

2014 No. 1614

MERCHANT SHIPPING

**The Merchant Shipping (Maritime Labour Convention)
(Consequential and Minor Amendments) Regulations 2014**

<i>Made</i>	- - - -	<i>9th July 2014</i>
<i>Laid before Parliament</i>		<i>15th July 2014</i>
<i>Coming into force</i>	- -	<i>7th August 2014</i>

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) and in relation to measures relating to maritime transport(c).

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 25 to 27, 32, 36, 47, 73(3), 77, 78 and 85 of the Merchant Shipping Act 1995(d).

In accordance with sections 86(4) and 306(4) of the Merchant Shipping Act 1995(e), the Secretary of State has consulted the persons and organisations referred to in those sections.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 and they come into force on 7th August 2014.

PART 1

Amendments to Primary Legislation

Amendments to Merchant Shipping Act 1995

2.—(1) The Merchant Shipping Act 1995(f) is amended as follows.

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- (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) S.I. 1994/757.
- (d) 1995 c. 21. There are amendments to sections 73 and 85 which are not relevant to these Regulations.
- (e) There are amendments to section 306 which are not relevant to these Regulations.
- (f) 1995 c.21.

- (2) In section 24, insert after subsection (2)—
- “(2A) Sections 25, 26, 30, 31, 33, 38(1), 44, 45, 55 and 73 to 75 apply to sea-going United Kingdom ships and masters and seamen employed in them only if they are—
- (a) fishing vessels;
 - (b) ships of traditional build; or
 - (c) vessels which are not ordinarily engaged in commercial activities.”.
- (3) In section 32—
- (a) in paragraph (a) after “crew agreement” insert “or such other type of agreement as may be specified in the regulations”; and
 - (b) in paragraph (c) for “a crew agreement” substitute “the agreement”.
- (4) In section 35 after “crew agreement” insert “or an agreement specified in regulations under section 32(a)”.
- (5) In section 70, after subsection (4) insert—
- “(5) Subsection (3) does not apply in respect of an agreement to reimburse repatriation costs.”.

Amendment to the Employment Rights Act 1996

3. In section 199(1) of the Employment Rights Act 1996(a), at the end insert “or an agreement specified in regulations under section 32(a) of the Merchant Shipping Act 1995”(b).

PART 2

Amendments to Secondary Legislation

Amendment of the Merchant Shipping (Seaman’s Allotments) Regulations 1972

4.—(1) The Merchant Shipping (Seaman’s Allotments) Regulations 1972(c) are amended as follows.

- (2) In regulation 2—
- (a) renumber the existing text as paragraph (1); and
 - (b) in that text—
 - (i) after “a seaman employed”, insert “or engaged”;
 - (ii) omit “either”;
 - (iii) at the end of sub-paragraph (b), insert “or”;
 - (iv) insert after sub-paragraph (b)—

“(c) is employed or engaged on a ship to which the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014(d) apply”;
 - (v) after “so employed”, insert “or engaged”;
 - (vi) after “allot”, insert “all or”; and
 - (vii) at the end, insert—

(a) 1996 c.18.

(b) Section 32 is amended by regulation 2 of these Regulations.

(c) S.I. 1972/1698.

(d) S.I. 2014/1613.

“(2) In these Regulations, references to wages include any remuneration payable to a seaman who is not an employee and who is engaged on a ship falling within paragraph (1)(c).”.

(3) In regulation 3—

- (a) in paragraph (1), insert at the start “Subject to paragraph (3)”; and
- (b) insert after paragraph (2)—

“(3) Paragraph (1) does not apply to a seaman employed or engaged on a ship to which the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 apply.”.

(4) After regulation 5, insert—

“Payments pursuant to allotment notes

6. All sums payable pursuant to an allotment note must be paid promptly and directly to the person to whom the allotment is made.

Charges and exchange rates

7.—(1) Subject to paragraph (2), a person may recover from the relevant seaman any costs incurred in making payments pursuant to an allotment note in accordance with these Regulations, but may not otherwise charge for the provision of that service.

(2) Where paragraph (1) applies, costs which that person ordinarily incurs in making payments to the seaman may not be recovered.

(3) Where it is appropriate or necessary to exchange currency in order to make payments pursuant to an allotment note, the person making the payment must make the exchange at a reasonable rate.

(4) A breach of this regulation is an offence.

(5) A person guilty of the offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale.”.

Amendment of the Merchant Shipping (Seaman’s Wages and Accounts) Regulations 1972

5.—(1) The Merchant Shipping (Seaman’s Wages and Accounts) Regulations 1972(a) are amended as follows.

(2) In regulation 1(2)—

- (a) after the definition of “the Act”, insert—

““seafarer employment agreement” means an agreement required by regulation 9 of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014(b), and a reference to a seafarer employment agreement in relation to a seafarer who works on a ship means the agreement of that description to which that seafarer is party in connection with that work;” and

- (b) omit the definition of “code of conduct”.

(3) Omit regulations 2, 3, 5(e) and the Schedule.

(4) In regulations 4(1), 4(2)(a), 5(c), 5(d) and 8(4) after “crew agreement” in each place insert “or seafarer employment agreement”.

(5) In paragraphs (1) and (4) of regulation 8, for “regulation 5(c), (d) or (e)” substitute “regulations 5(c) or (d)”.

(a) S.I. 1972/1700, amended by S.I. 1978/1757, S.I. 1999/3360, and S.I. 1985/340.

(b) S.I. 2014/1613.

Amendment of the Merchant Shipping (Repatriation) Regulations 1979

- 6.**—(1) The Merchant Shipping (Repatriation) Regulations 1979(a) are amended as follows.
- (2) In regulation 2(1), for “paragraph (2)” substitute “paragraphs (1A) and (2)”.
 - (3) After regulation 2(1), insert—
 - “(1A) These regulations do not apply to seafarers on ships to which the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014(b) apply.”.
 - (4) In regulation 2(2), for “11” substitute “12”.
 - (5) Omit regulation 11.

Amendment of the Merchant Shipping (Provisions and Water) Regulations 1989

- 7.**—(1) The Merchant Shipping (Provisions and Water) Regulations 1989(c) are amended as follows.
- (2) In regulation 2 omit the definitions of “offshore installation” and “submersible craft”.
 - (3) In regulation 3(1)(a) omit “other than regulation 9”.
 - (4) For regulation 3(1)(b), substitute—
 - “(b) regulations 7, 8 and 10 apply only to fishing vessels.”
 - (5) Omit regulations 3(2)(c) and (d) and 9.

Amendment of the Merchant Shipping (Crew Agreements etc.) Regulations 1991

- 8.**—(1) The Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991(d) are amended as follows.
- (2) In regulation 2—
 - (a) after the definition of “coastal voyage”, insert—
 - “Maritime Labour Certificate” has the meaning given in regulation 2(1) of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014(e);”;
 - (b) after the definition of “ship”, insert—
 - ““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 the responsibility for the operation of the ship from the owner; and”.
 - (3) In regulation 3—
 - (a) renumber the existing text as paragraph (1), and at the end insert—
 - “(2) This Part does not apply to a ship to which the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 apply.”;
 - (b) in the heading, after “interpretation” insert “and application”.
 - (4) Omit regulations 13, 14(1)(a)(iii), 14(3), 23 and 24.

(a) S.I. 1979/97. There are amendments not relevant to these Regulations.
(b) S.I. 2014/1613.
(c) S.I. 1989/102. There are amendments not relevant to these Regulations.
(d) S.I. 1991/2144.
(e) S.I. 2014/1613.

- (5) In regulation 14(1)(b), omit “whether or not he is employed under a crew agreement”.
- (6) In regulation 16 and 17, for “a superintendent” substitute “the Secretary of State”.
- (7) For regulation 19 substitute—

“**19.** A list of crew remains in force until all of the persons employed on the ship whose particulars are contained on the list have been discharged.”.

- (8) For regulation 20(2) substitute—
 - “(2) The shipowner must deliver a list of crew to the Registrar-General of Shipping and Seamen within seven days of the expiry of each period of six months after the date on which it is made, for so long as it remains in force.”.
- (9) In regulation 21, omit “superintendent or”.
- (10) In regulation 26—
 - (a) in paragraph (1)(a), for “regulation 24” substitute “regulation 25”;
 - (b) in paragraph (1)(b), for “regulation 25(c)(ii)” substitute “regulation 25(1)(c)(ii)”;
 - (c) omit “23(1),” in paragraph (2).

Amendment of the Industrial Tribunals (Northern Ireland) Order 1996

9. In Article 20(1) of the Industrial Tribunals (Northern Ireland) Order 1996(a) for sub-paragraph (u) substitute—

“(u) under regulation 22 of the Merchant Shipping (Hours of Work) Regulations 2002(b), or”.

Amendment of the Merchant Shipping (Crew Accommodation) Regulations 1997

10.—(1) The Merchant Shipping (Crew Accommodation) Regulations 1997(c) are amended as follows.

(2) In regulation 3(2) at the end of sub-paragraph (b) omit “and” and at the end of sub-paragraph (c) insert—

“and

(d) ships to which the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014(d) apply.”.

Amendment of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998

11.—(1) The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998(e) are amended as follows.

(2) In regulation 2(1), for the definitions of “EEA Agreement” and “EEA State” substitute—

““EEA Agreement” and “EEA State” have the meaning given by Schedule 1 to the Interpretation Act 1978(f).”.

(3) In Schedule 1—

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- (a) S.I. 1996/1921 (N.I. 18). Article 20(1)(u) was inserted by the Schedule to S.I. 2014/308. Article 20 was amended by S.R. 2014 No. 88 and section 8 of the Employment Act (Northern Ireland) 2011 (c.13 (N.I.)); there are other amending instruments but none is relevant.
 - (b) S.I. 2002/2125. Regulation 22 was inserted by S.I. 2014/308 and amended by S.I. 2014/431. There are other amending instruments but none is relevant.
 - (c) S.I. 1997/1508.
 - (d) S.I. 2014/1613.
 - (e) S.I. 1998/2771, amended by S.I. 2000/482 and S.I. 2002/1473.
 - (f) 1978 c.30. The definitions of “EEA Agreement” and “EEA State” were inserted by the Legislative and Regulatory Reform Act 2006 (c.51) section 26(1).

- (a) omit “The Merchant Shipping (Crew Accommodation) Regulations 1997” and “1997/1508”;
 - (b) at the end of the first column, insert “The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014”; and
 - (c) at the end of the second column, insert “2014/1613”.
- (4) In Schedule 2 —
- (a) omit “The Merchant Shipping (Crew Accommodation) Regulations 1997” and “1997/1508”;
 - (b) at the end of the first column, insert “The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014”; and
 - (c) at the end of the second column, insert “2014/1613”.

Amendment of the Merchant Shipping (Hours of Work) Regulations 2002

- 12.**—(1) The Merchant Shipping (Hours of Work) Regulations 2002(a) are amended as follows.
- (2) Omit regulations 10 and 20(3).
- (3) For regulation 14A(2) substitute—
- “(2) Where a relevant inspector has power to inspect a ship under paragraph (1)(b), regulation 14 applies to the relevant inspector as if—
- (a) in paragraphs (1) and (4), for the words “verifying compliance with these Regulations” there were substituted “carrying out an inspection under regulation 14A(1)(b)”;
 - (b) in paragraph (4), for the words “to which this regulation applies” in both places there were substituted “to which regulation 14A(1)(b) applies”.

Amendment of the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010

- 13.**—(1) The Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010(b) are amended as follows.
- (2) In regulation 2—
- (a) for the definitions of “medical practitioner” and “sea-going” substitute respectively—
- ““medical practitioner” means—
- (a) in the case of a practitioner ordinarily resident in the United Kingdom, a fully registered person who—
 - (i) holds a licence to practise; or
 - (ii) meets the criteria specified in Merchant Shipping Notice 1839(M), being criteria which the Secretary of State considers appropriate having regard to the evidence of continuing professional development which such a practitioner must demonstrate in order to obtain a licence to practise; or
 - (b) in the case of a practitioner not ordinarily resident in the United Kingdom, a person who meets the criteria specified in Merchant Shipping Notice 1839(M), being criteria which the Secretary of State considers appropriate having regard to the qualifications and other credentials which must be demonstrated by a person falling within paragraph (a),”;
- and

(a) S.I. 2002/2125. Regulation 14A was inserted by S.I. 2014/308.
 (b) S.I. 2010/737.

““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)(a);
 - (b) 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;
 - (c) a ship to which regulation 4 of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998(c) applies and which falls within the description given in paragraph (3) of that regulation; 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(d);”.
- (b) after the definition of “relevant inspector” insert—
- ““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;”.
- (3) Omit regulation 3.
- (4) In regulation 5(1)(b), for “regulation 18(1)(b)” substitute “regulation 20”.
- (5) In regulations 8(1) (wherever it appears), 8(2)(b), 10(1), 12(3), 13(1)(c), 14(5) to (7) and 16(2), for “Merchant Shipping Notice 1822(M)” substitute “Merchant Shipping Notice 1839(M)”.

Amendment of the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013

14.—(1) The Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013(e) are amended as follows.

(2) In regulation 2(1), at paragraph (a) within the definition of “shipowner”, after “Maritime Labour Certificate” insert “or interim Maritime Labour Certificate”.

(3) In regulation 4—

- (a) in paragraph (1), after “10 to 17” insert “(except regulation 11(3))”; and
- (b) in paragraph (2), after “9” insert “, 11(3)”.

(4) In regulation 11(3), omit “or Government of a Convention State”.

(5) In regulation 15(2), after “on indictment” insert “to imprisonment”.

(6) In regulation 17(5), for sub-paragraph (c) substitute—

“(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 the master of the ship;”.

(a) 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 S.I. 1992/2356, as the notice which currently supersedes Merchant Shipping Notice M1504 pursuant to regulation 2 of those Regulations.

(b) S.I. 1995/1210, amended by S.I. 2004/302, S.I. 2005/2114 and S.I. 2010/1075; there are other amending instruments but none is relevant.

(c) S.I. 1998/2771, amended by S.I. 2002/1473 (and see regulation 3 of these Regulations); there is another amending instrument which is not relevant.

(d) S.I. 2004/302, amended by S.I. 2012/2636; there are other amending instruments but none is relevant.

(e) S.I. 2013/1785.

PART 3

Revocations of Secondary Legislation

Revocations

15. The following instruments are revoked—

- (1) The Merchant Shipping (Certification of Ships' Cooks) Regulations 1981(a).
- (2) The Merchant Shipping (Ships' Doctors) Regulations 1995(b).

PART 4

Saving

Saving of the Merchant Shipping and Fishing Vessels (Health and Safety) (Employment of Young Persons) Regulations 1998

16. Notwithstanding the amendment of section 24 of the Merchant Shipping Act 1995 by article 2(1) and (2), the Merchant Shipping and Fishing Vessels (Health and Safety) (Employment of Young Persons) Regulations 1998(c) continue to apply in relation to all sea-going United Kingdom ships.

Signed by authority of the Secretary of State for Transport

Stephen Hammond
Parliamentary Under Secretary of State
Department for Transport

9th July 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make consequential and other minor amendments to primary and secondary legislation arising out of the implementation of the Maritime Labour Convention, 2006 (“the Convention”).

Regulation 2(2) amends the Merchant Shipping Act 1995 so as to provide that certain provisions will in future apply to a more limited class of ships. The ships to which those provisions will thereby cease to be apply are subject to provisions on the same subject matter in the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (S.I. 2014/1613) (“the 2014 Regulations”) which are compatible with the Convention.

The remainder of regulation 2 and *regulation 3* make consequential amendments to the 1995 Act and the Employment Rights Act 1996 arising from the provision made in the 2014 Regulations.

Regulation 4 extends the application of the Merchant Shipping (Seaman’s Allotments) Regulations 1972 to extend the right to make allotments to cover additional seafarers and additional forms of remuneration, and to adjust the nature of the right in certain respects, so as to make it compatible with the Convention.

(a) S.I. 1981/1076.

(b) S.I. 1995/1803.

(c) S.I. 1998/2411, amended by S.I. 2002/2125 and S.I. 2002/3135.

Regulation 5 amends the Merchant Shipping (Seaman’s Wages and Accounts) Regulations 1972 so as to (a) remove certain provisions which are superseded by provisions in the 2014 Regulations, and (b) to make consequential amendments arising from the provision made in the 2014 Regulations.

Regulation 6 amends the Merchant Shipping (Repatriation) Regulations 1979 so as to (a) remove a provision which is superseded by a provision made in the 2014 Regulations, and (b) disapply the remaining regulations for ships to which the 2014 Regulations apply (as the 2014 Regulations contain different provision on the same subject matter which is compatible with the Convention).

Regulation 7 amends the Merchant Shipping (Provisions and Water) Regulations 1989 so as to (a) remove provisions as regards merchant shipping which are superseded by provisions in the 2014 Regulations, and (b) amend certain provisions which remain so that they are compatible with the Convention.

Regulation 8 amends the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 so as to (a) disapply Part 1 for ships to which the 2014 Regulations apply (as the 2014 Regulations introduce a requirement for seafarer employment agreements instead of crew agreements), (b) amend certain provisions which remain so that they are compatible with the Convention and (c) correct errors in certain cross-references in regulation 26.

Regulation 9 corrects an amendment to the Industrial Tribunals (Northern Ireland) Order 1996 made by the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014.

Regulation 10 amends the Merchant Shipping (Crew Accommodation) Regulations 1997 so as to provide that those Regulations do not apply to ships to which the 2014 Regulations apply.

Regulation 11 makes consequential amendments to the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 arising from the provision made in the 2014 Regulations, and updates the definitions of “EEA Agreement” and “EEA State”.

Regulation 12 amends the Merchant Shipping (Hours of Work) Regulations 2002 so as to remove provisions which are superseded by provisions in the 2014 Regulations and correct errors in certain cross-references in regulation 14A.

Regulations 13 and 14 contain corrections to the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 and the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013. Regulation 14 also amends the definitions of “medical practitioner”, “seafarer” and “sea-going” so as to maintain consistency with the terms used in the 2014 Regulations.

Regulation 15 revokes the Merchant Shipping (Certification of Ships’ Cooks) Regulations 1981 and Merchant Shipping (Ships’ Doctors) Regulations 1995 so as to remove provisions which are superseded by provisions in the 2014 Regulations.

Regulation 16 contains a saving provision in respect of the Merchant Shipping and Fishing Vessels (Health and Safety) (Employment of Young Persons) Regulations 1998.

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The Convention may be downloaded from the website of the International Labour Organisation (“ILO”) at www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm. Copies of the Convention may be obtained from www.tsoshop.co.uk, by e-mail from customer.services@tso.co.uk or by post from TSO, P.O. Box 29, Norwich, NR3 1GN, Tel: +44 (0)870 600 5522/Fax: +44 (0)870 600 5533, as a priced publication.

An Impact Assessment has not been prepared for this instrument specifically. A full impact assessment of the effect that this instrument and the 2014 Regulations will collectively have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside the 2014 Regulations on www.legislation.gov.uk.

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