

2016 No.

MERCHANT SHIPPING

The Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2016

Made - - - - ***
Laid before Parliament ***
Coming into force - - ***

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

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) and (2) of the Merchant Shipping Act 1995(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. These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2016 and come into force on 1st October 2016.

Interpretation

2.—(1) In these Regulations—

“collective agreement” means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992(d), the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

“Declaration of Maritime Labour Compliance” means, in relation to a ship, the Part 1 and Part 2 documents drawn up and issued in accordance with the Maritime Labour Convention, in the

(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part I of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The Maritime Labour Convention is regarded as one of the EU treaties within the meaning 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), as amended by S.I. 2011/1043.

(b) S.I. 1993/595.

(c) 1995 c.21. Sections 85 and 86 were amended by section 8 of the Merchant Shipping and Maritime Security Act 1997 (c.28), and are applied to hovercraft by article 4 of the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350) (sections 85 and 86 re-enact sections 21 and 22 of the Merchant Shipping Act 1979 (c.39), to which that article refers). There are other amendments not relevant to these Regulations.

(d) 1992 c.52.

forms corresponding to the relevant models 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;

“hours of rest” means time outside hours of work and does not include short breaks;

“hours of work” means time during which a seafarer is required to do work on the business of the ship;

“Maritime Labour Certificate” and “interim Maritime Labour Certificate” mean, in relation to a ship, a 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;

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

“master” in the application of these Regulations to a hovercraft includes the captain of a hovercraft;

“MCA” means the Maritime and Coastguard Agency(b);

“Merchant Shipping Notice” means a Notice described as such and issued by the MCA; 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;

“MLC ship” means a sea-going ship which is not a United Kingdom ship if—

- (a) the Maritime Labour Convention has come into force for 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 Compliance is attached; or
 - (ii) an interim Maritime Labour Certificate;

“non-MLC ship” means a sea-going ship which is neither a United Kingdom ship nor an MLC ship.

“pleasure vessel” means—

- (a) any vessel which at the time it is being used is—
 - (i) in the case of a vessel wholly owned by—
 - (aa) 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) 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 paragraph (a) or (b), no other payments are made by or on behalf of users of the vessel, other than by the owner; and in this definition “immediate

(a) Cmnd. 7049.

(b) The Maritime and Coastguard Agency is an executive agency of the Department for Transport.

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;

“relevant inspector” means any of the persons mentioned in section 258(1) of the Merchant Shipping Act 1995(a);

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

- (a) a ship which operates outside the waters specified as category A, B, C and D waters in Merchant Shipping Notice 1837(M)(b);
- (b) a ship to which the Merchant Shipping (Survey and Certification) Regulations 2015(c) apply and in respect of which no exemption granted under regulation 5(3) of those regulations applies;
- (c) a ship to which regulation 4 of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998(d) applies and which falls within the description given in paragraph (3) of that regulations; or
- (d) a high speed craft in respect of which a permit to operate outside waters of Categories A, B, C or D has been issued in accordance with regulation 8 of the Merchant Shipping (High Speed Craft) Regulations 2004(e);

“ship” includes hovercraft;

“shipowner” means—

- (a) in relation to a ship which has a valid Maritime Labour Certificate or interim 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 responsibility for
- (c) a United Kingdom ship within the meaning of section 85(2) of the Merchant Shipping Act 1995(f);
- (d) a Government ship within the meaning given by section 308(4) of the Merchant Shipping Act 1995 which is ordinarily engaged in commercial maritime operations; or
- (e) a hovercraft registered under the Hovercraft Act 1968(g);

“workforce agreement” means an agreement between an employer and persons employed by that employer or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied.

(2) For the purposes of these Regulations “competent authority” means—

- (a) in relation to the United Kingdom, the MCA;
- (b) in relation to any other member State, the national maritime administration maintained by that State for the inspection of ships; and
- (c) in relation to any state other than a member State, any authority designated as such by that state.

(3) For the purposes of these Regulations—

(a) Section 258(1) was amended by paragraph 4(2)(a) of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997 (c.28).

(b) Merchant Shipping Notice 1837(M) specifies which waters are category A, B, C and D waters for the purposes of regulation 3(2)(a) of SI 1992/2356, as the notice which currently supersedes Merchant Shipping Notice M1504 pursuant to regulation 2 of those Regulations.

(c) S.I. 2015/508.

(d) S.I. 1998/2771, amended by S.I. 2000/482, S.I. 2002/1473, S.I. 2005/2114, S.I. 2013/1785, S.I. 2014/1614 and S.I. 2016/353.

(e) S.I. 2004/302, amended by 2012/2636

(f) Section 85(2) was amended by section 2(3) of the British Overseas Territories Act 2002 (c.8).

(g) 1968 c.59.

- (a) “seafarer” means any person, including a master, who is employed or engaged or who works in any capacity on board a ship and whose normal place of work is on a ship, other than a seafarer who is subject to any requirement contained in the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003^(a);
- (b) “engaged”, in the application of these Regulations to a seafarer, means engaged under a contract, whether express or implied, and (if it is express) whether oral or in writing, whereby the seafarer undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried out by the seafarer;
- (c) “employed seafarer” means a seafarer who is employed under a contract of employment or engaged (or where the employment has ceased, was employed or engaged);
- (d) “employer” in relation to an employed seafarer means the person by whom the employed seafarer is or was employed or engaged; and
- (e) “employment” in relation to an employed seafarer is to be construed accordingly.

Application to ships

3.—(1) The following regulations apply to a sea-going United Kingdom ship wherever it may be and a non-MLC ship while it is in United Kingdom waters—

- (a) regulation 5 (general duty of shipowner, master, employer to provide hours of rest);
- (b) regulation 9 (requirement to post up table);
- (c) regulation 11 (exception to hours of rest in emergencies);
- (d) regulation 12 (requirement to keep records of hours of rest);
- (e) regulation 14 (provision of information on request);
- (f) regulation 15 (annual and additional leave);
- (g) regulation 17 (shore leave) (but see paragraph (3));
- (h) regulation 19 (inspection);
- (i) regulation 21 (detention);
- (j) regulation 22 (release of ships).

(2) The following regulations apply to an MLC ship while that ship is in United Kingdom waters—

- (a) regulation 8 (general duty of shipowner, master, employer to provide hours of rest);
- (b) regulation 10 (requirement to post up table);
- (c) regulation 11 (exception to hours of rest in emergencies);
- (d) regulation 13 (requirement to keep records of hours of rest);
- (e) regulation 16 (annual leave)
- (f) regulation 17 (shore leave) (but see paragraph (3));
- (g) regulation 20 (inspection);
- (h) regulation 21 (detention);
- (i) regulation 22 (release of ships).

(3) Regulation 17 (shore leave) does not apply to ships of traditional build.

(4) These Regulations do not apply to—

- (a) pleasure vessels;
- (b) fishing vessels;
- (c) warships or naval auxiliaries;

(a) S.I. 2003/3049.

- (d) vessels which are not ordinarily engaged in commercial activities.

Northern Ireland

4.—(1) These Regulations apply in relation to Northern Ireland with the following modifications.

(2) In regulation 2(1) (interpretation)—

- (a) for the definition of “collective agreement” there were substituted the following definition—

““collective agreement” means a collective agreement within the meaning of Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992(a), the trade union parties to which are independent trade unions within the meaning of that Article;”;

- (b) there were inserted in the appropriate place—

““industrial tribunal” means a tribunal established under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996(b);”.

(3) In regulations 26(1), (2), (3) and (5) and 28(1)(b) and (3)(c), for the words “employment tribunal” there were substituted “industrial tribunal”.

(4) In regulation 28(2)(a) (contracting out)—

- (a) for the words “a conciliation officer” there were substituted “the Agency”; and
- (b) for the words “sections 18A to 18C of the Employment Tribunals Act 1996 (conciliation)” there were substituted “Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(c)”.

General duty of shipowner, master, employer

5.—(1) It is the duty of the persons mentioned in paragraph (2) to ensure that a seafarer in relation to a ship to which this regulation applies is provided with at least the minimum hours of rest.

(2) The persons are—

- (a) the shipowner in relation to the ship;
- (b) the master of the ship; and
- (c) where the seafarer is an employed seafarer, the seafarer’s employer.

(3) A muster, drill or training session held pursuant to the Merchant Shipping (Musters, Training and Decision Support Systems) Regulations 1999—

- (a) may require the participation of a seafarer during the seafarer’s hours of rest, but
- (b) must be conducted in a manner which minimises disturbance of the seafarer’s hours of rest and does not induce fatigue.

(4) A seafarer who is on-call on board ship—

- (a) may be required to do call outs during hours of rest, but
- (b) must be provided with an adequate compensatory rest period for any call out work done during hours of rest.

(5) Nothing in this regulation restricts the operation of regulation 6 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998(a) (rest periods for young persons).

(a) S.I. 1992/807 (N.I. 5); the definition of “collective agreement” was amended by article 150 of, and Schedule 2 to, the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12)).

(b) S.I. 1996/1921 (N.I. 18).

(c) S.I. 1996/1921 (N.I. 18). Article 20 was amended by regulation 33(b) of S.I. 1998/386, regulation 33(2)(a) of S.I. 1999/3323, Schedule 2 to S.I. 2002/2836 (N.I. 2) and section 8 of the Employment Act (Northern Ireland) 2011 (c.13 (N.I.)); there are other amending instruments which are not relevant to these Regulations.

(6) This regulation is subject to regulation 11.

Minimum hours of rest

6.—(1) The minimum hours of rest are—

- (a) 10 hours in any 24-hour period; and
- (b) 77 hours in any 7-day period.

(2) The 10 hours of rest mentioned in paragraph (1)(a) may be divided into no more than 2 periods, one of which is to be at least 6 hours in length.

(3) This regulation is subject to regulation 7.

Authorised exceptions to minimum hours of rest

7.—(1) The MCA may authorise collective agreements or workforce agreements which—

- (a) provide exceptions to the minimum hours of rest mentioned in regulation 6(1)(b);
- (b) provide for exceptions to regulation 6(2).

(2) A collective agreement or workforce agreement under paragraph (1)(a) must require that—

- (a) there are at least 70 hours total rest in any period of 7 days;
- (b) the exceptions provided for in the agreement do not apply in relation to a period of more than two consecutive weeks; and
- (c) where the exceptions apply in relation to two periods separated by an interval, the interval is at least twice the duration of the longer of the two periods.

(3) A collective agreement or workforce agreement under paragraph (1)(b) must require that the 10 minimum hours of rest mentioned in regulation 6(1)(a) are divided into three periods—

- (a) one of the three periods is at least 6 hours long and neither of the two other periods are less than one hour long;
- (b) intervals between consecutive periods do not exceed 14 hours each; and
- (c) the exceptions provided for in the agreement do not apply in relation to more than two 24 hour periods in any 7 day period.

Hours of rest requirement for MLC ships

8.—(1) It is the duty of the persons mentioned in paragraph (2) to ensure that a seafarer in relation to a ship to which this regulation applies is provided with hours of work or hours of rest in accordance with the provisions of Standard A2.3 of the Maritime Labour Convention.

(2) The persons are—

- (a) the shipowner in relation to the ship;
- (b) the master of the ship; and
- (c) where the seafarer is an employed seafarer, the seafarer's employer.

Posting up of table

9.—(1) The master of a ship to which this regulation applies, or a person authorised by the master, must ensure that the following tables are posted up in a prominent and easily accessible place in the ship—

- (a) a table of scheduled watchkeeping; and
- (b) a table of scheduled hours of rest.

(a) S.I. 1998/2411; regulation 6 was amended by S.I. 2002/2125.

- (2) A table under paragraph (1) is to—
- (a) contain the information specified in [Merchant Shipping Notice XXXX *to be updated*];
 - (b) be in the format specified in that Merchant Shipping Notice, or in a format substantially like it; and
 - (c) be in English and in the working language of the ship if that is not English.

Requirement to post up table in relation to MLC ships

10. The master of a ship to which this regulation applies, or a person authorised by the master, must post a table of the working shipboard arrangements in accordance with the provisions of paragraphs 10 and 11 of Standard A2.3 of the Maritime Labour Convention.

Exception for emergencies

11.—(1) The master of a ship to which this regulation applies may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board or cargo, for the purpose of giving assistance to another ship or to a person in distress at sea.

(2) As soon as practicable after the normal situation has been restored the master must ensure that any seafarer who has performed work in hours of rest scheduled in the table under regulation 8 is provided with an adequate rest period.

Records

12.—(1) The master of a ship to which this regulation applies, or a person authorised by the master, must maintain records of each seafarers' daily hours of rest.

(2) The procedures for keeping such records (including the intervals at which the information is to be recorded) and the format of such records must comply with the requirements specified in [Merchant Shipping Notice XXXX *to be updated*].

(3) Records must be in English and in the working language of the ship if that is not English.

(4) The records kept under paragraph (1) must be endorsed by—

- (a) the master, or the person authorised by the master; and
- (b) the seafarer to whom the record relates.

(5) The master, or a person authorised by the master, must give a copy of the endorsed record to the seafarer to whom the record relates.

(6) A relevant inspector must examine and endorse, at appropriate intervals, records kept under paragraph (1).

(7) The shipowner and the master must ensure that a copy of these Regulations (including any relevant Merchant Shipping notices) and any collective agreements or workforce agreements relevant to the ship which are authorised under regulation 7 (exceptions to minimum hours of rest) are carried at all times on board ship in an easily accessible place.

Records requirement for MLC ships

13. The master of a ship to which this regulation applies, or a person authorised by the master, must maintain records of seafarers' daily hours of rest or work and provide copies of such records to seafarers in accordance with the provisions of paragraph 12 of Standard A2.3 of the Maritime Labour Convention.

Power to require information

14. A shipowner in relation to a ship to which this regulation applies must provide the MCA with such information as the MCA may specify on watchkeepers and other seafarers working at night.

Entitlement to annual and additional leave

- 15.**—(1) An employed seafarer on a ship to which this regulation applies is entitled to—
- (a) paid annual leave that is to be calculated on the basis of two and a half days for each month of employment in the leave year and pro rata for incomplete months; and
 - (b) additional paid leave of eight days in each leave year and pro rata for incomplete years.
- (2) Leave to which a seafarer is entitled under this regulation—
- (a) may be taken in instalments; and
 - (b) may not be replaced by payment in lieu, except where the seafarer’s employment is terminated.
- (3) Justified absences from work are not to be considered annual leave for the purposes of paragraph (1)(a).
- (4) For the purposes of this regulation, “justified absences from work” include any absence authorised by—
- (i) any enactment;
 - (ii) any contract between the seafarer’s employer and the seafarer;
 - (iii) any collective agreement or workplace agreement; or
 - (iv) custom or practice.

Annual leave requirement for MLC ships

16. The employer of a seafarer in relation to a ship to which this regulation applies must ensure that the seafarer is given paid annual leave in accordance with Regulation 2.4 of the Maritime Labour Convention.

Shore leave

17. The shipowner and the master of a ship to which this regulation applies must ensure that shore leave is granted to seafarers who work on the ship to benefit their health and well-being where consistent with the operational requirements of their positions.

Entitlements under other provisions

18. These Regulations do not limit the hours of rest or paid leave to which a seafarer is otherwise entitled.

Inspection of United Kingdom ships and non-MLC ships

19.—(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) may at all reasonable times go on board and inspect a ship, its equipment, any article on it and any document carried on it.

(2) Subsections (1A), (2), (3) and (5) of section 258 of the Merchant Shipping Act 1995 (powers to inspect ships and their equipment, etc.)^(a) apply in relation to the power conferred by paragraph (1) as they apply to the power conferred under subsection (1) of that section.

(3) The powers conferred by section 259 of the Merchant Shipping Act 1995 (powers of inspectors in relation to ships) are available to any person conducting an inspection under paragraph (1), for the purpose of performing the person’s functions in relation to the inspection.

(4) In its application by virtue of paragraph (3), section 259 of the Merchant Shipping Act 1995 applies as if—

- (a) subsections (3), (4) and (6) were omitted ;

^(a) Subsection (1A) was inserted by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1, paragraph 4.

- (b) in subsection (2)(h)(iii)—
 - (i) for the words “this Act” there were substituted “these Regulations”; and
 - (ii) the words “or any instrument made under it” were omitted;
- (c) in subsection (2)(j)(i), for the words “this Act” there were substituted “these Regulations”;
- (d) in subsection (5)—
 - (i) for the words “subsections (2) and (4) above for the purposes of Chapter II of Part VI” there were substituted “subsection (2) above”; and
 - (ii) for the words “those subsections” there were substituted “that subsection”.

(5) Section 260 (provisions supplementary to section 259) applies in relation to the powers conferred by section 259 by virtue of paragraph (3).

(6) Sections 261 to 266 (improvement notices and prohibition notices) apply in relation to a person conducting an inspection under paragraph (1) as they apply in relation to an inspector appointed under section 256(6).

(7) In its application by virtue of paragraph (6), section 261 (meaning of “the relevant statutory provisions”)(a), has effect as if in subsection (4), after paragraph (b) there were inserted—

“(c) the Merchant Shipping (Hours of Work) Regulations 2016.”.

(8) Any regulations made under subsection (8) of section 259 or subsection (3) of section 260 of the Merchant Shipping Act 1995 apply for the purposes of the provisions of those sections as applied by this regulation as they apply for the purposes of the Merchant Shipping Act 1995.

Inspection of MLC ships for compliance with Maritime Labour Convention documentation

20.—(1) A relevant inspector may—

- (a) review a 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 (inspections in port) applies, carry out a more detailed inspection in accordance with that Standard.

(2) Subsections (1A), (2), (3) and (5) of section 258 of the Merchant Shipping Act 1995 (powers to inspect ships and their equipment, etc.)(b) apply in relation to the power conferred by paragraph (1) as they apply to the power conferred under subsection (1) of that section.

(3) The powers conferred by section 259 of that Act (powers of inspectors in relation to ships) are available to any person conducting an inspection under paragraph (1), for the purpose of performing the person’s functions in relation to the inspection.

(4) In its application by virtue of paragraph —

- (a) subsections (3), (4) and (6) were omitted ;
- (b) in subsection (2)(h)(iii)—
 - (i) for the words “this Act” there were substituted “these Regulations”; and
 - (ii) the words “or any instrument made under it” were omitted;
- (c) in subsection (2)(j)(i), for the words “this Act” there were substituted “these Regulations”;
- (d) in subsection (5)—

(a) Section 261 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 6, paragraph 16 and by S.I. 1998/2241 and S.I. 1998/2647. Section 264 was amended by the Arbitration Act 1996 (c.23), Schedule 4, and by the Constitutional Reform Act 2005 (c.4), Schedule 11; there are further amendments made by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 10 which have yet to be brought into force. The meaning of “the relevant statutory provisions” as provided in section 261(4) applies to sections 261 to 266 of the Merchant Shipping Act 1995.

(b) Subsection (1A) was inserted by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1, paragraph 4.

- (i) for the words “subsections (2) and (4) above for the purposes of Chapter II of Part VI” there were substituted “subsection (2) above”; and
- (ii) for the words “those subsections” there were substituted “that subsection”.

(5) Section 260 (provisions supplementary to section 259) applies in relation to the powers conferred by section 259 by virtue of paragraph (3).

(6) Sections 261 to 266 (improvement notices and prohibition notices) apply in relation to a person conducting an inspection under paragraph (1) as they apply in relation to an inspector appointed under section 256(6).

(7) In its application by virtue of paragraph (6), section 261 (meaning of “the relevant statutory provisions”)(a), has effect as if in subsection (4), after paragraph (b) there were inserted—

“(c) the Merchant Shipping (Hours of Work) Regulations 2016.”.

(8) Any regulations made under subsection (8) of section 259 or subsection (3) of section 260 of the Merchant Shipping Act 1995 apply for the purposes of the provisions of those sections as applied by this regulation as they apply for the purposes of the Merchant Shipping Act 1995.

Detention of ships

21.—(1) Where a ship is inspected under regulation 19 or 20, the ship may be detained if the relevant inspector or, as the case may be, proper officer has clear grounds for believing that—

- (a) the ship does not comply with the provisions of these Regulations that apply to it; and
- (b) either—
 - (i) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
 - (ii) the non-compliance mentioned in condition A represents a serious breach or the latest in a series of repeated breaches of these Regulations or the requirements of the Maritime Labour Convention.

(2) Section 284 of the Merchant Shipping Act 1995, (enforcing detention of a ship)(b) applies in relation to a ship which may be detained under paragraph (1) as it applies in relation to a ship which may be detained under that Act.

(3) In its application by virtue of paragraph (2), section 284 has effect as if—

- (a) in subsection (3), for “owner of a ship” there were substituted “shipowner in relation to a ship”;
- (b) in subsection (4), for “owner” there were substituted “shipowner”; and
- (c) subsection (7) were omitted.

(4) Where a ship is detained under paragraph (1), the person detaining the ship must serve on the master of the ship a detention notice which—

- (a) states the grounds of detention; and
- (b) states that the terms of the notice must be complied with until the ship is released by any person mentioned in section 284(1) of the Merchant Shipping Act 1995.

(5) Where a ship other than a United Kingdom ship is detained under paragraph (1), 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, and invite them to send a representative to attend the ship.

(a) Section 261 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 6, paragraph 16 and by S.I. 1998/2241 and S.I. 1998/2647. Section 264 was amended by the Arbitration Act 1996 (c.23), Schedule 4, and by the Constitutional Reform Act 2005 (c.4), Schedule 11; there are further amendments made by the Tribunals, Courts and Enforcement Act 2007 (c.15), section 10 which have yet to be brought into force. The meaning of “the relevant statutory provisions” as provided in section 261(4) applies to sections 261 to 266 of the Merchant Shipping Act 1995.

(b) Section 284 was amended by the Merchant Shipping and Maritime Security Act 1997, Schedule 1 and S.I. 2015/664.

Release of ships detained under regulation 20

22.—(1) Where a ship is detained under regulation 21(1), a person who had power to detain the ship must, at the request of the shipowner or master, immediately release the ship if—

- (a) the person no longer has grounds for believing that regulation 21(1)(a) or (b) applies; and
- (b) relevant circumstances have arisen.

(2) For the purposes of paragraph (1), relevant circumstances have arisen if—

- (a) no proceedings for an offence under regulation 25 of these Regulations are instituted within the period of seven days beginning on the day on which the ship is detained;
- (b) proceedings for such an offence are instituted within that period and are concluded without the shipowner or master being convicted;
- (c) the shipowner or master—
 - (i) is convicted of such an offence, and
 - (ii) has paid any fines, costs and expenses arising out of the conviction;
- (d) the sum of £30,000 is paid to the Secretary of State by or on behalf of the shipowner or master;
- (e) other security which, in the opinion of the Secretary of State, is satisfactory and is of a value not less than £30,000 is given to the Secretary of State; or
- (f) the release of the ship is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea and any bond or other financial security ordered by such a court or tribunal is posted.

(3) The Secretary of State must repay any sum paid under paragraph (2)(d) or release any security given under paragraph (2)(e) if—

- (a) no proceedings for an offence under these Regulations are instituted within the period of seven days beginning with the day on which the sum is paid; or
- (b) proceedings for such an offence are instituted within that period and are concluded without the shipowner or master being convicted.

(4) Where the shipowner or master is convicted of an offence under these Regulations, any sum paid to the Secretary of State by any person under paragraph (2)(d) 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 person who paid the sum.

(5) Section 145 of the Merchant Shipping Act 1995, (interpretation of references in section 144 to the institution or conclusion of proceedings) applies for the interpretation of references in paragraphs (2) to (4) as it does for the interpretation of references in section 144 of that Act (detention of ships for certain offences).

(6) In its application by virtue of paragraph (5), section 145 has effect as if—

- (a) references to the owner of a ship were references to a shipowner under these Regulations; and
- (b) references to an offence under section 131 of that Act were references to an offence under regulation 25 of these Regulations.

Arbitration and compensation

23.—(1) Sections 96 and 97 of the Merchant Shipping Act 1995 (arbitration and compensation) apply in relation to a detention notice under regulation 20(7) as they apply to a detention notice under section 95(3).

(2) In its application by virtue of paragraph (1), section 96 (references of detention notices to arbitration) applies as if—

- (a) in subsection (1), for the words “owner of a ship” there were substituted “shipowner in relation to the ship”;
 - (b) in subsection (2)—
 - (i) for the words “owner of a ship” there were substituted “shipowner in relation to the ship”; and
 - (ii) the words from “unless” to the end were omitted;
 - (c) in subsection (3), the words “to whether the ship was or was not a dangerously unsafe ship” were omitted.
 - (d) in subsection (5), the words “as a dangerously unsafe ship” were omitted; and
 - (e) for subsection (11) there were substituted—

“(11) In this section “relevant inspector” means any person mentioned in paragraph (a), (b) or (c) of section 258(1) or, in the case of a United Kingdom ship, a proper officer.”.
- (3) In its application by virtue of paragraph (1), section 97 (compensation in connection with invalid detention of a ship) applies as if—
- (a) for subsection (1) there were substituted—

“(1) If on a reference under section 96 relating to a detention notice, the shipowner in relation to the ship shows to the satisfaction of the arbitrator that—

 - (a) any matter did not constitute a valid basis for the relevant inspector’s opinion; and
 - (b) there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may award the shipowner such compensation in respect of any loss suffered by the shipowner in consequence of the detention of the ship as the arbitrator thinks fit.”; and
 - (b) for subsection (4) there were substituted—

“(4) In this section “relevant inspector” means any person mentioned in paragraph (1), (b) or (c) of section 258(1) or, in the case of a United Kingdom ship, a proper officer.”.

Release of information

24. The MCA must ensure the publication, at least every month, of the information specified in [Merchant Shipping Notice XXXX] concerning ships which during the previous month have been detained in a port in the United Kingdom under regulation 21.

Offences and penalties

- 25.—**(1) It is an offence for—
- (a) the master of the ship to breach regulation 5(1), (3)(b) or (4)(b), 8(1), 9(1), 10, 11(2), 12(1), (4), (5) or (7), 13 or 17;
 - (b) the employer of an employed seafarer to breach regulation 5(1), 8(1) or 16;
 - (c) the person authorised by the master of the ship to breach regulation 9(1), 10, 12(1), (4) or (5) or 13;
 - (d) the shipowner to breach regulation 5(1), 8(1), 12(7), 14 or 17.
- (2) Where there is a contravention of regulation 15(1)(a) or (b), the employer of the seafarer is guilty of an offence.
- (3) A person guilty of an offence under these Regulations is liable on summary conviction—
- (a) in England and Wales, to a fine;
 - (b) in Scotland or Northern Ireland, to a fine not exceeding level 5 on the standard scale.
- (4) In any proceedings for an offence under these Regulations it is a defence for the defendant to show that all reasonable steps had been taken by the defendant to ensure compliance with these regulations.

Remedies

26.—(1) An employed seafarer may present a complaint to an employment tribunal that the seafarer’s employer—

- (a) has refused to permit the exercise of any right that the seafarer has under regulation 15(1)(a) or (b) (entitlement to annual leave etc.); or
- (b) has failed to pay the seafarer the whole or any part of any amount due to the seafarer under regulation 15(1)(a) or (b).

(2) An employment tribunal must not consider a complaint under this regulation unless it is presented—

- (a) before the end of the complaint period; or
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of the complaint period.

(3) Where an employment tribunal finds a complaint under paragraph (1)(a) to be well-founded, the tribunal—

- (a) must make a declaration to that effect; and
- (b) may make an award of compensation to be paid by the employer to the seafarer.

(4) The amount of the compensation is to be such amount as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer’s default in refusing to permit the seafarer to exercise the seafarer’s right, and
- (b) any loss sustained by the seafarer which is attributable to the matters complained of.

(5) Where on complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a seafarer in accordance with regulation 15(1)(a) or (b), it must order the employer to pay the seafarer the amount which it finds to be due to the seafarer.

Complaint period and its extension to facilitate conciliation before institution of proceedings

27.—(1) The “complaint period” is the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a period of annual leave or additional leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made.

(2) In working out when the complaint period expires, the period beginning with the day after Day A and ending with Day B is not to be counted.

(3) If the complaint period would (if not extended by this paragraph) expire during the period beginning with Day A and ending one month after Day B, the time limit expires instead at the end of that period.

(4) In this regulation—

- (a) “Day A” is the day on which the seafarer concerned complies with the requirement in section 18A(1) of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings) in relation to the matter in respect of which the proceedings are brought, and
- (b) “Day B” is the day on which the seafarer concerned receives or, if earlier, is treated as receiving (by virtue of regulations made under section 18A(11) of the Employment Tribunals Act 1996) the certificate issued under subsection (4) of that section.

Restriction on contracting out

28.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports to—

- (a) exclude or limit the operation of any provision of these Regulations; or

- (b) preclude a person from bringing proceedings under these Regulations before an employment tribunal.
- (2) Paragraph (1) does not apply to—
- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under sections 18A to 18C of the Employment Tribunals Act 1996 (conciliation)(a); or
 - (b) any agreement to refrain from instituting or continuing proceedings under regulation 26, if the following conditions are met.
- (3) For the purposes of paragraph (2)(b) the conditions are—
- (a) the agreement is in writing;
 - (b) the agreement relates to the particular complaint;
 - (c) the seafarer has received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on the seafarer’s ability to pursue the seafarer’s rights before an employment tribunal;
 - (d) there is in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the seafarer in respect of loss arising in consequence of the advice; and
 - (e) the agreement states that the conditions in sub paragraphs (a) to (d) are satisfied.
- (4) A person is a relevant independent adviser for the purposes of paragraph (3)(c) if the person—
- (a) is a qualified lawyer;
 - (b) is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union; or
 - (c) works at an advice centre (whether as an employee or a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.
- (5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c)—
- (a) if the person is, is employed by or is acting in the matter for the employer or an associated employer;
 - (b) in the case of a person within paragraph (4)(b), if the trade union is the employer or an associated employer; or
 - (c) in the case of a person within paragraph (4)(c), if the seafarer makes a payment for the advice received from the person.
- (6) In paragraph (4)(a), “qualified lawyer” means—
- (a) as respects England and Wales, a person who, for the purposes of the Legal Services Act 2007(b), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act);
 - (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate; and
 - (c) as respects Northern Ireland, a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.
- (7) For the purposes of paragraph (5) any two employers are to be treated as associated if—
- (a) one is a company of which the other (directly or indirectly) has control; or
 - (b) both are companies of which a third person (directly or indirectly) has control;

(a) 1996 c.17. Sections 18A to 18C were added by the Enterprise and Regulatory Reform Act (c.24). Sections 18A and 18B were added by Part 2, section 7(1) of that Act. Section 18C was added by paragraph 6 of Schedule 1 to that Act.

(b) 2007 c.29. Section 18 defines authorised persons for the purposes of the Act.

and “associated employer” is to be construed accordingly.

Review

29.—(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 other member States have implemented—

- (a) the Maritime Labour Convention;
- (b) Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners’ Association (ECSA) and the Federation of Transport Workers Unions in the European Union (FST)(a);
- (c) Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners’ Association (ECSA) and the European Transport Workers’ Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC(b)
- (d) Council Directive 2012/35/EU of 21 November 2012 amending Directive 2008/106/EC on the minimum level of training for seafarers,
- (e) Council Directive 2013/38/EU of 12 August 2013 amending Directive 2009/16/EC on port state control(c);
- (f) Council Directive 2013/54/EU of 20 November 2013 concerning certain flag state responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006(d);

(3) The report must in particular—

- (a) set out the objectives intended to be achieved 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 that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of 3 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 5 years.

Revocations and savings

30. The following Regulations are revoked—

- (a) the Merchant Shipping (Hours of Work) Regulations 2002(e), except for regulation 21 and Schedule 2;
- (b) the Merchant Shipping (Hours of Work) (Amendment) Regulations 2004(f); and
- (c) the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendments) Regulations 2014(g), except for regulation 3 and the Schedule.

(a) O.J. L167, 2.7.1999, p. 33, amended by Council Directive 2009/13/EC.

(b) O.J. L124, 20.5.2009, p. 30.

(c) O.J. L218, 14.8.2013, p. 1.

(d) O.J. L329, 10.12.2013, p. 1.

(e) S.I. 2002/2125.

(f) S.I. 2004/1469.

(g) S.I. 2014/308.

Consequential amendments

31. Schedule 2 (consequential amendments) has effect.

Signed by authority of the Secretary of State for Transport

[Date]

Name
Minister of State
Department for Transport

SCHEDULE 1

Regulation 2(1)

WORKFORCE AGREEMENTS

1.—(1) An agreement is a workforce agreement for the purposes of these Regulations if the following conditions are satisfied.

- (2) The agreement is in writing;
- (3) The agreement has effect for a specified period not exceeding five years;
- (4) The agreement applies either—
 - (a) to all of the relevant members of the workforce, or
 - (b) to all of the relevant members of the workforce who belong to a particular group.
- (5) The agreement is signed—
 - (a) in the case of an agreement of the kind referred to in paragraph (4)(a)—
 - (i) by the representatives of the workforce, or
 - (ii) if the employer employed 20 or fewer individuals on the date on which the agreement was first made available for signature, the majority of the individuals employed by the employer;
 - (b) in the case of an agreement of the kind referred to in sub-paragraph (4)(b)—
 - (i) by the representatives of the group to which the agreement applies (excluding, in either case, any representative not a relevant member of the workforce on the date on which the agreement was first made available for signature), or
 - (ii) if the employer employed 20 or fewer individuals on the date on which the agreement was first made available for signature, the majority of the individuals employed by the employer; and
- (6) Before the agreement was made available for signature, the employer provided all the employees to whom it was intended to apply on the date on which it came into effect with copies of the text of the agreement and such guidance as those employees might reasonably require in order to understand it in full.

2. “a particular group” is a group of the relevant members of a workforce who undertake a particular function, work at a particular workplace or belong to a particular department or unit within their employer’s business;

“employee” means an individual who has entered into or works under a contract of employment;

“relevant members of the workforce” are all of the employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement;

“representatives of the workforce” are employees duly elected to represent the relevant members of the workforce, “representatives of the group” are employees duly elected to represent the members of a particular group, and representatives are “duly elected” if the election at which they were elected satisfies the requirements of paragraph 3 of this Schedule.

3. The requirements concerning elections referred to in the definition of “representatives of the workforce” are that—

- (a) the number of representatives to be elected is determined by the employer;
- (b) the candidates for election as representatives of the workforce are relevant members of the workforce, and the candidates for election as representatives of a group are members of the group;
- (c) no employee who is eligible to be a candidate is unreasonably excluded from standing in the election;
- (d) all the relevant members of the workforce are entitled to vote for representatives of the workforce, and all the members of a particular group are entitled to vote for representatives of the group;
- (e) the employees entitled to vote may vote for as many candidates as there are representatives to be elected; and
- (f) the election is conducted so as to ensure that—
 - (i) so far as practicable, those voting do so in secret, and
 - (ii) the votes given at the election are fairly and accurately counted.

SCHEDULE 2

Regulation 31

CONSEQUENTIAL AMENDMENTS

1. In the Employment Tribunals Act 1996(a)—

- (a) in section 18(1), for paragraph (n) substitute—

“(n) under regulation 25 of the Merchant Shipping (Hours of Work) Regulations 2016 (S.I. 2016/xxxx).”;
- (b) in section 21(1), for paragraph (z) substitute—

“(z) the Merchant Shipping (Hours of Work) Regulations 2016 (S.I. 2016/xxxx).”.

2. In the Employment Rights Act 1996(b)—

- (a) in section 45A(5), for paragraph (d) substitute—

“(d) the Merchant Shipping (Hours of Work) Regulations 2016 (S.I. 2016/xxxx).”;
- (b) in section 101A(2), for paragraph (d) substitute—

“(d) the Merchant Shipping (Hours of Work) Regulations 2016 (S.I. 2016/xxxx).”;
- (c) in section 104(4)(d), for “the Merchant Shipping (Hours of Work) Regulations 2002” substitute “the Merchant Shipping (Hours of Work) Regulations 2016 (S.I. 2016/xxxx)”.

3. In the Employment Rights (Northern Ireland) Order 1996(c)—

- (a) in article 68A(5), for sub-paragraph (d) substitute—

“(d) the Merchant Shipping (Hours of Work) Regulations 2016.”;

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- (a) 1996 c.17. Section 18 was amended by section 9, section 18 and paragraph 5 of Schedule 1 to the Enterprise and Regulatory Reform Act 2013 (c.24) and S.I. 2014/431; there are other amending enactments but none are relevant. Section 21 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8), S.I. 1998/1833 and S.I. 2014/308; there are other amending enactments but none are relevant.
 - (b) 1996 c.18. Section 45A was added by S.I. 1998/1833 and was amended by S.I. 2003/3049 and S.I. 2014/308; there are other amending enactments but none are relevant. Section 101A was added by 1998/1833 and subsection (2) was inserted by S.I. 2003/3049, S.I. 2004/1713, S.I. 2008/1660 and S.I. 2014/308. Section 104(4)(d) was inserted by S.I. 1998/1833 and amended by S.I. 2004/1713, S.I. 2008/1660 and S.I. 2014/308.
 - (c) S.I. 1996/1919 (N.I. 16). Article 68A was inserted by S.R. 1998 no. 386 and Article 68(5) was inserted by S.I. 2003/3049 and amended by S.I. 2014/308. Article 132A was inserted by S.R. 1998 no. 386 and Article 132A(2) was inserted by S.I. 2003/3049 and amended by S.I. 2014/308. Article 135(4)(d) was inserted by S.I. 2004/1713 and amended by S.I. 2014/308. There are other instruments amending articles 68A, 132A and 135 but none are relevant.

- (b) in article 132A(2), for sub paragraph (d) substitute—
“(d) the Merchant Shipping (Hours of Work) Regulations 2016.”;
- (c) in article 135(4)(d) for “the Merchant Shipping (Hours of Work) Regulations 2002” substitute “the Merchant Shipping (Hours of Work) Regulations 2016”.
- 4.** In the Industrial Tribunals (Northern Ireland) Order 1996(a), in article 20(1), for sub-paragraph (u) substitute—
“(u) under regulation 25 of the Merchant Shipping (Hours of Work) Regulations 2016.”.
- 5.** In the Working Time Regulations 1998(b), in regulation 18(1)(a), for “the Merchant Shipping (Hours of Work) Regulations 2002” substitute “the Merchant Shipping (Hours of Work) Regulations 2016”.
- 6.** In the Working Time Regulations (Northern Ireland) 2016(c), in regulation 22(1)(a), for “the Merchant Shipping (Hours of Work) Regulations 2002” substitute “the Merchant Shipping (Hours of Work) Regulations 2016”.
- 7.** In the Merchant Shipping (Fees) Regulations 2006(d), in Part 1 of Schedule 1, in the table in paragraph 1, in Section K (manning and certification)—
- (a) in the first column, for the entry relating to the Merchant Shipping (Hours of Work) Regulations 2002 substitute “Merchant Shipping (Hours of Work) Regulations 2016”;
- (b) in the second column, omit “2002/2125”; and
- (c) in the third column, omit “2003/3049”.
- 8.** In the Legislative and Regulatory Reform (Regulatory Functions) Order 2007(e), in Part 2 of the Schedule—
- (a) omit “Merchant Shipping (Hours of Work) Regulations 2002”; and
- (b) insert in the appropriate place “Merchant Shipping (Hours of Work) Regulations 2016”.
- 9.** In the Merchant Shipping (Boatmasters’ Qualifications, Crew and Hours of Work) Regulations 2015(f), in regulation 43(b),
- (a) omit paragraph (ii); and
- (b) after paragraph (iii), insert—
“(iv) the Merchant Shipping (Hours of Work) Regulations 2016.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

(a) S.I. 1996/1921 (N.I. 18). Article 20 was amended by S.I. 2014/1614, by S.R. 2014 no. 88 and section 8 of the Employment Act (Northern Ireland) 2011 (c.13 (N.I.)); there are other amending enactments but none are relevant.

(b) S.I. 1998/1833. Regulation 18 was amended by S.I. 2003/1684, S.I. 2003/3049, S.I. 2004/1713 and S.I. 2014/308.

(c) S.R. 2016 No. 49.

(d) S.I. 2006/2055.

(e) S.I. 2007/3544. There are no relevant amending instruments.

(f) S.I. 2015/410.