

2014 No. 1616

MERCHANT SHIPPING

The Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014

<i>Made</i>	- - - -	<i>8th September 2014</i>
<i>Laid before Parliament</i>		<i>15th September 2014</i>
<i>Coming into force</i>	- -	<i>13th October 2014</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 the safety of ships and the health and safety of persons on them.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 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^(c).

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

Citation and commencement

1.—(1) These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014.

(2) These Regulations come into force on 13th October 2014.

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

2.—(1) The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997^(d) are amended as follows.

(2) In regulation 2(2)—

(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 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).

(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 to section 85 not relevant to these Regulations.

(d) S.I. 1997/2962, amended by S.I. 1998/2411 and S.I. 2001/54.

- (a) after the definition of “contract of employment” insert—

““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 MLC, in the forms corresponding to the relevant models given in Appendix A5-II of the MLC and having the contents, duration and validity specified in Regulation 5.1.3 and Standard A5.1.3 of the MLC;”;
- (b) after the definition of “health and safety” insert—

““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 certificate of that name issued in accordance with the MLC, in a form corresponding to the relevant model given in Appendix A5-II of the MLC and having the contents, duration and validity specified in Regulation 5.1.3 and Standard A5.1.3 of the MLC;”;
- (c) 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;”;
- (d) after the definition of “Merchant Shipping Notice” insert—

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

(f) after the definition of “sail training vessel” 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^(a) and whose normal place of work is on such a ship;

“sea-going” means—

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

(i) a ship which operates outside the waters specified as Category A, B, C and D waters in Merchant Shipping Notice 1837(M)^(b);

(ii) a ship to which the Merchant Shipping (Survey and Certification) Regulations 1995^(c) apply and in respect of which no exemption granted under regulation 2(2) of those Regulations applies;

(iii) 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 regulation; or

(iv) 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);

(b) in relation to a fishing vessel which is a United Kingdom ship or a ship which is not a United Kingdom ship, that the ship operates outside the waters specified as Category A, B, C and D waters in Merchant Shipping Notice 1837(M);

“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

(g) omit the definition of “sea-going”.

(3) In regulation 3(1), omit “United Kingdom”.

(4) After regulation 3(1), insert—

“(1A) As regards Group A ships, Group B ships and Group C ships—

(a) the following provisions, insofar as they apply to workers, also apply to seafarers who are not workers and, insofar as they apply to employers, also apply to shipowners—

(i) regulation 4(1)(a);

(ii) regulation 5(1);

(iii) regulation 7;

(iv) regulation 12(1) and (2);

(v) regulation 16(1)(b)(iii);

(vi) regulation 18(b) and (c);

(a) “fishing vessel” is defined in section 313(1) of the Merchant Shipping Act 1995.

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

(c) 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.

(d) S.I. 1998/2771, amended by S.I. 2002/1473; there is another amending instrument which is not relevant.

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

- (vii) regulation 19(1)(b)(ii);
 - (viii) regulation 20;
 - (b) in relation to seafarers who are not workers, any obligation imposed by the provisions mentioned in paragraph (a) that would, by virtue of that paragraph, otherwise apply to employers and shipowners applies to shipowners only.”.
- (5) For regulation 3(2) substitute—
- “(2) Part II of these Regulations applies as follows—
- (a) all of the provisions apply to Group A ships and, with the exception of regulations 7(4A) and 11A, to Group D ships;
 - (b) regulations 4, 5, 7 and 12 apply to Group C ships.
- (3) Part III of these Regulations applies as follows—
- (a) regulation 13 applies to Group A ships, Group C ships and Group D ships;
 - (b) regulation 13A applies only to Group A ships.
- (4) Part IV of these Regulations applies as follows—
- (a) all of the provisions apply to Group A ships;
 - (b) regulations 15 and 19 apply to Group C ships; and
 - (c) regulations 14, 19 and 20 apply to Group D ships.
- (5) The provisions in Part V of these Regulations apply to Group A and Group D ships only.
- (6) Part VI of these Regulations applies as follows—
- (a) all of the provisions other than regulations 27, 28, 28A, 28B and 29 apply to Group A ships;
 - (b) regulations 28A, 28B and 30 apply to Group B ships;
 - (c) regulations 22, 24 to 26, 27A and 27B apply to Group C ships;
 - (d) all of the provisions other than regulations 27A to 28B apply to Group D ships;
 - (e) regulations 28, 29 and 30 apply to Group E ships.
- (7) In this regulation—
- (a) subject to paragraph (8), a “Group A” ship is a United Kingdom ship which is not a fishing vessel, wherever it may be;
 - (b) subject to paragraphs (8) and (9), a “Group B” ship is a sea-going ship which is not a fishing vessel and which is not a United Kingdom ship, which is in United Kingdom waters, where—
 - (i) the MLC has come into force for the State whose flag the ship is entitled to fly; and
 - (ii) the ship carries—
 - (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 paragraphs (8) and (9), a “Group C” ship is a sea-going ship which is not a fishing vessel and which is not a United Kingdom ship, which is in United Kingdom waters, where—
 - (i) the MLC has not come into force for the State whose flag the ship is entitled to fly; or
 - (ii) the MLC 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.
- (d) a “Group D” ship is a fishing vessel which is a United Kingdom ship, wherever it may be;
- (e) a “Group E” ship is a fishing vessel which is in United Kingdom waters and is not a United Kingdom ship.
- (8) The following ships are not Group A, Group B or Group C ships—
 - (a) pleasure vessels;
 - (b) ships of traditional build; and
 - (c) warships or naval auxiliaries.
- (9) Vessels which are not ordinarily engaged in commercial activities are not Group B or Group C ships.”.
- (6) In regulation 7, after paragraph (4) insert—

“(4A) When conducting the assessment required by paragraphs (1) and (2), or a review required by paragraph (3), a shipowner must have regard to the statistical information and associated advice referred to in Marine Guidance Note 484(M).”.
- (7) After regulation 11, insert—

“Reporting of occupational diseases

11A.—(1) Subject to paragraph (2), this regulation applies where an employer receives a written report from a medical practitioner which indicates that a seafarer who works or who has worked on a ship has (or has had) a disease listed in the table in Merchant Shipping Notice 1850(M).

(2) This regulation does not apply where the entry in the table in Merchant Shipping Notice 1850(M) for the disease which the seafarer has (or has had) refers to an activity or a particular form or description of an activity, and that seafarer is not (and was not) involved in that activity (or that particular form or description of the activity) when working on that ship.

(3) The employer must—

- (a) have regard to the International Labour Organization guidance concerning the protection of workers’ personal data referred to in Merchant Shipping Notice 1850(M);
- (b) complete a form in the form specified in that Notice in respect of the seafarer; and
- (c) send the completed form to the address specified in that Notice.

(4) In this regulation—

“fully registered person” and “licence to practice” have the meanings given in section 55(1) of the Medical Act 1983(a);

“medical practitioner” means—

- (a) in the case of a practitioner ordinarily resident in the United Kingdom, a fully registered person who holds a licence to practise; and
- (b) in the case of a practitioner not ordinarily resident in the United Kingdom, a person entitled to practise as such in the country or territory in which that practitioner is ordinarily resident.”.

(8) After regulation 13, insert—

(a) 1983 c.54. The definition of “fully registered person” was amended by S.I. 2000/3041, S.I. 2006/1914, S.I. 2007/3101 and S.I. 2008/1774. The definition of “licence to practise” was amended by S.I. 2002/3135.

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

13A.—(1) This regulation applies if—

- (a) a duty is owed by an employer to a worker on a ship in respect of a risk concerning workplace health and safety by virtue of one or more provisions in any of the Regulations listed in the Schedule; 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 a duty referred to in paragraph (1)(a) in respect of that risk as regards workers is also taken as regards seafarers who are not workers.”.

(9) In regulation 15(1), for the words “more than five” to the end, substitute “five or more seafarers are working”.

(10) 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 1850(M))”.

(11) 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),”.

(12) In regulation 17(4), omit the words from the start to “elected”.

(13) In regulation 19(2), after “the Company shall” insert “(having had regard to the International Labour Organization guidance concerning the protection of workers’ personal data specified in Merchant Shipping Notice 1850(M))”.

(14) In regulation 21, in each place it appears, for “worker” substitute “worker or seafarer”.

(15) In regulation 24(1), after “5” insert “or 13A”.

(16) In regulation 24(4), after “11,” insert “11A,”.

(17) In regulation 27—

- (a) after “any” insert “fishing vessel which is a”; and
- (b) in the heading, for the word “ship” substitute “fishing vessel”.

(18) After regulation 27, insert—

“Inspection of United Kingdom ships and non-United Kingdom ships without MLC documentation

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 and inspect the ship, its equipment, any articles on it and any document carried on it.

(2) Section 258(1A), (3) and (5) of the Act^(b) (powers to inspect ships and their equipment, etc.) applies 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) and (2) 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;

(a) S.I. 2012/1743.

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

(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 section 259(8) or section 260(3) 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^(a) (improvement notices and prohibition notices) apply for the purposes of these Regulations as if the meaning of “the relevant statutory provisions” in section 261(4) included these Regulations.

Detention of United Kingdom ships and non-United Kingdom ships without MLC documentation

27B.—(1) Where a relevant inspector has clear grounds for believing that—

(a) a ship to which this regulation applies does not comply 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 breach or the latest in a series of repeated breaches of these Regulations or the requirements of the MLC (including the rights of seafarers referred to in Articles III and IV of the MLC which are secured by it),

that ship is liable to be detained.

(2) The power under this regulation to detain a ship may be exercised as regards a United Kingdom ship wherever it may be, but as regards a ship which is not a United Kingdom 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.

(3) A person having powers to detain a ship may permit a ship which is liable to be detained under this regulation to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

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

(a) references to the owner of a ship were to the shipowner under these Regulations;

(b) references to detention of a ship under the Act were references to detention of the ship in question under this regulation; and

(c) subsection (7) were omitted.

(5) 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.

(6) 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

^(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 50 and Schedule 10 which have yet to be brought into force.

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

ship is entitled to fly or the appropriate maritime authorities of that State, and invite them to send a representative to attend the ship.

(7) Where a ship is detained under this regulation and all of the grounds for detention have ceased to apply, 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 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 these 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 these Regulations, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if the release is ordered by a court or tribunal referred to in article 292 of the United Nations Convention on the Law of the Sea^(a), and any bond or other financial security ordered by such court or tribunal is posted.

(8) 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 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; or
- (b) if proceedings for such an offence, having been instituted within that period, are concluded without a person being convicted.

(9) 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 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,

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

(10) Section 145 of the Act (interpretation of references in section 144 to the institution of proceedings or their conclusion) applies for the purposes of paragraphs (7) and (8) as if—

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

(19) In regulation 28—

- (a) for “any ship which is not a United Kingdom ship” substitute “any fishing vessel which is not a United Kingdom ship”; and
- (b) in the heading for the word “ships” substitute “fishing vessels”.

(20) After regulation 28, insert—

(a) Cmnd. 8941.

“Inspection of non-United Kingdom ships with MLC documentation

28A.—(1) A relevant inspector may—

- (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 MLC 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 the relevant inspector as if—

- (a) in paragraphs (1) and (3), for the words “checking compliance with these Regulations” there were substituted “carrying out an inspection under regulation 28A(1)(b)”; and
- (b) in paragraph (3), for the words “to which this regulation applies” in both places where they appear there were substituted “to which regulation 28A(1)(b) applies”.

Detention of non-United Kingdom ships with MLC documentation

28B.—(1) Where a relevant inspector inspects the ship under regulation 28A(1)(b) and has clear grounds for believing that—

- (a) one or more of the requirements of Regulation 4.3 and Standard A4.3 of the MLC (health and safety protection and accident prevention) have not been complied with; 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 breach or the latest in a series of repeated breaches of the requirements of the MLC (including the rights of seafarers referred to in Articles III and IV of the MLC 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.

(3) A person having powers to detain a ship may permit a ship which is liable to be detained under this regulation to proceed to sea for the purpose of proceeding to the nearest appropriate repair yard available.

(4) Where a ship is liable to be detained under paragraph (1), section 284 of the Act (enforcing detention of a ship) has effect in relation to that ship as if—

- (a) references to the owner of a ship were to the shipowner under these Regulations;
- (b) references to detention of a ship under the Act were references to detention of the ship in question under these Regulations; and
- (c) subsection (7) were omitted.

(5) 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, and invite them to send a representative to attend the ship.

(6) Where a ship is detained under this regulation and all the grounds for detention have ceased to apply, a person having power to detain the ship must, at the request of the shipowner or master, immediately release the ship.”.

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

(22) After regulation 30, insert—

“PART VII

Review

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 MLC is implemented in other member States.

(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 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.”.

(23) At the end of the Regulations insert—

“SCHEDULE

Regulation 13A

Merchant Shipping Health and Safety Regulations containing duties in respect of workers which regulation 13A extends to all seafarers

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**)

(a) S.I. 2010/2987.

(b) S.I. 2010/2984, amended by S.I. 2012/632 and S.I. 2013/1473.

(c) S.I. 2010/332.

(d) S.I. 2010/330, amended by S.I. 2010/1110, S.I. 2011/1043 and S.I. 2012/1844.

(e) S.I. 2010/323.

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

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

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

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

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

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

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

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

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations 1998(i)".

Signed by authority of the Secretary of State for Transport

8th September 2014

John Hayes
Minister of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962) ("the 1997 Regulations") so as to fully implement the following provisions relating to seafarers' working conditions and entitlements:

- (a) Title 4.3 of the Maritime Labour Convention, 2006 (Cm 7049) ("the MLC") and related mandatory Standards; and
- (b) the corresponding parts of the Agreement set out in the Annex to Council Directive 2009/13/EC ("the 2009 Directive") of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 (O.J. L124, 20.5.2009, p. 30).

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- (a) S.I. 2007/3100.
 - (b) S.I. 2007/3077.
 - (c) S.I. 2007/3075.
 - (d) S.I. 2006/2184, amended by S.I. 2008/2166.
 - (e) S.I. 2006/2183, amended by S.I. 2008/2165.
 - (f) S.I. 2001/3444.
 - (g) S.I. 1999/2205.
 - (h) S.I. 1998/2857.
 - (i) S.I. 1998/2411, amended by S.I. 2002/2125 and S.I. 2002/3135.

These Regulations do not make substantive changes to the 1997 Regulations as they apply to fishing vessels.

Regulation 2(2) amends existing definitions and inserts new definitions into the 1997 Regulations.

Paragraph (4) extends the application of specified provisions in the 1997 Regulations so that references to “workers” (persons employed under a contract of employment) apply to seafarers who are not workers, and references to “employers” apply to shipowners. Paragraphs (8) and (15) contain similar extensions as regards “workers”.

Paragraph (5) governs the application of Parts II to VI of the 1997 Regulations as regards different categories of ship.

Paragraph (6) adds to the existing duty in regulation 7 of the 1997 Regulations to conduct or review a risk assessment by requiring the shipowner to have regard to information and advice referred to in Marine Guidance Note 484(M) when doing so.

Paragraph (7) requires a shipowner to report occupational diseases on a prescribed form having regard to guidance concerning the protection of personal data.

Paragraph (9) extends duties imposed on employers by the Regulations specified in the Schedule. Where those Regulations impose a duty on an employer as regards a worker in respect of a health and safety risk, and there is at least one seafarer exposed to that risk who is not a worker, the shipowner must ensure that action taken to discharge that duty as regards workers is also taken as regards seafarers.

Paragraphs (10), (11), (13) to (18) and (22) make consequential and other minor amendments to the 1997 Regulations.

Paragraph (12) amends regulation 17(4) of the 1997 Regulations so as to impose the duty to appoint a safety committee irrespective of whether a safety representative has been elected.

Paragraphs (19) to (21) introduce separate inspection and detention provisions as regards ships which are not fishing vessels.

Paragraph (23) inserts a review clause in the 1997 Regulations which requires the Secretary of State to review the operation and effect of those Regulations and publish a report within five years after these Regulations come into force and within every five years after that. Following a review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

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The MLC may be downloaded from the website of the International Labour Organization at www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm. Merchant Shipping Notice 1850(M) identifies the website from which the relevant International Labour Organization guidance concerning the protection of workers’ personal data may be downloaded. Copies of the MLC and International Labour Organization guidance concerning the protection of workers’ personal data 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, each as a priced publication.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

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