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STATUTORY INSTRUMENTS

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**2010 No. 737**

**MERCHANT SHIPPING**

**The Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010**

<i>Made</i>	- - - -	<i>10th March 2010</i>
<i>Laid before Parliament</i>		<i>12th March 2010</i>
<i>Coming into force</i>	- -	<i>6th April 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 85(1)(a) and (b), (1A), (1B), (3) and (5) to (7) and section 86(1) of the Merchant Shipping Act 1995<sup>(1)</sup> and section 2(2) of the European Communities Act 1972<sup>(2)</sup>.

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

**Citation, commencement and revocations**

1.—(1) These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 and shall come into force on 6th April 2010.

(2) The following Regulations are revoked—

- (a) the Merchant Shipping (Medical Examination) Regulations 2002<sup>(3)</sup>, and
- (b) the Merchant Shipping (Medical Examination) (Amendment) Regulations 2005<sup>(4)</sup>.

**Interpretation**

2. In these Regulations—

“the Act” means the Merchant Shipping Act 1995,

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- (1) 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 the Hovercraft (Application of Enactments) Order 1989 (S.I. 1989/1350), to which there are amendments not relevant to these Regulations.
- (2) 1972 c. 68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3 of the European Union (Amendment) Act 2008 (c. 7). The Maritime and Labour Convention is specified as one of the Community Treaties by the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757).
- (3) S.I. 2002/2055.
- (4) S.I. 2005/1919.

“approval” means an approval given by the Secretary of State in writing and which specifies the date on which it takes effect, its duration and the conditions (if any) on which it is given, and “approved” has a corresponding meaning,

“Code of Practice” means one of the following Codes of Practice—

- (a) The Code of Practice for the Safety of Small Commercial Sailing Vessels, published in 1993 by the Stationery Office (ISBN 0-11-551184-9),
- (b) The Code of Practice for the Safety of Large Commercial Sailing and Motor Vessels, as set out in Merchant Shipping Notice 1792(M),
- (c) The Code of Practice for the Safety of Small Commercial Motor Vessels, published in 1993 by the Stationery Office (ISBN 0-11-551185-7),
- (d) The Safety of Small Workboats and Pilot Boats — A Code of Practice, published in 1998 by the MCA,
- (e) The Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure Point, published in 1999 by the Stationery Office (ISBN 0-11-551812-6),

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

“medical fitness certificate” means a certificate attesting to a person’s fitness to perform the duties which that person will carry out at sea and which is issued under regulation 8 or 14 (whether or not subject to restriction or conditions),

“medical practitioner” means a medical practitioner approved by the Secretary of State to issue medical fitness certificates who—

- (a) in the case of a practitioner based in the United Kingdom, is a registered medical practitioner,
- (b) in the case of a practitioner not based in the United Kingdom, is entitled to practise in the country or territory in which that practitioner is based, and whose qualifications are specified in Merchant Shipping Notice 1822(M) as equivalent to those required of a practitioner based in the United Kingdom who is a registered medical practitioner,

“Merchant Shipping Notice” means a notice described as such and issued by the MCA, and any reference to a particular Merchant Shipping Notice includes a reference to a Merchant Shipping Notice amending or replacing that Notice which is considered by the Secretary of State to be relevant from time to time,

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

“relevant inspector” means a person mentioned in paragraph (a), (b) or (c) of section 258(1) of the Act<sup>(5)</sup>

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

- (a) a ship in respect of which a certificate is required to be in force in accordance with—
  - (i) the Merchant Shipping (Load Line) Regulations 1998<sup>(6)</sup>,
  - (ii) the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998<sup>(7)</sup>, or
  - (iii) the Merchant Shipping (Small Workboats and Pilot Boats) Regulations 1998<sup>(8)</sup>,

(5) Section 258(1) was amended by the Merchant Shipping and Maritime Security Act 1997 (c.28), Schedule 1, paragraph 4 and Schedule 7 Part 1.

(6) S.I. 1998/2241, amended by S.I. 2000/1335 and S.I. 2005/2114.

(7) S.I. 1998/2771, amended by S.I. 2000/482, S.I. 2002/1473 and S.I. 2005/2144.

(8) S.I. 1998/1609, amended by S.I. 2006/2055.

- (b) a passenger ship of Class I, II, II(A), III, VI or VI(A) in respect of which a certificate is required to be in force in accordance with the Merchant Shipping (Survey and Certification) Regulations 1995<sup>(9)</sup>, or
- (c) a high speed craft in respect of which a permit to operate outside waters of Categories A, B, C or D is required to be in force in accordance with the Merchant Shipping (High Speed Craft) Regulations 2004<sup>(10)</sup>,

“ship” includes a hovercraft, and

“United Kingdom ship” means a ship which is—

- (a) a United Kingdom ship within the meaning of section 85(2) of the Act,
- (b) a Government ship within the meaning of section 308(4) of the Act which is ordinarily engaged in commercial maritime operations, or
- (c) a hovercraft registered under the Hovercraft Act 1968<sup>(11)</sup>.

### Meaning of “seafarer”

**3.—**(1) In these Regulations “seafarer” means any person, including a master, who is employed or engaged or works in any capacity on board a ship on the business of the ship but does not include a person who—

- (a) is training in a sail training vessel, or
- (b) is on board a sail training vessel other than for training but—
  - (i) is not engaged in or responsible for the navigation of the vessel, and
  - (ii) has no emergency safety responsibilities on the vessel.

(2) In paragraph (1) “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 on navigation and seamanship for yachtsmen,
- and which is operating under a Code of Practice.

### Meaning of “pleasure vessel”

**4.—**(1) Subject to paragraph (4), for the purposes of these Regulations a “pleasure vessel” is a vessel of a type described in paragraph (2) or (3).

(2) The first type of pleasure vessel is a vessel—

- (a) wholly owned by an individual and used only for the sport or pleasure of the owner or the immediate family or friends of the owner, or
- (b) wholly 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,

which is on a voyage or excursion in respect of 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.

(3) The second type of pleasure vessel is a vessel wholly owned by or on behalf of an unincorporated association formed for the purposes of sport or pleasure which, at the time it is being

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<sup>(9)</sup> S.I. 1995/1210, amended by S.I. 1996/2418, S.I. 2000/1334 and 2687, S.I. 2002/1473, S.I. 2003/771, S.I. 2004/302, 1107, and 2883 and S.I. 2005/2114.

<sup>(10)</sup> S.I. 2004/302, amended by S.I. 2004/2883, S.I. 2005/2144 and S.I. 2006/2055.

<sup>(11)</sup> 1969 c.59.

used, is used only for the sport or pleasure of members of that unincorporated association or their immediate families, and for the use of which any charges levied are paid into the funds of, and applied for the general use of, that unincorporated association.

(4) A vessel is not in paragraph (2) or (3) if payments other than those mentioned in those paragraphs are made by or on behalf of the users of the vessel, other than the owner of the vessel.

(5) In paragraphs (2) and (3) “immediate family” means, in relation to an individual, the spouse or civil partner of the individual, and a sibling, ancestor or lineal descendant of that individual or of that individual’s spouse or civil partner.

## **Application**

5.—(1) Subject to paragraph (2)—

- (a) these Regulations apply to sea-going United Kingdom ships wherever they may be, and
- (b) regulation 18(1)(b) applies to sea-going ships (including hovercraft) which are not United Kingdom ships, when they are in a United Kingdom port or United Kingdom waters.

(2) These Regulations do not apply to—

- (a) pleasure vessels,
- (b) fishing vessels,
- (c) warships or naval auxiliaries,
- (d) offshore installations whilst on their working stations.

(3) These Regulations do not apply to (in the case of regulation 7, do not apply as respects)—

- (a) any person whose work is not part of the routine business of the ship and whose principal place of work is ashore,
- (b) any person who is subject to any requirement contained in the Working Time Regulations 1998<sup>(12)</sup>, the Merchant Shipping (Working Time: Inland Waterway) Regulations 2003<sup>(13)</sup> or the Fishing Vessels (Working Time: Sea-fishermen) Regulations 2004<sup>(14)</sup>.

## **Seafarer to have valid medical fitness certificate**

6.—(1) Subject to paragraphs (3) and (4), no person may work as a seafarer on a ship to which these Regulations apply unless that person has been issued with a medical fitness certificate which is still valid and is not suspended.

(2) A seafarer who has been issued with a medical fitness certificate must carry that certificate on board during the term of that seafarer’s employment on a ship to which these Regulations apply.

(3) A seafarer whose medical fitness certificate has expired during the course of a voyage may continue to work until—

- (a) the first port of call at which it is possible for the seafarer to make an application for a medical fitness certificate and be examined by a medical practitioner, or
- (b) the expiry of three months starting on the date of the expiry of the certificate,

whichever is the sooner.

(4) In urgent cases, with the Secretary of State’s approval, if a person—

- (a) does not hold a valid medical fitness certificate, but

<sup>(12)</sup> S.I.1998/1833, amended by S.I. 1999/3242 and 3372, S.I. 2001/3256, S.I. 2002/3128, S.I. 2003/1684 and 3049, S.I. 2004/1713, 2516 and 2241, S.I. 2006/99, 557, 594 and 2389, S.I. 2007/2079, S.I. 2008/960, 1660 and 1696 and S.I. 2009/1567 and 2766.

<sup>(13)</sup> S.I. 2003/3049 amended by S.I. 2006/3223.

<sup>(14)</sup> S.I. 2004/1713.

- (b) has held a medical fitness certificate for a period of not less than 24 months (or in the case of a person under 18 years at the date of issue of the certificate, 12 months) and that certificate has expired no earlier than one month before the date on which that person joined a ship to which these Regulations apply,

that person may work as a seafarer on that ship until the first port of call at which it is possible for an application for a medical fitness certificate as respects that person to be made and for that person to be examined by a medical practitioner, but in any case not for a period exceeding three months.

(5) No person may work as a seafarer on a ship to which these Regulations apply in a capacity of sea service or in a geographical area precluded by any restriction in that person's medical fitness certificate.

(6) No person may work as a seafarer on a ship to which these Regulations apply in breach of a condition of that person's medical fitness certificate.

### **Employment of seafarers**

7.—(1) Subject to paragraphs (2) and (3), no person may employ another person as a seafarer on a ship to which these Regulations apply unless that other person has been issued with a medical fitness certificate which is still valid and is not suspended.

(2) A person may continue to employ as a seafarer, on a ship to which these Regulations apply, a person whose medical fitness certificate has expired during the course of a voyage until—

- (a) the first port of call at which it is possible for the seafarer to make an application for a medical fitness certificate and be examined by a medical practitioner, or
- (b) the expiry of three months starting on the date of expiry of the certificate,

whichever is the sooner.

(3) In urgent cases, with the Secretary of State's approval, if a person who is a seafarer—

- (a) does not hold a valid medical fitness certificate, but
- (b) has held a medical fitness certificate for a period of not less than 24 months (or in the case of a person under 18 years at the date of issue of the certificate, 12 months) and that certificate has expired no earlier than one month from the date on which the seafarer joined a ship to which these Regulations apply,

another person may employ that person as a seafarer on that ship until the first port of call at which it is possible for an application for a medical fitness certificate as respects that seafarer to be made and for that seafarer to be examined by a medical practitioner, but in any case not for a period exceeding three months.

(4) No person may employ a person as a seafarer in a ship to which these Regulations apply in a capacity of sea service or in a geographical area precluded by any restriction in that person's medical fitness certificate.

(5) No person may employ a person as a seafarer in a ship to which these Regulations apply in such a way as to breach a condition of the person's medical fitness certificate.

### **Application for and issue of medical fitness certificate**

8.—(1) If—

- (a) an application for a medical fitness certificate is made to a medical practitioner,
- (b) any fee prescribed in Regulations made under section 302 of the Act has been paid,
- (c) the medical practitioner has examined the person to whom the application relates, and

(d) having had regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1822(M), the medical practitioner considers that the person to whom the application relates is fit to perform the duties which that person will carry out at sea, the medical practitioner must issue that person with a medical fitness certificate in the form specified in Merchant Shipping Notice 1822(M).

(2) A medical fitness certificate may, as the medical practitioner considers appropriate—

- (a) be restricted to such capacity of sea service or geographical areas as that practitioner records on the certificate, and
- (b) be subject to such conditions as that practitioner records in accordance with the requirements of Merchant Shipping Notice 1822(M).

(3) If a person is employed as a seafarer, or has been offered employment as a seafarer, at the time an application is made for a medical fitness certificate under paragraph (1), the person's employer must ensure that the application is made and processed at no cost to the person to whom it relates.

#### **Period of validity of medical fitness certificate**

9. A medical fitness certificate is valid only from the date of the medical examination or the date of consideration by a medical referee, as appropriate, and for the following maximum periods—

- (a) in respect of a person under 18 years of age, one year,
- (b) in respect of a person of 18 years of age or over, two years,

or, in either case, such shorter period as is specified on the certificate.

#### **Fitness certificates: Code vessels and domestic passenger vessels**

10.—(1) If a person has been issued with a certificate of medical fitness which is specified by the Secretary of State in Merchant Shipping Notice 1822(M) as equivalent to a medical fitness certificate for work on a Code vessel or a domestic passenger vessel, then (unless that person is the master of a domestic passenger vessel) that certificate is for the purposes of regulations 6, 7, 12 and 13 equivalent to a medical fitness certificate, but only as respects that person's work on that type of vessel.

(2) In paragraph (1)—

“Code vessel” means a vessel which—

- (i) operates under a Code of Practice, and
- (ii) does not go more than 60 miles from a harbour or shelter of any kind which affords entry (subject to prudence in the weather conditions prevailing) and protection from the force of weather, and

“domestic passenger vessel” means a ship which is of Class VI or Class VI(A) as defined in the Merchant Shipping (Life Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1999(15).

#### **Fitness certificates: non-United Kingdom certificates**

11.—(1) A certificate of medical fitness to work as a seafarer which has been issued to a person by an authority empowered to issue such certificates by the laws of any country or territory outside the United Kingdom specified by the Secretary of State in Merchant Shipping Notice 1815(M) is for the purposes of regulations 6, 7 and 12, and for the purposes of regulation 13 other than regulation 13(1)(d), equivalent to a medical fitness certificate, but only until the expiry date specified on the certificate.

(2) A certificate to which paragraph (1) applies is not equivalent to a medical fitness certificate unless it is issued in English, or in English and some other language.

### **Reporting of medical conditions**

**12.—**(1) A person who is a seafarer who holds a medical fitness certificate and who—

- (a) is, or is likely to be, absent from work for a period of thirty days or more due to a medical condition, or
- (b) develops a significant medical condition,

must report that medical condition as soon as practicable.

(2) A report made in accordance with paragraph (1) must be made—

- (a) in the case of a person who has been issued with a certificate of medical fitness, to the authority which issued that certificate,
- (b) in any other case, to a medical practitioner.

(3) If a seafarer must make the report required by paragraph (1), the validity of that seafarer's medical fitness certificate or certificate of medical fitness is suspended from the date on which it first becomes practicable for that seafarer to make the report until the date (if any) on which a medical practitioner or the authority (as appropriate) has assessed, if necessary by conducting a medical examination of the seafarer, that the seafarer is fit having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1822(M).

(4) In this regulation "medical condition" includes both injury and illness, and a significant medical condition is one which adversely affects or is reasonably likely adversely to affect the seafarer's ability to carry out their duties, including the seafarer's ability to undertake emergency duties.

### **Suspension and cancellation of medical fitness certificate**

**13.—**(1) This regulation applies if a medical practitioner has reasonable grounds for believing that—

- (a) there has been a significant change in the medical fitness of a person during the period of validity of that person's medical fitness certificate,
- (b) a person is not complying with the terms of a condition to which that person's medical fitness certificate is subject,
- (c) when a medical fitness certificate was issued to a person, had a medical practitioner been in possession of full details of that person's condition, the medical practitioner could not reasonably have considered that the person was fit, having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1822(M), or
- (d) a medical fitness certificate was issued to a person otherwise than in accordance with these Regulations.

(2) If this regulation applies, the medical practitioner may—

- (a) suspend the validity of that medical fitness certificate until the person to whom the certificate was issued has undergone further medical examination,
- (b) suspend the validity of the medical fitness certificate for such period as the medical practitioner considers the person to whom the certificate was issued will remain unfit to perform the duties that person will carry out at sea, or
- (c) cancel the certificate if the medical practitioner considers that the person to whom the certificate was issued is likely to remain permanently unfit to perform the duties that person will carry out at sea.

and must notify the person concerned accordingly.

(3) The medical practitioner may require that a person surrenders a medical fitness certificate which has been issued to that person and which has been suspended or cancelled pursuant to paragraph (2), as that practitioner directs.

(4) In this regulation, a significant change in the medical fitness of a person is a condition which affects or would be reasonably likely to affect that person's ability to carry out their duties, including their ability to undertake emergency duties.

### **Review of medical practitioner's decision**

14.—(1) A person who is aggrieved by—

- (a) the refusal of a medical practitioner to issue a medical fitness certificate in accordance with regulation 8,
- (b) any restriction imposed on such a certificate, or
- (c) the suspension for a period of more than three months or cancellation of such a certificate by a medical practitioner pursuant to regulation 13,

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) The Secretary of State must have the matter reviewed if the application—

- (a) was lodged with the Secretary of State within one month of the date on which the applicant was given notice of refusal, imposition of a restriction, suspension or cancellation,
- (b) includes a consent for the medical practitioner responsible for the refusal, imposition of a restriction, suspension or cancellation to provide a report to the medical referee, and
- (c) specifies the name and address of that practitioner.

(3) If an application is made after the time prescribed in paragraph (2)(a), the Secretary of State, upon consideration of any reasons for the lateness of the application, may decide that the matter is nonetheless to be reviewed.

(4) If requested by the applicant, the medical practitioner must send to the applicant a copy of the report of the medical practitioner and any other evidence provided by the medical practitioner to the medical referee.

(5) In a case within paragraph (1)(a) or (c), if in the light of the medical evidence, and having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1822(M), the medical referee considers that the applicant is fit to perform the duties that person will carry out at sea, the medical referee must issue to the applicant a medical fitness certificate in the form specified in Merchant Shipping Notice 1822(M), or terminate the suspension of the applicant's medical fitness certificate, as the case may be.

(6) In a case within paragraph (1)(a), (b) or (c), and having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1822(M), if in the light of the medical evidence the medical referee considers that restrictions as to capacity of sea service or geographical areas should be imposed on a certificate issued to the applicant, or that any restriction so imposed by a medical practitioner should be deleted or varied, the medical referee must issue to the applicant a medical fitness certificate in the form specified in Merchant Shipping Notice 1822(M) which records any restrictions as so imposed or varied, and the former certificate shall cease to have effect.

(7) If in the light of the medical evidence, and having regard to the medical standards specified by the Secretary of State in Merchant Shipping Notice 1822(M), the medical referee considers that the applicant is unfit to perform the duties that person will carry out at sea, the medical referee must



notify the applicant of the period during which the medical referee considers that the applicant will remain unfit to go to sea.

(8) If the applicant fails to attend an appointment with the medical referee without giving adequate notice, then the Secretary of State may recover from the applicant as a civil debt the cost incurred by the Secretary of State of that appointment.

### **Health assessment and transfer of seafarers on night watchkeeping duties**

**15.—**(1) If—

- (a) a medical practitioner or medical referee 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 seafarer's employer 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 employer must transfer the seafarer accordingly.

(2) In paragraph (1), "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).

### **Medical examinations and reviews: records and returns**

**16.—**(1) A medical practitioner or medical referee who conducts a medical examination or a review in accordance with these Regulations must—

- (a) make and retain for ten years a record of each such examination or review which that medical practitioner or medical referee carries out pursuant to these Regulations, and
- (b) send to the Secretary of State on the Secretary of State's written request a return of all such examinations or reviews.

(2) In keeping the record and making any return required under paragraph (1), the medical practitioner or medical referee must use the relevant form or forms specified by the Secretary of State in Merchant Shipping Notice 1822(M).

### **Replacement certificates**

**17.—**(1) Unless a medical fitness certificate has been surrendered under regulation 13(3), if a person who was issued with a medical fitness certificate which is still valid is no longer in possession of that certificate, then upon—

- (a) application being made by that person or that person's employer to the medical practitioner or referee who issued the certificate, and
- (b) payment of the medical practitioner's or referee's administrative costs of issuing the replacement,

the medical practitioner or referee who issued that certificate may issue to that person a replacement medical fitness certificate.

(2) A replacement medical fitness certificate issued under this regulation expires on the expiration date of the original medical fitness certificate which it replaces.

**Offences and penalties**

**18.**—(1) Any person who contravenes regulation 6 or 7 is guilty of an offence and is liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(2) An employer who fails to comply with regulation 8(3) or 15(1) is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale.

(3) A seafarer who fails without reasonable excuse to comply with a requirement made under regulation 13(3) is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale.

(4) Any person who—

(a) obstructs a relevant inspector in the exercise of his powers under regulation 20, or

(b) fails without reasonable excuse to comply with a requirement made under regulation 20, is guilty of an offence and liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.

(5) In any proceedings for an offence under these Regulations it is a defence for the person charged to show that all reasonable steps had been taken by that person to ensure compliance with the relevant provision of these Regulations.

**Inspection of Government ships**

**19.** Sections 258 to 266 of the Act<sup>(16)</sup> apply to these Regulations as if they were for all purposes made under section 85 of the Act and accordingly those sections apply in relation to Government ships.

**Inspection of ships other than United Kingdom ships**

**20.**—(1) When a ship other than a United Kingdom ship is in a United Kingdom port or United Kingdom waters, a relevant inspector may inspect that ship, and may require any seafarer on board that ship to produce any document, in order to ascertain whether the requirements of Regulation 1.2 and Standard A1.2 of the Maritime Labour Convention, 2006<sup>(17)</sup> are met in relation to the seafarers working on that ship.

(2) Where a relevant inspector is satisfied that any seafarer working on a ship which is not a United Kingdom ship is unable to prove that that seafarer is working in accordance with the medical certification requirements of Regulation 1.2 and Standard A1.2 of the Maritime Labour Convention, 2006, the relevant inspector may send—

(a) a report to the government of the State whose flag the ship is entitled to fly, and

(b) a copy of the report to the Director General of the International Labour Office<sup>(18)</sup>.

(3) A ship shall not in the exercise of the power under this regulation be delayed unreasonably.

<sup>(16)</sup> These sections provide powers to inspect ships and their equipment, powers of inspectors in relation to premises and ships, for the service of improvement notices and prohibition notices and their reference to arbitration, compensation for invalid prohibition notices and offences.

<sup>(17)</sup> Cmd. 7049.

<sup>(18)</sup> The International Labour Office is the permanent secretariat of the International Labour Organisation, which is an agency of the United Nations.

Signed by authority of the Secretary of State for Transport

10th March 2010

*Paul Clark*  
Parliamentary Under Secretary of State  
Department for Transport

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations implement Regulation 1.2 of the Maritime Labour Convention, 2006 (Cmd. 7049). The Regulations also implement Clause 13 of the Annex to Directive 1999/63/EC (O.J. No.L167, 02.07.1999, p.33) as amended by Article 2.4 of Directive 2009/13/EC (O.J. No. L124, 20.05.2009, p.30). They apply to seafarers on sea-going United Kingdom ships wherever they may be. *Regulation 18 (Inspection)* also applies to sea-going ships other than United Kingdom ships, while they are in a United Kingdom port or United Kingdom waters.

*Regulations 6 and 7* provide that seafarers working on seagoing United Kingdom ships must possess medical fitness certificates and carry them on board a ship on which they are working, and preclude employers from employing seafarers who do not have such a certificate. In limited circumstances and for limited periods of time, a seafarer may work on a ship without a medical fitness certificate and, in those circumstances, an employer may employ that seafarer.

*Regulations 8 to 11* make provision as to the issuing and validity of medical fitness certificates and for equivalent certificates to be accepted as medical fitness certificates in certain circumstances.

*Regulation 12* provides that seafarers must report medical conditions to the medical practitioner or other authority who issued their medical fitness certificate. Where this obligation applies, a medical certificate will be suspended until such time as the medical practitioner or authority has assessed the seafarer's condition. *Regulation 13* provides that, where there has been a significant change in a seafarer's medical fitness, or where the medical practitioner who issued a medical fitness certificate was not in possession of full details about the seafarer and, if those details were appreciated the certificate would not have been issued, or where such a certificate has not been issued in compliance with these Regulations, a medical practitioner may suspend or cancel the certificate.

*Regulation 14* provides that the Secretary of State must arrange for the review by a medical referee of certain decisions by a medical practitioner. An application for review must be made within one month of the date of notification of the decision challenged, unless the Secretary of State agrees that a longer period is appropriate.

*Regulation 15* provides that where a medical practitioner certifies that a seafarer on night watchkeeping duties suffers from health problems which the medical practitioner considers are because the seafarer works at night, and where an employer is able to transfer the seafarer to other suitable work which is not performed at night, the employer must transfer the seafarer to that work.

*Regulation 16* provides that medical practitioners and medical referees must keep records, and must send to the Secretary of State, on request, a return of medical examinations which have been carried out.

*Regulation 17* provides that, on application and payment of the medical practitioner's administrative costs, a replacement medical fitness certificate may be issued where the person to which that certificate was issued is no longer in possession of it.

*Regulation 18* provides for offences and penalties for persons, including seafarers and employers, who fail to comply with the Regulations.

*Regulation 19* applies to Government ships the inspection provisions, and the improvement notice and prohibition notice provisions, of the Merchant Shipping Act 1995. *Regulation 20* provides a power to inspect non-United Kingdom ships, and a power to report a failure to comply with the medical certification provisions of the Maritime Labour Convention to the government of the State in which that ship is entitled to be registered.

The Regulations are made under sections 85(1)(a) and (b), (1A), (1B), (3) and (5) to (7) and 86(1) of the Merchant Shipping Act 1995 except in so far as they relate to government ships. Section 2(2) of the European Communities Act 1972 is used to extend the application of the Regulations to government ships, in order to implement the obligations of Regulation 1.2 of the Maritime Labour Convention, 2006 as respects such ships.

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An Impact Assessment has been produced and is annexed to the Explanatory Memorandum, which has been placed in the Libraries of both Houses of Parliament and is available alongside the Regulations on the OPSI website at [www.opsi.gov.uk](http://www.opsi.gov.uk).