
STATUTORY INSTRUMENTS

2002 No. 2055

MERCHANT SHIPPING

The Merchant Shipping (Medical Examination) Regulations 2002

Made - - - - *4th August 2002*
Laid before Parliament *6th August 2002*
Coming into force - - *1st September 2002*

The Secretary of State, after consulting the persons referred to in section 86(4) of the Merchant Shipping Act 1995(1), in exercise of the powers conferred upon him by section 85(1)(a) and (b), (3), (5) and (7) and section 86(1) of that Act, hereby makes the following Regulations:

Citation, commencement and revocations

1.—(1) These Regulations may be cited as the Merchant Shipping (Medical Examination) Regulations 2002 and shall come into force on 1st September 2002.

(2) The following Regulations are hereby revoked—

- (a) the Merchant Shipping (Medical Examination) Regulations 1983(2);
- (b) the Merchant Shipping (Medical Examination) (Amendment) Regulations 1985(3); and
- (c) the Merchant Shipping (Medical Examination) (Amendment) Regulations 1990(4).

Interpretation etc

2.—(1) In these Regulations:

“approved” means approved for the purpose by the Secretary of State;

“the Act” means the Merchant Shipping Act 1995;

“MCA” means the Maritime and Coastguard Agency, an executive agency of the Department for Transport;

(1) 1995 c. 21; sections 85 and 86 were amended by the Merchant Shipping and Maritime Security Act 1997 (c. 28), section 8 and are applied to hovercraft by virtue of the Hovercraft (Application of Enactments) Order 1989 (S.I.1989/1350) to which there are amendments not relevant to these Regulations.

(2) S.I. 1983/808.

(3) S.I. 1985/512.

(4) S.I. 1990/1985.

“medical fitness certificate” means a certificate attesting to a person’s fitness for the work for which he is to be employed at sea and which is issued under regulation 7 or 10(8) (whether or not subject to restrictions) or a certificate deemed equivalent under regulation 5 or 6;

“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 any document amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time and is specified in a Merchant Shipping Notice;

“offshore installation” means any installation which is intended for underwater exploitation of mineral resources or exploration with a view to such exploitation;

“pleasure vessel” means—

(a) any vessel which is:

- (i) wholly owned by an individual or individuals and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or
- (ii) owned by a body corporate and used only for the sport or pleasure of employees or officers of the body corporate, or their immediate family or friends,

and is on a voyage or excursion which is one for which the owner is not paid 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 which is 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 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,

and no payments other than those mentioned above 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 husband or wife of the individual, and a relative of the individual or the individual’s husband or wife, and a brother, sister, ancestor or lineal descendant of that individual or that individual’s husband or wife;

“relevant inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act;

“sail training vessel” means a sailing vessel which is being used either:

- (a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship; or
- (b) to provide instruction in navigation and seamanship for yachtsmen;

and is operating under one of the following codes—

The Code of Practice for the Safety of Small Commercial Sailing Vessels⁽⁵⁾;

The Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels⁽⁶⁾;

The Code of Practice for the Safety of Small Commercial Motor Vessels⁽⁷⁾; or

The Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point⁽⁸⁾;

“seafarer” means any person, including a master, who is employed or engaged in any capacity on board a ship on the business of the ship but does not include persons who are training in a

(5) Published by The Stationery Office in 1993 (ISBN 0-11-551184-9).

(6) Published by The Stationery Office in 1997 (ISBN 0-11-551911-4).

(7) Published by The Stationery Office in 1993 (ISBN 0-11-551185-7).

(8) Published by The Stationery Office in 2000 (ISBN 0-11-551812-6).

sail training vessel or persons who are not engaged in the navigation of, or have no emergency safety responsibilities on, such a vessel;

“sea-going ship” means a ship certificated for navigation at sea by the competent authority which, in the case of a United Kingdom ship, is the MCA or any person authorised by the MCA;

“ship”, in the application of these Regulations to hovercraft, includes hovercraft;

“United Kingdom ship” means a ship which—

- (a) is a United Kingdom ship within the meaning of section 85(2) of the Act; or
- (b) is a hovercraft registered under the Hovercraft Act 1968⁽⁹⁾.

(2) Any approval in pursuance of these Regulations shall be given in writing and specify the date on which it takes effect and the conditions (if any) on which it is given.

Application

3.—(1) Subject to paragraph (2)—

- (a) these Regulations shall apply to sea-going United Kingdom ships wherever they may be; and
- (b) regulations 14 to 16 of these Regulations shall apply to sea-going ships, other than United Kingdom ships, when they are in a United Kingdom port or in United Kingdom waters.

(2) These Regulations shall not apply to fishing vessels, pleasure vessels, and offshore installations whilst on their working stations.

(3) These Regulations shall not apply to any person who is subject to any requirement contained in the Working Time Regulations 1998⁽¹⁰⁾.

Employment of seafarers

4.—(1) Subject to paragraph (2), no person shall employ a seafarer in a ship to which these Regulations apply unless that seafarer is the holder of a valid medical fitness certificate.

(2) A seafarer, the validity of whose certificate expires while he is in a location where medical examination in accordance with these Regulations is impracticable, may continue to be employed without such a certificate for a period not exceeding three months from the date of expiry of such medical certificate.

(3) No person shall employ a seafarer in a ship to which these Regulations apply in a capacity or in a geographical area precluded by any restriction in that seafarer’s medical fitness certificate.

Certificates equivalent to a medical fitness certificate—existing certificates

5.—(1) Any certificate of medical fitness issued to a seafarer by an approved medical practitioner in respect of a medical examination conducted before the date on which these Regulations come into force shall be deemed for the purposes of these Regulations to be equivalent to a medical fitness certificate issued under regulation 7.

(2) Notwithstanding the appropriate maximum period (according to the age of the applicant prescribed in regulation 8), any such certificate issued by any such practitioner shall remain valid from the date of the medical examination for such period as may be specified in the certificate.

⁽⁹⁾ 1968 c. 59.

⁽¹⁰⁾ S.I. 1998/1833, amended by S.I. 1999/3242, 1999/3372 and 2001/3256.

Certificates equivalent to a medical fitness certificate—non-United Kingdom certificates

6.—(1) Any certificate of medical fitness issued to a seafarer by an approved authority empowered in that behalf by the laws of a country or territory outside the United Kingdom as may be specified by the Secretary of State in Merchant Shipping Notice No. MSN 1765(M) shall be deemed for the purposes of these Regulations to be equivalent to a medical fitness certificate issued under regulation 7.

(2) Notwithstanding the appropriate maximum period (according to the age of the applicant prescribed in regulation 8), any such certificate issued by any such authority shall remain in force, unless renewed, only until expiration of the period of validity specified in that certificate.

Issue of medical fitness certificate

7.—(1) Every application for a medical fitness certificate shall, on payment of the fee prescribed in Regulations made under section 302 of the Act, be considered by an approved medical practitioner.

(2) If after examination of the applicant the practitioner considers that the applicant is fit, having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice No. MSN 1765(M), he shall issue the applicant with a medical fitness certificate in an approved form.

(3) The certificate may be restricted to such capacity of sea service or geographical areas as the practitioner considers appropriate.

(4) The person by whom a seafarer is employed at the time an application is made for a medical fitness certificate under paragraph (1) shall ensure that the application is at no cost to the seafarer to whom it relates.

Period of validity of certificate

8. An approved medical practitioner who issues a medical fitness certificate under regulation 7 shall specify the period of validity, from the date of the medical examination, for which the certificate is to remain in force, subject to the following maximum periods:

- (a) in respect of applicants under 18 years of age, one year;
- (b) in respect of applicants 18 years of age and over, two years.

Suspension and cancellation of certificate

9.—(1) If an approved medical practitioner has reasonable grounds for believing that:

- (a) there has been a significant change in the medical fitness of a seafarer during the period of validity of his medical fitness certificate; or
- (b) when the medical fitness certificate was issued an approved medical practitioner, had he been in possession of full details of the seafarer's condition, could not reasonably have considered that the seafarer was fit, having regard to the medical standards referred to in regulation 7; or
- (c) that the medical fitness certificate was issued otherwise than in accordance with these Regulations,

he may:

- (aa) suspend the validity of that certificate until the seafarer has undergone a further medical examination;
- (bb) suspend the certificate for such period as he considers the seafarer will remain unfit to go to sea; or

- (cc) cancel the certificate if he considers that the seafarer is likely to remain permanently unfit to go to sea

and shall notify the seafarer concerned accordingly.

(2) The approved medical practitioner may require that a medical fitness certificate which has been suspended or cancelled pursuant to paragraph (1) above be surrendered as he directs.

Application for a review

10.—(1) A person who is aggrieved by:

- (a) the refusal of an approved medical practitioner to issue him with a medical fitness certificate, or
- (b) any restriction imposed on such a certificate, or
- (c) the suspension for a period of more than three months or cancellation of that certificate by an approved medical practitioner pursuant to regulation 9,

may apply to the Secretary of State for the matter to be reviewed by a single medical referee appointed by the Secretary of State.

(2) Any such application shall:

- (a) be lodged with the Secretary of State within one month of the date on which the applicant is given notice of refusal, imposition of a restriction, suspension or cancellation (or such longer period as the Secretary of State may determine if delay is caused by the applicant's employment on board ship away from the United Kingdom);
- (b) include a consent to the approved medical practitioner responsible for the refusal, imposition of a restriction, suspension or cancellation providing a report to the medical referee, and specify the name and address of that practitioner.

(3) The Secretary of State shall notify the medical referee appointed by him to review the matter of the date on which any such application is lodged.

(4) The medical referee appointed by the Secretary of State to review the matter shall obtain a report from the approved medical practitioner by whom the applicant was examined or by whom the certificate was suspended or cancelled and shall examine the medical condition of the applicant. Subject to paragraph (5), the medical referee shall, if the applicant so requests, disclose to the applicant the report of the approved medical practitioner and any other evidence not produced by the applicant himself.

(5) If the medical referee considers that such disclosure would be harmful to the applicant's health the referee shall not be required to make such disclosure.

(6) The medical referee shall have regard to any relevant medical evidence, whether produced by the applicant, his employer, or otherwise, and whether or not disclosed to the applicant.

(7) In the light of the medical evidence before him, the medical referee shall, if he considers that the applicant is fit to go to sea, having regard to the medical standards referred to in regulation 7, issue the applicant with a medical fitness certificate in the approved form.

(8) Where the medical referee considers that restrictions as to capacity or geographical area other than those imposed on the medical fitness certificate issued to the applicant should be imposed, or that any restrictions so imposed should be deleted or varied, he shall issue to the applicant a revised medical fitness certificate and the former certificate shall thereupon cease to have effect.

(9) In the light of the medical evidence before him, if the medical referee considers that the applicant is unfit to go to sea, he shall notify the applicant of the period he considers the applicant will remain unfit to go to sea.

(10) Any such action by the medical referee under paragraphs (7) to (9) shall be taken not later than two months from the date on which the application for review is lodged with the Secretary of State or within such longer period as the Secretary of State may determine.

Health assessment and transfer of seafarers on watchkeeping duties to day work

11.—(1) Where—

- (a) an approved medical practitioner has certified that a seafarer engaged on watchkeeping duties is suffering from health problems which the practitioner considers to be due to the fact that the seafarer performs work during the night, and
- (b) it is possible for the person by whom he is employed to transfer the seafarer to work—
 - (i) to which the seafarer is suited, and
 - (ii) which is to be undertaken during periods such that the seafarer will cease to perform work during the night,

the person by whom the seafarer is employed shall transfer the seafarer accordingly.

(2) In this regulation, “night” means a period—

- (a) the duration of which is not less than nine consecutive hours; and
- (b) which includes the period between midnight and 5 a.m. (local time).

Records and returns

12. An approved medical practitioner who conducts a medical examination in accordance with these Regulations shall:

- (a) make and retain for ten years a record in an approved form of each medical examination which he carries out pursuant to these Regulations; and
- (b) send to the Secretary of State at his direction a return of all such examinations in an approved form (which form so far as the Secretary of State considers practicable shall not include medical information which can be identified as applying to a particular person).

Inspection and detention of a United Kingdom ship

13.—(1) A relevant inspector may inspect any United Kingdom ship to which these Regulations apply and may detain the ship if he is satisfied that any seafarer, in relation to whom a person is required by regulation 4 of these Regulations to ensure that the seafarer is the holder of a medical fitness certificate, is unable to produce a certificate which meets the requirements of that regulation.

(2) The relevant inspector shall not in the exercise of his power under this regulation detain or delay the ship unreasonably.

Inspection, detention and other measures in respect of ships other than United Kingdom ships

14.—(1) A relevant inspector may inspect any ship, which is not a United Kingdom ship, to which these Regulations apply when the ship is in a United Kingdom port, and if he is satisfied that any seafarer is unable to produce a valid medical fitness certificate he may—

- (a) send a report to the government of the country in which the ship is registered, and a copy thereof to the Director General of the International Labour Office; and
- (b) where conditions on board are clearly hazardous to health and safety—
 - (i) take such measures as are necessary to rectify those conditions, or

(ii) detain the ship,

when the ship has called at a United Kingdom port in the normal course of business or for operational reasons.

(2) If either of the measures specified in paragraph (1)(b) is taken, the relevant inspector shall forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.

(3) The relevant inspector shall not in the exercise of his power under this regulation detain or delay the ship unreasonably.

Enforcement of detention

15. Where a ship is liable to be detained under these Regulations, section 284(11) of the Act (which relates to the detention of a ship) shall have effect as if for the words “this Act”, wherever they appear, there were substituted the words “the Merchant Shipping (Medical Examination) Regulations 2002”.

Compensation

16. Sections 96 and 97 of the Act (arbitration and compensation) shall have effect in relation to a detention notice under these Regulations as they apply to a detention notice under section 95(3) of the Act subject to the following modifications—

(a) in section 96 the following words shall be omitted—

in sub-section (1), “in pursuance of section 95(3)(b)”;

in sub-section (3), “to whether the ship was or was not a dangerously unsafe ship”;

in sub-section (5), “as a dangerously unsafe ship”; and

(b) in sections 96 and 97 “relevant inspector” means a person making an inspection under these Regulations.

Penalties

17.—(1) Any contravention of regulation 4 shall be an offence punishable on summary conviction by a fine of an amount not exceeding level 5 on the standard scale.

(2) A failure to comply with the requirements of regulation 7(4) or regulation 11 shall be an offence punishable on summary conviction by a fine of an amount not exceeding level 2 on the standard scale.

(3) If a seafarer fails without reasonable excuse to comply with a requirement made under regulation 9(2) he shall be liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale.

(4) In any proceedings for an offence under these Regulations it shall be a defence for the defendant to show that all reasonable steps had been taken by him to ensure compliance with the Regulations.

Signed by authority of the Secretary of State for Transport

4th August 2002

David Jamieson
Parliamentary Under-Secretary of State,
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and substantially re-enact the Merchant Shipping (Medical Examination) Regulations 1983, as amended. These Regulations remove the previous restriction on application based on tonnage and apply to sea-going ships, irrespective of tonnage. The Regulations also make new provision in relation to the period of validity of medical fitness certificates and in relation to seafarers on watchkeeping duties.

The Regulations give effect in part to Convention 147 of the International Labour Organization entitled the Merchant Shipping (Minimum Standards) Convention 1976 (ratified by the United Kingdom on 28th November 1980), as supplemented by Protocol 147 to that Convention (ratified by the United Kingdom on 29th June 2001). Convention 147 requires provisions to be made substantially equivalent to those of (amongst other Conventions) Convention 73 entitled the Medical Examinations (Seafarers) Convention 1946 which is in force but has not been ratified by the United Kingdom. The Regulations also give effect to Clause 13 of the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association and the Federation of Transport Workers' Unions in the European Union which is annexed to Council Directive [1999/63/EC](#).

The Regulations:

- apply to sea-going United Kingdom ships other than fishing vessels, pleasure vessels and offshore installations whilst on their working stations (regulation 3);
- prohibit the employment of seafarers in such a ship unless they hold a valid medical fitness certificate and provide for certain other medical certificates to be treated as equivalent (regulations 4, 5 and 6);
- provide for the issue of medical fitness certificates, on payment of the prescribed fee, by medical practitioners approved by the Secretary of State (regulation 7);
- provide for the period of validity of medical fitness certificates (regulation 8), for the suspension or cancellation of certificates in specified circumstances (regulation 9), and for the review of a refusal of a medical fitness certificate, or the suspension or cancellation of a certificate, by a medical referee appointed by the Secretary of State (regulation 10); and
- provide for the transfer to day work of seafarers who are suffering health problems due to performing work at night (regulation 11).

Regulation 12 provides for the keeping of records and the making of returns by medical practitioners.

Regulations 13 to 17 provide for inspection, detention, compensation and penalties.

A Regulatory Impact Assessment has been produced and a copy placed in the library of both Houses of Parliament. Copies may be obtained from the Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone number 023 8032 9380).

Merchant Shipping Notices are published by the Maritime and Coastguard Agency. Copies may be obtained from Mail Marketing (Scotland), Unit 6, Blooms Grove Industrial Estate, Norton Street, Nottingham NG7 3JG (telephone: 0115 901 3336; fax: 0115 901 3334; e-mail address: mca@promosolution.com).

The Codes of Practice are published by, and copies may be obtained from, The Stationery Office.

Status: *This is the original version (as it was originally made).*

International Labour Organization Conventions are published by the International Labour Office and copies may be obtained from ILO Publications, International Labour Office, CH-211 Geneva 22, Switzerland.

A Transposition Note has been prepared and copies may be obtained from the Seafarer Health and Safety Branch of the Maritime and Coastguard Agency.