vessels which are not United Kingdom ships and which are in United Kingdom waters”.
- (6) After regulation 3(2), insert—

“(2A) As regards ships which are not fishing vessels—

 - (a) subject to paragraph (2B), regulations 1 to 26, 27A, 27B and 30 apply to sea-going United Kingdom ships wherever they may be;
 - (b) subject to paragraph (2B), regulations 1 to 3 and 28A, 28B and 30 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—
 - (i) the Maritime Labour Convention has come into force for the State whose flag the ship is entitled to fly; and
 - (ii) the ship carries—

(a) S.I. 2004/302, amended by S.I. 2004/2883, S.I. 2005/2144 and S.I. 2006/2055.

- (aa) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached; or
 - (bb) an interim Maritime Labour Certificate.
- (c) subject to paragraph (2B), regulations 1 to 5, 7, 12, 13, 15, 19, 22, 24 to 26, 27A and 27B apply to a sea-going ship which is not a United Kingdom ship, while that ship is in United Kingdom waters, if—
 - (i) the Maritime Labour Convention has not come into force for the State whose flag the ship is entitled to fly; or
 - (ii) 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—
 - (aa) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached; or
 - (bb) an interim Maritime Labour Certificate.
- (2B) Paragraph (2A) does not apply to—
 - (a) pleasure vessels;
 - (c) ships of traditional build; and
 - (d) warships or naval auxiliaries.”
- (7) In regulation 7, after paragraph (4) insert—

“(4A) When conducting the assessment referred to in paragraphs (1) and (2), or a review referred to in paragraph (3), a shipowner must have regard to the statistical information and associated advice referred to in Marine Guidance Note [XXX].”
- (8) After regulation 11, insert—

“Reporting of occupational diseases

11A.—(1) This regulation applies where—

- (a) an employer receives a written report from a medical practitioner which indicates that a seafarer who has worked on the ship has (or has had) a disease listed in the table in Merchant Shipping Notice [XXX]; and
- (b) that seafarer was involved in an activity listed in that table as corresponding to that disease when working on the ship.

(2) The employer must—

- (a) have regard to the International Labour Organization guidance concerning the protection of workers’ personal data specified in Merchant Shipping Notice [XXX];
- (b) complete the form set out in Merchant Shipping Notice [XXX] in respect of the seafarer; and
- (c) send the completed form to the address specified in Merchant Shipping Notice [XXX].

(3) In this regulation—

“fully registered person” has the meaning given in section 55(1) of the Medical Act 1983(a);

“licence to practise” has the meaning given in section 55(1) of the Medical Act 1983(b);

“medical practitioner” means—

(a) 1983 c.54. The relevant amendments to section 55(1) were made by S.I. 2000/3041, S.I. 2006/1914, S.I. 2007/3101 and S.I. 2008/1774.

(b) The relevant amendment to section 55(1) was made by S.I. 2002/3135.

- (a) in the case of a practitioner based in the United Kingdom, a fully registered person who holds a licence to practise,
- (b) in the case of a practitioner not based in the United Kingdom, a person—
 - (i) entitled to practise in the country or territory in which that practitioner is based;
 - (ii) whose qualifications are specified in Merchant Shipping Notice [XXX] as sufficient for the holder to become a fully registered person if they were based in the United Kingdom; and
 - (iii) whose entitlement and qualifications to practice have been subject to satisfactory periodic assessment in a manner which satisfies the requirements specified in Merchant Shipping Notice [XXX].”
- (9) [In regulation 12(4), in each place it appears, for “workers” substitute “seafarers”.]
- (10) After regulation 13, insert—

“Extension of duties in other Regulations as regards seafarers who are not workers

- 13A.**—(1) This regulation applies if—
- (a) a duty in one of the Regulations listed in the Schedule is owed by an employer to a worker on a ship which is not a fishing vessel in respect of a risk; and
 - (b) at least one seafarer who is not a worker is exposed to that risk.
- (2) The shipowner must, so far as is reasonably practicable and appropriate, ensure that any action taken by any person to discharge the duty referred to in paragraph (1)(a) in respect of that risk as regards workers is also taken as regards seafarers.”
- (11) In regulation 15(1)—
 - (a) for “more than five” substitute “five or more”;
 - (b) for “workers” substitute “seafarers”; and
 - (c) for “employed, other than fishing vessels” substitute “working”.
- (12) In regulation 16(1), after “duty of the safety officer” insert “(having had regard to the International Labour Organization guidance concerning the protection of workers’ personal data specified in Merchant Shipping Notice [XXX])”.
- (13) In regulation 16(1)(b)(i), for “major” to the end, substitute “or serious injury as defined in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012(a).”.
- (14) In regulation 17(4), delete the words from the start to “elected”.
- (15) [In regulation 21, in each place it appears, for “worker” substitute “worker or seafarer”.]
- (16) In regulation 24(1), after “5” insert “or 13A”.
- (17) In regulation 24(4), after “11” insert “, 11A”.
- (18) In regulation 27—
 - (a) for the heading substitute—

“Inspection and detention of a United Kingdom fishing vessel”

- (b) in the first line, for “United Kingdom ship” substitute “United Kingdom fishing vessel”.
- (19) After regulation 27, insert—

(a) S.I. 2012/1743.

“Inspection of United Kingdom ships and certain other ships which are not fishing vessels

27A.—(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 a reference to these Regulations.

Detention of United Kingdom ships and other non-MLC ships which are not fishing vessels

27B.—(1) As regards a ship to which this regulation applies, where a relevant inspector has clear grounds for believing that—

- (a) the ship to which this regulation applies 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 the requirements of these Regulations or the Maritime Labour Convention (or the rights of seafarers referred to in Articles III and 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.

(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 one or more of these Regulations 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 one or more of those regulations, having been instituted within that period, are concluded without a person 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 a person 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^(b), 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 (7)(c) or release any security so given—

- (a) if no proceedings for an offence under one or more of these Regulations 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 such an offence, having been instituted within that period, are concluded without a person being convicted.

(8) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (7)(c) and a person is convicted of an offence under one or more of these Regulations, 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 person convicted; and
- (b) next in payment of any fine imposed by the court,

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

^(b) Cmnd. 8941.

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 any of these Regulations.”

(20) In regulation 28—

(a) for the heading substitute—

“Inspection and detention and other measures in respect of fishing vessels registered outside the United Kingdom”;

(b) for “any ship which is not a United Kingdom ship” substitute “any fishing vessel which is not a United Kingdom ship”.

(21) After regulation 28, insert—

“Inspection of non-United Kingdom ships with Maritime Labour Certificates which are not fishing vessels

28A.—(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), regulation 27A applies to that ship.

Detention of non-United Kingdom ships with Maritime Labour Certificates which are not fishing vessels

28B.—(1) — As regards a ship to which this regulation applies, where a relevant inspector inspects the ship under regulation 28A(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 4.3 and Standard A4.3 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 and IV of the Maritime Labour Convention which are secured by it);

the 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 paragraph (1), 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 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.”

(22) In regulation 29, after “these Regulations” insert “(other than under regulation 27B or 28B)”.

(23) After regulation 30, insert—

“Review

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

- (a) carry out a review of these regulations;
- (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 member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by those 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 that 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 this regulation comes into force.

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

SCHEDULE

Regulation 13A

Merchant Shipping Health and Safety Regulations

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Artificial Optical Radiation) Regulations 2010(**a**)

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010(**b**)

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Work at Height) Regulations 2010(**c**)

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010(**d**)

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010(**e**)

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007(**f**)

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- (a) S.I. 2010/2987.
 - (b) S.I. 2010/2984.
 - (c) S.I. 2010/332.
 - (d) S.I. 2010/330.
 - (e) S.I. 2010/323.
 - (f) S.I. 2007/3100.

The Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007**(a)**

The Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007**(b)**

The Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006**(c)**

The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006**(d)**

The Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001**(e)**

The Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999**(f)**

The Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations 1998**(g)**

The Merchant Shipping (Safety at Work Regulations) (Non-UK Ships) Regulations 1988**(h)**

The Merchant Shipping (Safe Movement on Board Ship) Regulations 1988**(i)**

The Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988**(j)**

The Merchant Shipping (Means of Access) Regulations 1988**(k)**”

Signed by authority of the Secretary of State for Transport

Address
Date

Name
Parliamentary Under Secretary of State
Department for Transport

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- (a)** S.I. 2007/3077.
(b) S.I. 2007/3075.
(c) S.I. 2006/2184.
(d) S.I. 2006/2183.
(e) S.I. 2001/3444.
(f) S.I. 1999/2205.
(g) S.I. 1998/2857.
(h) S.I. 1988/2274.
(i) S.I. 1988/1641.
(j) S.I. 1988/1638.
(k) S.I. 1988/1637.