
STATUTORY INSTRUMENTS

2018 No. 667

The Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018

PART 2

Amendments relating to compulsory financial security

Amendments relating to compulsory financial security

2.—(1) The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014(1) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “Merchant Shipping Notice” insert—
““personal representative”, in relation to a seafarer who has died, means—

- (a) a person responsible for administering the seafarer’s estate under the law of England and Wales, Scotland or Northern Ireland; or
- (b) a person who, under the law of another country or territory, has functions equivalent to those of administering the seafarer’s estate;”.

(3) In regulation 3 (application)—

- (a) in paragraph (2)(a), for “10” substitute “10B”;
- (b) in paragraph (4)(a), for “regulations 26 and 49” substitute “regulation 26”;
- (c) in paragraph (4)(b)—
 - (i) at the end of paragraph (vi) omit “and”; and
 - (ii) after paragraph (vii) insert—
 - “(viii) regulation 53B(1)(b); and
 - (ix) regulation 53M(1)(b).”.

(4) In regulation 27 (Secretary of State functions in the event of shipowner default)—

(a) for paragraph (1) substitute—

“(1) The Secretary of State must make any provision which the shipowner of a United Kingdom ship is required to make under regulation 19 or 22 (repatriation and duty pending repatriation) (or secure that it is made) if—

- (a) the shipowner fails to make the required provision; and
- (b) the seafarer in relation to whom the shipowner has failed to make such provision is not entitled to receive financial assistance under an abandonment security.

(1A) The Secretary of State may make any provision which the shipowner of a United Kingdom ship is required to make under regulation 19 or 22 (or secure that it is made) if—

- (a) the shipowner fails to make the required provision; and
- (b) the seafarer in relation to whom the shipowner has failed to make such provision is entitled to receive financial assistance under an abandonment security.

(1B) Where the Secretary of State makes provision under paragraph (1) or (1A), the Secretary of State may recover costs incurred from the shipowner as a civil debt.”;

- (b) in paragraph (3), in the words before sub-paragraph (a), for “(1)” substitute (1B)”;
- (c) in paragraph (3)(b), for “A2.5” substitute “A2.5.1”;
- (d) in paragraph (5)(a) and (b), for “(1)” substitute (1B)”.

(5) In regulation 28(1) and (3)(a) and (b) (Part 6 requirements for non-United Kingdom ships with MLC documentation), for “A2.5” in each place where it occurs substitute “A2.5.1”.

(6) Omit regulation 49 (financial security requirement applicable to all ships).

(7) After regulation 53 insert—

“PART 10A

Security against shipowner’s liability for death or long term disability of seafarers

Interpretation of Part 10A

53A. In this Part—

“shipowner’s security” has the meaning given in regulation 53C;

“shipowner’s security document” has the meaning given in regulation 53G(6).

Shipowner’s security requirement applicable to all ships

53B.—(1) A ship must not be operated unless—

- (a) in the case of a ship in a category described in regulation 3(1)(a) or (b), a shipowner’s security is in force in relation to the ship; or
- (b) in the case of a ship in the category described in regulation 3(3), financial security to assure compensation in the event of death or long term disability of seafarers arising from occupational illness, injury or hazard is provided in relation to the ship in accordance with paragraph 1 of Standard A4.2.1 of the MLC.

(2) A breach of paragraph (1) is an offence by the shipowner.

Shipowner’s security

53C.—(1) “Shipowner’s security” means a contract of insurance or other form of security relating to a ship that satisfies the first and second conditions.

(2) The first condition is that the shipowner’s security must provide financial assurance of an amount which the shipowner reasonably considers adequate to ensure that the shipowner will be able to meet any liabilities that the shipowner may have, including liabilities under seafarer employment agreements, to provide compensation in the event of death or long term disability to seafarers arising from occupational injury, illness or hazard.

(3) The second condition is that the shipowner’s security must provide that a claim for compensation may be submitted directly to the shipowner’s security provider by—

- (a) any relevant seafarer who sustains a long term disability arising from a relevant occupational injury, illness or hazard; and
 - (b) the personal representatives of any deceased relevant seafarer, the death of whom arose from a relevant occupational injury, illness or hazard.
- (4) In this regulation—
- “relevant occupational injury, illness or hazard” means an occupational injury, illness or hazard—
- (a) occurring during the period of validity of the shipowner’s security; and
 - (b) in relation to which the shipowner is, or may be, liable to provide compensation to the seafarer or, as the case may be, the seafarer’s estate;
- “relevant seafarer” means a seafarer whose normal place of work during the period of validity of the shipowner’s security is, or was, on board the ship.

Payment of contractual compensation

53D.—(1) This regulation applies where a claim for contractual compensation is submitted to a shipowner’s security provider.

(2) A shipowner’s security provider must pay the contractual compensation to the seafarer, or the seafarer’s personal representative, within 7 days beginning with the date on which it is established that the shipowner is liable for the contractual compensation either—

- (a) by agreement between—
 - (i) the shipowner’s security provider; and
 - (ii) the seafarer or the seafarer’s personal representative; or
- (b) by order of a court or tribunal which is not subject to appeal.

(3) A shipowner’s security provider who fails to comply with paragraph (2) must pay to the seafarer, or the seafarer’s personal representative, interest on the unpaid amount at the rate of 20% per year beginning with the date that the shipowner’s security provider became satisfied of the shipowner’s liability.

(4) In this regulation, “claim for contractual compensation” means a claim for compensation in the event of death or long term disability of a seafarer arising from occupational injury, illness or hazard where the compensation payable in respect of the claim is set out in the seafarer’s seafarer employment agreement, and “contractual compensation” is to be construed accordingly.

Interim payments

53E.—(1) A seafarer is entitled to a payment (an “interim payment”) from a shipowner’s security provider if the following conditions are satisfied—

- (a) the shipowner is liable to pay compensation to the seafarer due to the seafarer having sustained a long term disability arising from an occupational injury, illness or hazard;
- (b) the occupational injury, illness or hazard occurred during the period of validity of the shipowner’s security;
- (c) the shipowner’s security provides financial assurance in respect of the compensation mentioned in sub-paragraph (a);
- (d) the full amount of compensation payable has not yet been determined; and
- (e) the seafarer is suffering hardship.

(2) A seafarer entitled under paragraph (1) may make a request for an interim payment to the shipowner's security provider.

(3) A request under paragraph (2) must be supported by evidence that the seafarer satisfies the conditions in paragraph (1).

(4) A shipowner's security provider must within 14 days of receipt of the request from the seafarer determine whether the conditions in paragraph (1) are satisfied.

(5) If, in contravention of paragraph (4), a shipowner's security provider does not determine whether the conditions in paragraph (1) are satisfied, it must make an interim payment within 21 days of the receipt of the request from the seafarer.

(6) Where a shipowner's security provider determines that the conditions in paragraph (1) are satisfied, it must make the interim payment within 21 days of the receipt of the request from the seafarer.

(7) The minimum amount of an interim payment is—

- (a) where an amount in respect of any part of the claim has been determined and payment of that amount would be sufficient to alleviate the seafarer's hardship, the amount so determined; or
- (b) where no amount in respect of any part of the claim has been determined, or the amount which has been determined is not sufficient to alleviate the seafarer's hardship, the lower of—
 - (i) such amount as would alleviate the seafarer's hardship; and
 - (ii) 75% of the likely total amount of compensation payable in respect of the claim as estimated by the shipowner's security provider.

(8) Where, in contravention of paragraph (5) or (6), a shipowner's security provider does not make an interim payment, the shipowner's security provider must pay interest on the unpaid amount at a rate of 20% per year from the date of receipt of the request from the seafarer.

(9) A shipowner's security provider who makes an interim payment may deduct the amount of the interim payment from the full amount of compensation payable in respect of the shipowner's liability.

(10) A shipowner's security provider who—

- (a) has made an interim payment under paragraph (5); and
- (b) subsequently determines that the conditions in paragraph (1) were not satisfied,

may recover as a civil debt the amount of the interim payment less any interest payable under paragraph (8).

(11) A shipowner's security provider may recover as a civil debt any proportion of an interim payment which exceeds the full amount of compensation payable in respect of a claim.

Offence of undue pressure

53F. A person is guilty of an offence if the person induces another to accept less than the full amount of compensation payable, as set out in a seafarer's seafarer employment agreement, in respect of the death or long term disability of a seafarer arising from occupational injury, illness or hazard.

Duty to carry and display shipowner's security document

53G.—(1) The shipowner must ensure that for each shipowner's security in force in relation to the ship, a shipowner's security document containing the information specified in Schedule 3 is carried on board.

(2) The shipowner must ensure that each shipowner's security document that relates to the ship and is not in English, has with it an English translation.

(3) A breach of paragraph (1) or (2) is an offence by the shipowner.

(4) The shipowner and master of the ship must ensure that each shipowner's security document that relates to the ship, together with any English translation, is displayed in a conspicuous place on board ship.

(5) A breach of paragraph (4) is an offence by the shipowner and the master of the ship.

(6) "Shipowner's security document" means a certificate or other documentary evidence of a shipowner's security issued by the shipowner's security provider.

Termination of shipowner's security on notice to the Secretary of State

53H.—(1) The termination by a shipowner's security provider of a shipowner's security before the end of its period of validity is effective only if the shipowner's security provider gives at least 30 days' prior notice to the Secretary of State.

(2) A notice under paragraph (1) must—

- (a) be in writing; and
- (b) include a copy of the shipowner's security document.

Duty on shipowner's security provider to notify the Secretary of State where a shipowner's security has been terminated

53I.—(1) If a shipowner's security provider terminates a shipowner's security before the end of its period of validity, the shipowner's security provider must give notice to that effect to the Secretary of State.

(2) A notice under paragraph (1) must—

- (a) be in writing; and
- (b) include a copy of the shipowner's security document.

(3) Failure to give notice under paragraph (1) within the period of 30 days beginning with the date on which the shipowner's security was terminated is an offence by the shipowner's security provider.

Duty on shipowner to notify seafarers if shipowner's security is to be terminated

53J.—(1) Where a shipowner becomes aware that any shipowner's security that relates to the ship is to be, or has been, terminated before the end of its period of validity, the shipowner must give notice to that effect to all seafarers who work on the ship during the notification period.

(2) A notice under paragraph (1) must—

- (a) be in writing;
- (b) state the date on which the shipowner's security is to be or was terminated; and
- (c) be given as soon as reasonably practicable after the shipowner becomes aware that the shipowner's security is to be or was terminated.

(3) A breach of paragraph (1) is an offence by the shipowner.

(4) In this regulation, the "notification period" means the period —

- (a) beginning with the date on which the shipowner becomes aware that the shipowner's security is to be, or has been, terminated before the end of its period of validity; and

- (b) ending with the date that the shipowner becomes aware that the shipowner's security has been replaced or reinstated.

PART 10B

Security against the abandonment of seafarers

Interpretation of Part 10B

53K. In this Part—

- “abandonment security” has the meaning given in regulation 53N(1);
- “relevant period” has the meaning given in regulation 53L(3);
- “wages” has the same meaning as in Part 10 (see regulation 53).

Abandonment

53L.—(1) A seafarer is “abandoned” in relation to a ship if the shipowner—

- (a) fails to make the provision required under regulation 19 (duty to repatriate seafarers);
- (b) having regard to the seafarer's personal circumstances and requirements, leaves the seafarer without necessary maintenance and support, including leaving the seafarer without—
 - (i) adequate food;
 - (ii) drinking water supplies;
 - (iii) accommodation;
 - (iv) essential fuel for survival on board the ship; or
 - (v) necessary medical care; or
- (c) otherwise unilaterally severs ties with the seafarer, including failing to pay any amount in respect of wages payable to the seafarer under the seafarer's seafarer employment agreement for a period of at least two months.

(2) An abandoned seafarer ceases to be abandoned in relation to a ship if, after the end of the relevant period, the seafarer continues, resumes or takes up new employment on board the ship or is engaged on board the ship.

(3) The “relevant period” begins with the day on which the seafarer is abandoned and ends with the earliest of the following events—

- (a) the seafarer's arrival in or at—
 - (i) the seafarer's country of residence;
 - (ii) the destination provided in the seafarer's seafarer employment agreement as being that to which the seafarer should be returned in the event that the seafarer is repatriated; or
 - (iii) such place as the seafarer has agreed in advance with—
 - (aa) the abandonment security provider; or
 - (bb) any person who has made provision for the seafarer's repatriation;
- (b) the seafarer refusing unreasonably to be repatriated, or to co-operate with arrangements made for the seafarer's repatriation;

- (c) the expiry of a period of 3 months during which the abandonment security provider has used reasonable endeavours to contact the seafarer but has been unable to make such contact;
- (d) the abandonment security provider receives written confirmation from the seafarer that financial assistance is no longer required;
- (e) the death of the seafarer.

Abandonment security requirement applicable to all ships

53M.—(1) A ship must not be operated unless—

- (a) in the case of a ship in a category described in regulation 3(1)(a) or (b), an abandonment security is in force in relation to the ship; or
- (b) in the case of a ship in the category described in regulation 3(3), financial security is in place for the ship in accordance with paragraph 3 of standard A2.5.2 of the MLC (financial security for abandoned seafarers).

(2) A breach of paragraph (1) is an offence by the shipowner.

Abandonment security

53N.—(1) “Abandonment security” means a contract of insurance or other form of security relating to a ship that—

- (a) provides financial assurance of an amount which the shipowner reasonably considers adequate to cover the items in paragraph (2)(a) to (d) for any seafarer who is abandoned in relation to the ship; and
- (b) provides that any seafarer who is abandoned in relation to the ship is entitled to—
 - (i) make an abandonment claim; and
 - (ii) receive financial assistance in respect of the items in paragraph (2)(a) to (d).

(2) The items referred to in paragraph (1)(a) and (b)(ii) are—

- (a) up to four months’ unpaid wages relating to work undertaken by the seafarer before the end of the relevant period;
- (b) the cost during the relevant period of—
 - (i) adequate food;
 - (ii) drinking water supplies;
 - (iii) clothing, where necessary;
 - (iv) accommodation;
 - (v) essential fuel for survival on board the ship;
 - (vi) necessary medical care;
- (c) the cost of repatriation, including—
 - (i) the cost of appropriate travel arrangements and any related costs of passage, but this may be limited to travel or passage that is completed before the seafarer ceases to be abandoned; and
 - (ii) the cost of transport of the seafarer’s personal effects; and
- (d) all other expenses reasonably incurred by the seafarer before the end of the relevant period as a result of being abandoned.

(3) In this regulation—

“abandonment claim” is a claim for financial assistance that—

- (a) is submitted directly to the abandonment security provider by—
 - (i) an abandoned seafarer; or
 - (ii) a person authorised by the seafarer to act on the seafarer’s behalf; and
 - (b) is supported by evidence showing that the seafarer is abandoned;
- “relevant period” has the meaning given in regulation 53L(3).

Consideration and payment of abandonment claims

53O.—(1) This regulation applies where an abandonment claim is made.

(2) The abandonment security provider to whom the abandonment claim is made must within 7 days of receipt of the claim determine whether the seafarer is entitled to receive financial assistance.

(3) An abandonment security provider who determines that a seafarer is entitled to receive financial assistance, whether in relation to the whole or any part of an abandonment claim, must within 14 days of receipt of the claim provide such assistance, whether or not there are further parts of the claim yet to be determined.

(4) An abandonment security provider who in contravention of paragraph (2) fails to determine whether a seafarer is entitled to receive financial assistance in relation to the whole or part of an abandonment claim must within 14 days of receipt of the claim provide financial assistance in the amount claimed by the seafarer.

(5) Where, in contravention of paragraph (3) or (4) financial assistance is not provided, the abandonment security provider must pay interest on the unpaid amount at the rate of 20% per year from the date of receipt of the claim.

(6) An abandonment security provider who—

- (a) has provided financial assistance to a seafarer under paragraph (3); and
- (b) subsequently determines that the seafarer was not entitled to receive the financial assistance,

may recover as a civil debt the amount of the financial assistance less any interest payable under paragraph (5).

(7) In this regulation “abandonment claim” has the meaning given in regulation 53N(3).

Subrogation

53P.—(1) Paragraph (2) applies where an abandonment security provider provides financial assistance (“the sum provided”) to a seafarer under an abandonment security.

(2) Any rights which a seafarer has (or but for the payment of that sum would have had) against the shipowner as a result of being abandoned are, with respect to the sum provided, transferred to and vested in the abandonment security provider.

Duty to carry and display an abandonment security document

53Q.—(1) The shipowner must ensure that, for each abandonment security in force in relation to the ship, an abandonment security document containing the information specified in Schedule 4 is carried on board.

(2) The shipowner must ensure that each abandonment security document that relates to the ship and is not in English, has with it an English translation.

(3) A breach of paragraph (1) or (2) is an offence by the shipowner.

(4) The shipowner and the master of a ship must ensure that each abandonment security document that relates to the ship, together with any English translation, is displayed in a conspicuous place on board ship.

(5) A breach of paragraph (4) is an offence by the shipowner and the master of the ship.

(6) “Abandonment security document” means a certificate or other documentary evidence of abandonment security issued by the abandonment security provider.

Termination of abandonment security effective only where notice given

53R.—(1) The termination by an abandonment security provider of an abandonment security before the end of its period of validity is effective only if the abandonment security provider gives at least 30 days’ prior notice to the Secretary of State.

(2) A notice under paragraph (1) must—

- (a) be in writing; and
- (b) include a copy of the abandonment security document.

(3) “Abandonment security document” has the meaning given in regulation 53Q(6).

Duty on shipowner to notify seafarers if abandonment security is to be terminated

53S.—(1) Where the shipowner becomes aware that any abandonment security that relates to a ship is to be, or has been, terminated before the end of its period of validity, the shipowner must give notice to that effect to all seafarers who work on the ship during the notification period.

(2) A notice under paragraph (1) must—

- (a) be in writing;
- (b) state the date on which the abandonment security is to be or was terminated; and
- (c) be given as soon as reasonably practicable after the shipowner becomes aware that the abandonment security is to be or was terminated.

(3) A breach of paragraph (1) is an offence by the shipowner.

(4) In this regulation, the “notification period” means the period —

- (a) beginning with the date on which the shipowner becomes aware that the abandonment security is to be, or has been, terminated before the end of its period of validity; and
- (b) ending with on the date that the shipowner becomes aware that the abandonment security has been replaced or reinstated.”.

(8) In regulation 57(1) and (2)(a), for “A2.5” substitute “A2.5.1”.

(9) In regulation 59 (penalties)—

(a) in paragraph (1), after “(5)” insert “and regulation 59A”;

(b) in paragraph (2)—

- (i) after sub-paragraph (e), omit “and”;
- (ii) after sub-paragraph (f), insert—
 - “(g) regulation 53G(3);
 - (h) regulation 53I(3); and
 - (i) regulation 53Q(3).”;

(c) in paragraph (3)—

- (i) after sub-paragraph (h), omit “and”;
- (ii) after sub-paragraph (i), insert—
 - “(j) regulation 53G(5); and
 - (k) regulation 53Q(5).”;
- (d) in paragraph (5)—
 - (i) in the words before sub-paragraph (a) for “level 5 on the standard scale” substitute “the statutory maximum”;
 - (ii) after sub-paragraph (f) insert “and”;
 - (iii) after sub-paragraph (g) omit “and”;
 - (iv) omit sub-paragraph (h).
- (10) After regulation 59, insert—

“Further provision on penalties

- 59A.**—(1) Offences under the provisions listed in paragraph (2) are punishable on summary conviction—
- (a) in England and Wales, by a fine;
 - (b) in Scotland and Northern Ireland, by a fine not exceeding level 5 on the standard scale.
- (2) The provisions referred to in paragraph (1) are—
- (a) regulation 53J(3);
 - (b) regulation 53M(2);
 - (c) regulation 53S(3).
- (3) Offences under the provisions listed in paragraph (4) are punishable—
- (a) on summary conviction—
 - (i) in England and Wales, by a fine;
 - (ii) in Scotland or Northern Ireland, by a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, by imprisonment for a term not exceeding two years or a fine, or both.
- (4) The provisions referred to in paragraph (3) are—
- (a) regulation 53B(2);
 - (b) regulation 53F.”.
- (11) After Schedule 2 insert—

“SCHEDULE 3

Regulation 53G

Information to be included in a shipowner’s security document

1. The information to be included in a shipowner’s security document is—
- (a) the name of the ship to which the shipowner’s security relates;
 - (b) the port of registry of the ship;
 - (c) the call sign of the ship;
 - (d) the International Maritime Organisation number of the ship;

- (e) the name and address of the shipowner's security provider;
- (f) the contact details of the point of contact at the shipowner's security provider responsible for handling claims made by seafarers;
- (g) the name of the owner of the ship;
- (h) the period of validity of the shipowner's security;
- (i) a declaration from the shipowner's security provider that the shipowner's security meets the requirements of standard A4.2.1 of the MLC.

SCHEDULE 4

Regulation 53Q

Information to be included in an abandonment security document

1. The information to be included in an abandonment security document is—
 - (a) the name of the ship to which the abandonment security relates;
 - (b) the port of registry of the ship;
 - (c) the call sign of the ship;
 - (d) the International Maritime Organisation number of the ship;
 - (e) the name and address of the abandonment security provider;
 - (f) the contact details of the point of contact at the abandonment security provider responsible for handling seafarers' abandonment claims;
 - (g) the name of the owner of the ship;
 - (h) the period of validity of the abandonment security;
 - (i) a declaration from the abandonment security provider that the abandonment security meets the requirements of standard A2.5.2 of the MLC.”.