

2014 No. 308

MERCHANT SHIPPING

The Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014

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| <i>Made</i> - - - - | <i>13th February 2014</i> |
| <i>Laid before Parliament</i> | <i>19th February 2014</i> |
| <i>Coming into force</i> - - | <i>17th March 2014</i> |

The Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to the safety of ships and the health and safety of persons on them(b).

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 85(1)(a) and (b), (3), (5) and (7) and 86(1) of the Merchant Shipping Act 1995(c) and section 2(2) of the European Communities Act 1972.

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) (Hours of Work) (Amendment) Regulations 2014.

(2) These Regulations come into force on 17th March 2014.

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- (a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The Maritime Labour Convention 2006 is regarded as one of the EU Treaties within the meaning of section 1(2) of the European Communities Act 1972 by virtue of the European Communities (Definition of Treaties) (Maritime Labour Convention) Order 2009 (S.I. 2009/1757, as amended by S.I. 2011/1043).
- (b) S.I. 1993/595.
- (c) 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) which are referred to in that article). Section 85 was amended by Part 1 of Schedule 7 to the Merchant Shipping and Maritime Security Act 1997 (c.28) and section 2 of the British Overseas Territories Act 2002 (c.8). There are other amendments to sections 85 and 86 which are not relevant.

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

2.—(1) The Merchant Shipping (Hours of Work) Regulations 2002(a) are amended as follows.

(2) In regulation 2(1)—

(a) after the definition of “collective agreement” 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 Maritime Labour Convention, in the forms corresponding to the relevant models given in Appendix A5-II of the Convention and having the contents, duration and validity specified in Regulation 5.1.3 and Standard A5.1.3 of the Convention;”;

(b) omit the definition of “company”;

(c) omit the definition of “complaint”;

(d) omit the definition of “the Directive”;

(e) omit the definitions of “employer”, “employment” and “employed”;

(f) after the definition of “hours of work” insert—

““Maritime Labour Certificate” and “interim Maritime Labour Certificate” mean, in relation to a ship, a certificate of that name issued in accordance with the Maritime Labour Convention, in a form corresponding to the relevant model given in Appendix A5-II of the Convention and having the contents, duration and validity specified in Regulation 5.1.3 and Standard A5.1.3 of the Convention;

“the Maritime Labour Convention” means the Convention adopted on 23rd February 2006 by the General Conference of the International Labour Organization(b);”;

(g) omit the definition of “offshore installation”;

(h) for the definition of “pleasure vessel” substitute—

““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;”;

(a) S.I. 2002/2125, amended by S.I. 2003/3049, S.I. 2004/1469, S.I. 22004/1713 and S.I. 2005/2114; there is another amending instrument which is not relevant.

(b) Cmnd. 7049.

- (i) omit the definition of “sail training vessel”;
 - (j) omit the definition of “seafarer”;
 - (k) for the definition of “sea-going” substitute—
 - ““sea-going” in relation to a United Kingdom ship means—
 - (a) a ship which operates outside the waters specified as Category A, B, C and D waters in Merchant Shipping Notice 1837(M)(a);
 - (b) a ship to which the Merchant Shipping (Survey and Certification) Regulations 1995(b) apply and in respect of which no exemption granted under regulation 2(2) of those Regulations applies;
 - (c) a ship to which regulation 4 of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998(c) applies and which falls within the description given in paragraph (3) of that regulation; or
 - (d) a high speed craft in respect of which a permit to operate outside waters of Categories A, B, C or D has been issued in accordance with regulation 8 of the Merchant Shipping (High Speed Craft) Regulations 2004(d);”;
 - (l) after the definition of “ship” insert—
 - ““shipowner” means—
 - (a) in relation to a ship which has a valid Maritime Labour Certificate or interim Maritime Labour Certificate, the person identified as the shipowner on that Certificate;
 - (b) in relation to any other ship, the owner of the ship or, if different, any other organisation or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner;”;
 - (m) for the definition of “United Kingdom ship” substitute—
 - ““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(e); and”;
- (3) Omit regulation 2(3).
- (4) After regulation 2(2) insert—
- “(4) For the purposes of these Regulations—
- (a) “seafarer” means any person, including a master, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on a ship;
 - (b) “engaged”, in the application of these Regulations to a seafarer, means engaged under a contract, whether express or implied and (if it is express) whether oral or in writing, whereby the seafarer undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried out by the seafarer; and

(a) Merchant Shipping Notice 1837(M) specifies which waters are Category A, B, C and D waters for the purposes of regulation 3(2)(a) of S.I. 1992/2356, as the notice which currently supersedes Merchant Shipping Notice M1504 pursuant to regulation 2 of those Regulations.

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

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

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

(e) 1968 c.59.

- (c) “employed seafarer” means a seafarer who is employed under a contract of employment or engaged (or, where the employment or engagement has ceased, was employed or engaged), “employer” in relation to an employed seafarer means the person by whom the employed seafarer is or was employed or engaged and “employment” in relation to an employed seafarer is to be construed accordingly.”.

(5) For regulation 3 substitute—

“Application

3.—(1) Subject to paragraphs (4), (5) and (6), these Regulations, other than regulations 14A to 16 and 17B, apply to a sea-going United Kingdom ship wherever it may be.

(2) Subject to paragraphs (4), (5) and (6), regulations 4, 7, 9, 14A to 16, 17B and 18 of these Regulations apply to a sea-going ship which is not a United Kingdom ship, while that ship is in United Kingdom waters, if—

- (a) the Maritime Labour Convention has come into force for the State whose flag the ship is entitled to fly; and
- (b) the ship carries—
 - (i) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached; or
 - (ii) an interim Maritime Labour Certificate.

(3) Subject to paragraphs (4), (5) and (6), these Regulations, other than regulation 14A and 17B, apply to a sea-going ship which is not a United Kingdom ship, while that ship is in United Kingdom waters, if—

- (a) the Maritime Labour Convention has not come into force for the State whose flag the ship is entitled to fly; or
- (b) the Maritime Labour Convention has come into force for the State whose flag the ship is entitled to fly, but the ship does not carry—
 - (i) a Maritime Labour Certificate to which a Declaration of Maritime Labour Compliance is attached; or
 - (ii) an interim Maritime Labour Certificate.

(4) Regulations 4 to 23 do not apply to—

- (a) pleasure vessels;
- (b) fishing vessels;
- (c) warships or naval auxiliaries; and
- (d) vessels which are not ordinarily engaged in commercial activities.

(5) Regulation 12A does not apply to ships of traditional build.

(6) These Regulations do not apply to any seafarer who is subject to any requirement contained in the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003(a).”.

(a) S.I. 2003/3049.

(6) After regulation 3 insert—

“Northern Ireland

3A. These Regulations apply in relation to Northern Ireland as if—

- (a) any reference to an employment tribunal were a reference to an industrial tribunal within the meaning of section 42(5) of the Interpretation Act (Northern Ireland) 1954(a);
- (b) in regulation 2(1) for the definition of “collective agreement” there were substituted the following definition—
“collective agreement” means a collective agreement within the meaning of Article 2(2) of the Industrial Relations (Northern Ireland) Order 1992(b), the trade union parties to which are independent trade unions within the meaning of that Article; and
- (c) in regulation 23—
 - (i) any reference to “settlement agreement” were a reference to “compromise agreement”;
 - (ii) in paragraph (2)(a) the reference to section 18 of the Employment Tribunals Act 1996(c) were a reference to Article 20 of the Industrial Tribunals (Northern Ireland) Order 1996(d);
 - (iii) in paragraph (2)(b) the reference to section 18(1)(y) of the Employment Tribunals Act 1996 were a reference to Article 20(1)(u) of the Industrial Tribunals (Northern Ireland) Order 1996.”.

(7) For regulation 4 substitute—

“General duty of shipowner, master, employer

4. Subject to regulation 8, it shall be the duty of—

- (a) a shipowner;
- (b) a master of a ship; and
- (c) in the case of an employed seafarer, any employer of the employed seafarer,

to ensure that a seafarer is provided with at least the minimum hours of rest.”.

(8) In regulation 7(2)(a) for “Merchant Shipping Notice No MSN 1767 (M)” substitute “Merchant Shipping Notice 1842 (M)”.

(9) In regulation 9—

- (a) in paragraph (2) for “Merchant Shipping Notice No MSN 1767 (M)” substitute “Merchant Shipping Notice 1842 (M)”;
- (b) in paragraph (5) for “The company” substitute “The shipowner”.

(10) In regulation 11 for “A company” substitute “A shipowner”.

(11) For regulation 12 substitute—

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- (a) 1954 c.33 (N.I.); section 42(5) was substituted by paragraph 1 of Schedule 1 to the Industrial Tribunals (Northern Ireland) Order 1996 (S.I. 1996/1921 (N.I. 18)).
 - (b) S.I. 1992/807 (N.I. 5); the definition of “collective agreement” was amended by article 150(2) of, and Schedule 2 to, the Trade Union and Labour Relations (Northern Ireland) Order 1995 (S.I. 1995/1980 (N.I. 12)).
 - (c) 1996 c.17. Section 18 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and section 5 of the Employment Act 2008 (c.24). Further amendments were made by Schedule 1 to the Enterprise and Regulatory Reform Act 2013 (c.24) but these are not yet in force or not yet in force for relevant purposes. There are other amendments to section 18 which are not relevant to these Regulations.
 - (d) S.I. 1996/1921 (N.I. 18). Article 20 was amended by Schedule 2 to S.I. 2002/2836 (N.I. 2) and section 8 of the Employment Act (Northern Ireland) 2011 (c.13 (N.I.)); there are other amending instruments which are not relevant to these Regulations.

“Entitlement to annual and additional leave

12.—(1) An employed seafarer is entitled to paid annual leave that is to be calculated on the basis of two and a half days for each month of employment in the leave year and pro rata for incomplete months.

(2) An employed seafarer is entitled to additional paid leave of eight days in each leave year and pro rata for incomplete years.

(3) Leave to which a seafarer is entitled under this regulation—

(a) may be taken in instalments; and

(b) may not be replaced by a payment in lieu, except where the seafarer’s employment is terminated.

(4) Justified absences from work shall not be considered as annual leave for the purposes of paragraph (1).

(5) For the purposes of this regulation, “justified absences from work” include an absence authorised by any enactment, contract between the seafarer’s employer and the seafarer, collective agreement or workplace agreement or by custom and practice.”.

(12) After regulation 12 insert—

“Shore leave

12A. The shipowner and the master must ensure that shore leave is granted to seafarers to benefit their health and well-being where consistent with the operational requirements of their positions.”.

(13) In regulation 13 for “annual leave” in both places where it occurs substitute “paid leave”.

(14) For regulation 14 substitute—

“Inspection of United Kingdom ships and certain other ships

14.—(1) For the purpose of verifying compliance with these Regulations and where regulation 15(1) does not apply, a relevant inspector (or, in the case of a United Kingdom ship, a proper officer) may at all reasonable times go on board a ship and inspect the ship.

(2) The power to inspect a ship under paragraph (1) includes the power to inspect its equipment, any article on it and any document carried on it.

(3) Subsections (1A), (3) and (5) of section 258 of the Act^(a) (powers to inspect ships and their equipment, etc) apply in relation to paragraph (1) as if references in those subsections to “subsection (1) above” and “this section” were references to paragraph (1).

(4) 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 verifying 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;

(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”.

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

(5) Any Regulations made under subsection (8) of section 259 or subsection (3) of section 260 of the Act apply for the purposes of the provisions of those sections as applied by paragraphs (3) and (4) as they apply for the purposes of the Act.

(6) 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.”.

(15) After regulation 14 insert—

“Inspection of non-United Kingdom ships with Maritime Labour Convention documentation

14A.—(1) Where regulation 15(1) does not apply, a relevant inspector may as respects a ship to which this regulation applies—

- (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 Maritime Labour Convention (inspections in port) 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 14 applies to the relevant inspector as if—

- (a) in paragraph (1), for the words “verifying compliance with these Regulations” there were substituted “carrying out an inspection under regulation 14A(1)(b)”;
- and
- (b) in paragraph (3), for the words “to which this regulation applies” there were substituted “to which regulation 14A(1)(b) applies”.

(16) In regulation 15 —

(a) after paragraph (1) insert—

“(1A) Where a relevant inspector has power to inspect a ship under paragraph (1), paragraphs (2) to (6) of regulation 14 apply to the relevant inspector as if—

- (a) in paragraph (2), for the words “under paragraph (1) includes” there were substituted “under regulation 15(1) includes”;
- (b) in paragraph (3), for the words “paragraph (1)” in both places there were substituted “regulation 15(1)”;
- and
- (c) in paragraph (4), for the words “to which this regulation applies” in both places there were substituted “to which regulation 15(1) applies” and for the words “verifying compliance with these Regulations” there were substituted “verifying compliance with the requirements of regulations 4, 7 and 9”;

(b) in paragraph (3)(a) omit “(“a relevant complaint”);

(c) in paragraph (5) for “the company in respect of the ship” substitute “the shipowner”;

(d) after paragraph (5) insert—

“(6) In this regulation—

- (a) “complaint” means any information or report submitted by a member of the crew, a professional body, an association, a trade union, or any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew; and
- (b) “relevant complaint” means a complaint within the meaning of paragraph (3)(a).”.

(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.

- (17) In regulation 16(3)(b) for “the company in respect of the ship” substitute “the shipowner”.
- (18) Omit regulation 17.
- (19) After regulation 17, as omitted, insert—

“Detention of United Kingdom ships and other ships without Maritime Labour Convention documentation

17A.—(1) Where a relevant inspector has no power to detain a ship under regulation 16 but 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 Maritime Labour Convention (including the rights of seafarers referred to in Articles III and IV of the Maritime Labour Convention which are secured by it),

the 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) Section 284 of the Act^(a) (enforcing detention of a ship) applies where a ship is liable to be detained under this regulation or under regulation 16 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 or under regulation 16 as the case may be; and
- (c) subsection (7) were omitted.

(4) 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.

(5) Where a ship other than a United Kingdom 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 but the failure to comply referred to in paragraph (1) has ceased, 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 the shipowner or master being convicted;
- (c) if either—
 - (i) the sum of £30,000 is paid to the Secretary of State by way of security; or

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

- (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 the shipowner or master 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.
- (7) The Secretary of State must repay any sum paid in pursuance of paragraph (6)(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 the shipowner or master being convicted.
- (8) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (6)(c) and the shipowner or master 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 shipowner or master; and
 - (b) next in payment of any fine imposed by the court,
- and any balance must be repaid to the first-mentioned person.
- (9) 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 (6) to (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.

Detention of non-United Kingdom ships with Maritime Labour Convention documentation

17B.—(1) This regulation applies where a relevant inspector inspects a ship under regulation 14A(1)(b) or regulation 15(1) or (3).

(2) Where the relevant inspector has no power to detain a ship under regulation 16 but has clear grounds for believing that—

- (a) requirements in one or more of the following parts of the Maritime Labour Convention have not been complied with—
 - (i) Standards A2.3.5 to A2.3.8 (requirements for hours of work or rest);
 - (ii) Standards A2.3.10 to A2.3.12 (requirements to post tables and keep records of hours of work or rest);
 - (iii) Regulation 2.4.2 (duty to grant shore leave); and
 - (iv) Standards A2.4.2 and A2.4.3 (entitlement to annual leave with pay and prohibition on contracting-out), and
- (b) (i) the conditions on board are clearly hazardous to the safety, health or security of seafarers, or

(a) Cmnd. 8941.

- (ii) the non-compliance represents a serious breach or the latest in a series of repeated breaches of the requirements of the Maritime Labour Convention (including the rights of seafarers referred to in Articles III and IV of the Maritime Labour Convention which are secured by it),

the ship is liable to be detained.

(3) 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.

(4) Where a ship is liable to be detained under this regulation or under regulation 16, section 284 of the Act 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 this regulation or under regulation 16 as the case may be; 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 but the failure to comply referred to in paragraph (2) has ceased, a person having power to detain the ship must, at the request of the shipowner or master, immediately release the ship.”.

(20) In regulation 18—

- (a) in paragraph (2)(a) after “under these Regulations” insert “and references to “the owner of a ship” mean the shipowner under these Regulations”.
- (b) for paragraph (2)(c) substitute—

“(c) section 97 shall apply in relation to a ship to which these Regulations apply as if for subsection (1) there were substituted—

“(1) If on a reference under section 96 relating to a detention notice in relation to a ship, the shipowner shows to the satisfaction of the arbitrator that—

- (a) any matter did not constitute a valid basis for the relevant inspector’s opinion; and
- (b) there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may award the shipowner such compensation in respect of any loss suffered by him in consequence of the detention of the ship as the arbitrator thinks fit.”.

(21) In regulation 19 for “the information specified in Part I of Annex IX to Merchant Shipping Notice No MSN 1725 M” substitute “the information specified in Merchant Shipping Notice 1842 (M)”.

(22) In regulation 20—

- (a) in paragraph (1)(a) for “8(3) or 9(1), (4) or (5)” substitute “8(3), 9(1), (4) or (5) or 12A”;
- (b) in paragraph (1)(d) for “a company” substitute “a shipowner” and for “9(5) or 11” substitute “9(5), 11 or 12A”;
- (c) in paragraph (4) for “regulation 12” substitute “regulation 12(1) or (2)”.

(23) After regulation 21 insert—

“Remedies

22.—(1) An employed seafarer may present a complaint to an employment tribunal that the seafarer’s employer—

- (a) has refused to permit the exercise of any right that the seafarer has under regulation 12(1) or (2); or
- (b) has failed to pay the seafarer the whole or any part of any amount due to the seafarer under regulation 12(1) or (2).

(2) An employment tribunal shall not consider a complaint under this regulation unless it is presented—

- (a) before the end of the period of three months beginning with the date on which it is alleged that the exercise of the right should have been permitted (or in the case of a period of annual leave or additional leave extending over more than one day, the date on which it should have been permitted to begin) or, as the case may be, the payment should have been made;
- (b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an employment tribunal finds a complaint under paragraph (1)(a) well-founded, the tribunal—

- (a) must make a declaration to that effect, and
- (b) may make an award of compensation to be paid by the employer to the seafarer.

(4) The amount of the compensation shall be such as the tribunal considers just and equitable in all the circumstances having regard to—

- (a) the employer’s default in refusing to permit the seafarer to exercise the seafarer’s right, and
- (b) any loss sustained by the seafarer which is attributable to the matters complained of.

(5) Where on a complaint under paragraph (1)(b) an employment tribunal finds that an employer has failed to pay a seafarer in accordance with regulation 12(1) or (2), it must order the employer to pay to the seafarer the amount which it finds to be due to the seafarer.

Restriction on contracting out

23.—(1) Any provision in an agreement (whether a contract of employment or not) is void in so far as it purports—

- (a) to exclude or limit the operation of any provision of these Regulations, save in so far as provided for under regulation 6; or
- (b) to preclude a person from bringing proceedings under these Regulations before an employment tribunal.

(2) Paragraph (1) does not apply to—

- (a) any agreement to refrain from instituting or continuing proceedings where a conciliation officer has taken action under section 18 of the Employment Tribunals Act 1996^(a) (conciliation); or
- (b) any agreement to refrain from instituting or continuing proceedings within section 18(1)(y) of the Employment Tribunals Act 1996 (proceedings under these

(a) 1996 c.17. Section 18 was amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8) and section 5 of the Employment Act 2008 (c.24). Further amendments were made by Schedule 1 to the Enterprise and Regulatory Reform Act 2013 (c.24) but these are not yet in force or not yet in force for relevant purposes. There are other amendments to section 18 which are not relevant to these Regulations.

Regulations where conciliation is available), if the conditions regulating settlement agreements under these Regulations are satisfied in relation to the agreement.

(3) For the purposes of paragraph (2)(b) the conditions regulating settlement agreements under these Regulations are that—

- (a) the agreement must be in writing,
- (b) the agreement must relate to the particular complaint,
- (c) the seafarer must have received advice from a relevant independent adviser as to the terms and effect of the proposed agreement and, in particular, its effect on his ability to pursue his rights before an employment tribunal,
- (d) there must be in force, when the adviser gives the advice, a contract of insurance, or an indemnity provided for members of a profession or a professional body, covering the risk of a claim by the seafarer in respect of loss arising in consequence of the advice,
- (e) the agreement must identify the adviser, and
- (f) the agreement must state that the conditions regulating settlement agreements under these Regulations are satisfied.

(4) A person is a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is a qualified lawyer,
- (b) if he is an officer, official, employee or member of an independent trade union who has been certified in writing by the trade union as competent to give advice and as authorised to do so on behalf of the trade union, or
- (c) if he works at an advice centre (whether as an employee or as a volunteer) and has been certified in writing by the centre as competent to give advice and as authorised to do so on behalf of the centre.

(5) But a person is not a relevant independent adviser for the purposes of paragraph (3)(c)—

- (a) if he is, is employed by or is acting in the matter for the employer or an associated employer,
- (b) in the case of a person within paragraph (4)(b), if the trade union is the employer or an associated employer, or
- (c) in the case of a person within paragraph (4)(c), if the seafarer makes a payment for the advice received from him.

(6) In paragraph (4)(a), “qualified lawyer” means—

- (a) as respects England and Wales, a person who, for the purposes of the Legal Services Act 2007(a), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act);
- (b) as respects Scotland, an advocate (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate; and
- (c) as respects Northern Ireland, a barrister (whether in practice as such or employed to give legal advice), or a solicitor who holds a practising certificate.

(7) For the purposes of paragraph (5) any two employers shall be treated as associated if—

- (a) one is a company of which the other (directly or indirectly) has control; or
- (b) both are companies of which a third person (directly or indirectly) has control;

and “associated employer” shall be construed accordingly.

(a) 2007 c.29. Section 18 defines authorised persons for the purposes of the Act.

Review

24.—(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—

- (a) the Maritime Labour Convention;
- (b) Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST)(a);
- (c) Directive 1999/95/EC of the European Parliament and of the Council of 13 December 1999 concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports(b); and
- (d) Council Directive 2009/13/EC 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, and amending Directive 1999/63/EC(c),

are 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.”.

Amendments to legislation

3. The Schedule (amendments to legislation) has effect.

Signed by authority of the Secretary of State for Transport

Stephen Hammond
Parliamentary Under Secretary of State
Department for Transport

13th February 2014

(a) O.J. L167, 2.7.1999, p. 33, amended by Council Directive 2009/13/EC.
(b) O.J. L014, 20.1.2000, p. 29.
(c) O.J. L124, 20.5.2009, p. 30.

SCHEDULE

Regulation 3

AMENDMENTS TO LEGISLATION

- 1.**—(1) The Employment Tribunals Act 1996(a) is amended as follows.
- (2) In section 18(1) (cases where conciliation provisions apply)—
- (a) omit the “or” at the end of paragraph (w) ;
 - (b) at the end of paragraph (x) insert “, or”;
 - (c) after paragraph (x) insert—
“*(y)* under regulation 22 of the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (3) In section 21(1) (jurisdiction of the Appeal Tribunal)—
- (a) omit the “or” at the end of paragraph (x) ;
 - (b) at the end of paragraph (y) insert “, or”;
 - (c) after paragraph (y) insert—
“*(z)* the Merchant Shipping (Hours of Work) Regulations 2002.”.
- 2.**—(1) The Employment Rights Act 1996(b) is amended as follows.
- (2) In section 45A(5) (right not to suffer detriment: working time cases) after paragraph (c) insert—
“*(d)* the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (3) In section 101A(2) (fairness in dismissal: working time cases) after paragraph (c) insert—
“*(d)* the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (4) In section 104(4) (fairness in dismissal: assertion of statutory right), in paragraph (d), after “the Working Time Regulations 1998,” insert “the Merchant Shipping (Hours of Work) Regulations 2002,”.
- 3.**—(1) The Employment Rights (Northern Ireland) Order 1996(c) is amended as follows.
- (2) In Article 68A(5) (rights not to suffer detriment: working time cases)—
- (a) omit the “and” at the end of sub-paragraph (b);
 - (b) at the end of sub-paragraph (c) insert “; and”;
 - (c) after sub-paragraph (c) insert—
“*(d)* the Merchant Shipping (Hours of Work) Regulations 2002.”.
- (3) In Article 132A(2) (right not to be unfairly dismissed: working time cases)—
- (a) omit the “and” at the end of sub-paragraph (b);

(a) 1996 c.17. Sections 18 and 21 were amended by section 1 of the Employment Rights (Dispute Resolution) Act 1998 (c.8). Section 18 was also amended by section 5 of the Employment Act 2008 (c. 24) and section 21 by S.I. 1998/1833. Extensive amendments to section 18 were made by Schedule 1 to the Enterprise and Regulatory Reform Act 2013 (c.24) but these are not yet in force or not yet in force for relevant purposes. There are other amendments to sections 18 and 21 which are not relevant to these Regulations.

(b) 1996 c.18. Section 45A was inserted by S.I. 1998/1833 and subsection (5) was inserted by S.I. 2003/3049 and amended by S.I. 2004/1713 and S.I. 2008/1660. Section 101A was inserted by S.I. 1998/1833 and subsection (2) was inserted by S.I. 2003/3049 and amended by S.I. 2004/1713 and S.I. 2008/1660. Section 104(4)(d) was inserted by S.I. 1998/1833 and amended by S.I. 2004/1713 and S.I. 2008/1660.

(c) S.I. 1996/1919 (N.I. 16). Article 68A was inserted by S.R. 1998 No. 386 and Article 68A(5) was inserted by S.I. 2003/3049. Article 132A was inserted by S.R. 1998 No. 386 and Article 132A(2) was inserted by S.I. 2003/3049. Article 135(4)(d) was inserted by S.I. 2004/1713. There are other instruments amending Articles 68A, 132A and 135 which are not relevant to these Regulations.

(b) at the end of sub-paragraph (c) insert “; and”;

(c) after sub-paragraph (c) insert—

“(d) the Merchant Shipping (Hours of Work) Regulations 2002.”

(4) In Article 135(4) (right not to be unfairly dismissed: assertion of statutory right), in sub-paragraph (d), after “the Working Time Regulations (Northern Ireland) 1998,” insert “the Merchant Shipping (Hours of Work) Regulations 2002,”.

4.—(1) The Industrial Tribunals (Northern Ireland) Order 1996(a) is amended as follows.

(2) In Article 20(1) (cases where conciliation provisions apply)—

(a) omit the “or” at the end of sub-paragraph (s);

(b) at the end of sub-paragraph (t) insert “, or”;

(c) after sub-paragraph (t) insert—

“(u) under regulation 21 of the Merchant Shipping (Hours of Work) Regulations 2002.”

5.—(1) The Working Time Regulations 1998(b) are amended as follows.

(2) In regulation 18(1) (excluded sectors) for sub-paragraph (a) substitute—

“(a) to workers to whom the Merchant Shipping (Hours of Work) Regulations 2002 apply.”.

6.—(1) The Working Time Regulations (Northern Ireland) 1998(c) are amended as follows.

(2) In regulation 18(1) (excluded sectors) for sub-paragraph (a) substitute—

“(a) to workers to whom the Merchant Shipping (Hours of Work) Regulations 2002 apply.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Merchant Shipping (Hours of Work) Regulations 2002. They implement the following provisions relating to seafarers’ leave entitlements:

Regulation 2.4 of the Maritime Labour Convention, 2006 (Cmd. 7049) (“the MLC”);

Article 2(5) of Council Directive 2009/13/EC 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), which replaces clause 16 of the Agreement annexed to Council Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Shipowners’ Association (ECSA) and the Federation of Transport Workers’ Unions in the European Union (FST) (O.J. L167, 2.7.1999, p. 33); and

Regulation 2.4 of the Agreement annexed to Council Directive 2009/13/EC.

The 2002 Regulations are also amended so as to provide enforcement mechanisms which distinguish between non-UK ships carrying a valid Maritime Labour Certificate (including an interim Maritime Labour Certificate) and other non-UK ships and to change some definitions.

Regulation 2(4) inserts new definitions of seafarer and employed seafarer into regulation 2 of the 2002 Regulations. An employed seafarer includes a seafarer engaged under a contract for personal performance of work or services, unless it is a contract with a client or customer of a profession or business carried out by the seafarer.

(a) S.I. 1996/1921 (N.I. 18). Article 20 was amended by Schedule 2 to S.I. 2002/2836 (N.I. 2) and section 8 of the Employment Act (Northern Ireland) 2011 (c.13 (N.I.)); there are other amending instruments which are not relevant to these Regulations.

(b) S.I. 1998/1833. Regulation 18(1) was amended by S.I. 2003/1684, S.I. 2003/3049 and S.I. 2004/1713.

(c) S.R. 1998 No. 386. Regulation 18(1) was amended by S.R. 2003 No.330, S.I. 2003/3049 and S.I. 2004/1713.

Regulation 2(5) replaces regulation 3 of the 2002 Regulations and provides that the 2002 Regulations apply to sea-going United Kingdom ships wherever they may be and to sea-going non-UK ships in United Kingdom waters, except as provided in regulation 3(4), (5) and (6).

Regulation 2(6) provides for the 2002 Regulations to apply to Northern Ireland with appropriate modifications.

Regulation 2(11) replaces regulation 12 of the 2002 Regulations and confers on employed seafarers an increased entitlement to paid annual leave and a new entitlement to additional paid leave of eight days per year.

Regulation 2(12) inserts a new regulation 12A into the 2002 Regulations which confers on seafarers a new right to shore leave.

Regulation 2(14) to (19) amends the 2002 Regulations by making new provisions and amending existing provisions concerning inspection and detention of ships.

Regulation 2(21) amends regulation 19 of the 2002 Regulations (release of information) so as to refer to a new MSN which specifies the information to be published.

Regulation 2(22) amends the offences in regulation 20 of the 2002 Regulations (penalties) to enforce the new obligations.

Regulation 2(23) inserts new regulations 22 and 23 into the 2002 Regulations which give employed seafarers the right to present a complaint to an employment tribunal (in Northern Ireland, an industrial tribunal) in order to enforce their entitlements to paid annual leave and additional paid leave and restrict the contracting out of rights under the Regulations.

Regulation 2(23) also inserts a new regulation 24 into the 2002 Regulations, requiring the Secretary of State to review the 2002 Regulations and to publish a report of that review within five years of the coming into force of these Regulations (and within every five years after that). Following a review it will fall to the Secretary of State to consider whether the 2002 Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the relevant provisions or to amend them.

Regulation 3 and the Schedule make consequential amendments to other legislation arising from the new right for employed seafarers to present a complaint to an employment tribunal.

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The MLC is available on the website of the International Labour Organisation at www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm.

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

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