



STATUTORY INSTRUMENTS.

S.I. No. 246 of 2014

MERCHANT SHIPPING (MEDICAL EXAMINATIONS) REGULATIONS
2014

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2014

I, LEO VARADKAR, Minister for Transport, Tourism and Sport, in exercise of the powers conferred on me by section 87 of the Merchant Shipping Act 2010 (No. 14 of 2010) (as adapted by the Transport (Alteration of Name of Department and Title of Minister) Order 2011 (No. 141 of 2011)), and for the purpose of giving effect to Council Directive 2009/13/EC of 16 February 2009¹ and to Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008² (as amended by Directive 2012/35/EU of the European Parliament and of the Council of 21 November 2012³), and having complied with the provisions of that section, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Merchant Shipping (Medical Examinations) Regulations 2014.

(2) These Regulations come into operation on 4 July 2014.

Interpretation

2. In these Regulations—

“Act of 1992” means the Merchant Shipping Act 1992 (No. 2 of 1992);

“Act of 2010” means the Merchant Shipping Act 2010 (No. 14 of 2010);

“approved doctor” means a medical practitioner whose name is for the time being entered in the register established under section 43 of the Medical Practitioners Act 2007 (No. 25 of 2007) and approved by the Minister under Regulation 4(1)(a);

“approved form” means a form approved by the Minister under Regulation 4(1)(e) from time to time and issued to an approved doctor;

“authorised person” has the same meaning as it has in section 87 of the Act of 2010;

“Marine Notice” means a notice, described as such, issued by the Minister, as may be amended or replaced from time to time;

¹OJ No. L 124, 20.5.2009, p. 30

²OJ No. L 323, 3.12.2008, p. 33

³OJ No. L 343, 14.12.2012, p. 78

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 10th June, 2014.*

“medical fitness certificate” means a seafarer’s medical certificate attesting to a person’s fitness or otherwise for the work for which he or she is to be employed at sea and which is—

- (a) issued under Regulation 6, or
- (b) a certificate, deemed under Regulation 8, to be equivalent to a medical fitness certificate issued under Regulation 6;

“medical referee” means an approved doctor who has been approved as an independent medical referee by the Minister under Regulation 4(1)(b);

“Regulations of 2011” means the European Communities (Passenger Ships) Regulations 2011 (S.I. No. 322 of 2011);

“seafarer” means any person, including the master, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on the ship but does not include a person who is a pilot within the meaning of the Harbours Act 1996 (No. 11 of 1996);

“seagoing”, in relation to a ship, means—

- (a) a ship in respect of which a certificate is required to be in force in accordance with the Merchant Shipping (Load Lines) Act 1968 (No. 17 of 1968),
- (b) a passenger boat of Class P5 or P6 in respect of which a passenger boat licence is required to be in force in accordance with the Act of 1992 and which proceeds to sea and operates beyond 40 miles from a sheltered harbour or bay where a vessel can safely berth alongside or be safely anchored,
- (c) a passenger ship of Class I, II, II(A), III or VI in respect of which a passenger ship certificate is required to be in force in accordance with the Act of 1992,
- (d) a passenger ship of Class A, B, C or D in respect of which a passenger ship safety certificate is required to be in force in accordance with the Regulations of 2011,
- (e) a high-speed passenger craft in respect of which a High Speed Craft Safety Certificate and a Permit to Operate High Speed Craft outside waters of Categories A, B, C or D are required to be in force in accordance with the Regulations of 2011, or
- (f) a Dynamically Supported Craft (in this paragraph referred to as a “DSC”) in respect of which a DSC Construction and Equipment Certificate, and a DSC Permit to Operate High Speed Craft outside waters of Categories A, B, C or D are required to be in force in accordance with the Regulations of 2011;

“ship” means any vessel, whether publicly or privately owned, which is ordinarily engaged in commercial operations, being a vessel other than a fishing vessel, warship or naval auxiliary;

“shipowner”, in relation to a ship, has the meaning assigned to it by the Maritime Labour Convention 2006 adopted at Geneva on 23 February 2006 and includes an owner within the meaning of the Act of 2010.

Application

3. These Regulations apply to all seagoing Irish ships wherever they may be.

Approval of Minister

4. (1) The Minister—

- (a) may approve a person to be an approved doctor,
- (b) may approve a person to be an independent medical referee,
- (c) may designate a place to be a referral centre to assess colour vision for the purpose of providing an approved doctor with the information necessary to issue a medical fitness certificate,
- (d) shall specify medical standards and eyesight and hearing standards as are required for the issue of a medical fitness certificate under Regulation 6, and
- (e) shall approve a standard form to be an “approved form”.

(2) The Minister may revoke an approval under paragraph (1) (a) or (b).

(3) The Minister may publish notice, by way of Marine Notice, of any of the decisions reached by the Minister under paragraph (1).

Employment of seafarers

5. (1) Subject to paragraphs (2) and (3), a shipowner or master shall not employ or continue to employ a seafarer on board a seagoing Irish ship, unless the seafarer is the holder of a medical fitness certificate that records the seafarer as fit to carry out the work for which he or she is to be employed and that is in force.

(2) Where the medical fitness certificate of a seafarer expires during the course of a voyage, a shipowner or master may continue to employ the seafarer on board a seagoing Irish ship—

- (a) for a period not exceeding 3 months from the date of expiry of the medical fitness certificate, or
- (b) until the first port of call at which it is possible for the seafarer to be examined and obtain a medical fitness certificate in accordance with these Regulations,

whichever is the sooner.

(3) The Minister may, in urgent cases and subject to paragraph (4), permit a seafarer, who is the holder of a medical fitness certificate which expired within a month before the date on which the seafarer joined a ship to which these Regulations apply, to be employed on board the ship, despite the expiry of the certificate, until the next port of call at which it is possible for the seafarer to obtain a medical fitness certificate in accordance with these Regulations.

(4) A permission under paragraph (3) shall not exceed a period of 3 months.

(5) A shipowner or master shall not employ a seafarer on board a ship to which these Regulations apply in breach of any restriction or condition recorded under Regulation 6(6) by an approved doctor on the seafarer's medical fitness certificate.

Issue of medical fitness certificate

6. (1) A person who wishes to obtain a medical fitness certificate shall—

- (a) be at least 16 years of age,
- (b) provide satisfactory proof of identity to an approved doctor, and
- (c) be medically examined by an approved doctor to ascertain if he or she is fit, having regard to the medical standards and eyesight and hearing standards specified by the Minister under Regulation 4(1)(d).

(2) If the effectiveness of an applicant's colour vision is in doubt following an initial assessment by the approved doctor, the doctor may, having regard to the duties to be performed at sea by the applicant, proceed to confirmatory colour vision testing using a referral centre designated by the Minister under Regulation 4(1)(c) as being competent to assess colour vision for the purpose of providing the doctor with the necessary information to issue a medical fitness certificate.

(3) A colour vision test carried out in accordance with this Regulation shall be valid for such period, not exceeding 6 years, as is specified in a certificate.

(4) Subject to paragraph (5), where an approved doctor—

- (a) medically examines an applicant, and
- (b) has regard to such medical standards and eyesight and hearing standards as are specified by the Minister under Regulation 4(1)(d),

the approved doctor shall issue a medical fitness certificate to the applicant in the approved form.

(5) A medical fitness certificate shall record whether an applicant is fit or unfit to carry out the work of a seafarer for which he or she is to be employed.

(6) A medical fitness certificate may, as an approved doctor considers appropriate—

- (a) be restricted to such capacity of sea service or geographical areas as the approved doctor records on the certificate, and
 - (b) be subject to such conditions as the approved doctor records on the certificate having had regard to the standards specified under Regulation 4(1)(d) and the nature of the duties to be carried out by the seafarer.
- (7) A seafarer who has been issued with a medical fitness certificate shall—
- (a) ensure that that certificate is in his or her possession, when on board during the term of his or her employment, and
 - (b) produce that certificate when requested to do so by an authorised person.

Period of validity of certificate

7. A medical fitness certificate shall, subject to Regulation 9, remain in force—

- (a) in the case of a seafarer who has not attained the age of 18 years, for such period, not exceeding one year, as an approved doctor specifies in the certificate, and
- (b) in the case of a seafarer who has attained the age of 18 years, for such period, not exceeding 2 years, as an approved doctor specifies in the certificate.

Recognition of medical fitness certificates issued by other states

8. A medical fitness certificate which has been issued to a seafarer by or under the authority of the Government of-

- (a) another Member State, or
- (b) a country which is not a Member State and which—
 - (i) is recognised in accordance with the International Convention on Standards, Training, Certification and Watchkeeping for Seafarers, 1978, as amended from time to time and Directive 2008/106/EC of the European Parliament and of the Council of 19 November 2008² (as last amended by Directive 2012/35/EU of the European Parliament and of the Council of 21 November 2012³), and
 - (ii) is specified in a Marine Notice,

shall be deemed for the purposes of these Regulations to be equivalent to a medical fitness certificate issued under Regulation 6.

Suspension and revocation of medical fitness certificate

9. (1) Subject to paragraph (4), where an approved doctor 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 or her medical fitness certificate,
- (b) when a medical fitness certificate was issued to a seafarer by an approved doctor (in this paragraph referred to as a “certifying doctor”), had the certifying doctor been in possession of the full details of the seafarer’s health, the certifying doctor could not reasonably have considered that the seafarer was fit to carry out his or her duties as a seafarer, having regard to the medical standards in force at the time the certificate was issued, or
- (c) a medical fitness certificate was issued to a seafarer otherwise than in accordance with these Regulations,

he or she may—

- (i) suspend the operation of the seafarer’s medical fitness certificate until the seafarer has undergone a further medical examination,
- (ii) suspend the operation of the medical fitness certificate for such reasonable period as he or she considers that the seafarer will remain unfit to go to sea, or
- (iii) revoke the medical fitness certificate if he or she considers that the seafarer is likely to remain permanently unfit to go to sea,

and shall notify the seafarer of his or her decision.

(2) An approved doctor may direct a seafarer who holds a medical fitness certificate which has been suspended or revoked under paragraph (1) to surrender the certificate to him or her as soon as practicable after its suspension or revocation.

(3) A seafarer shall comply with a direction given under paragraph (2).

(4) This Regulation does not apply to a certificate which is deemed, under Regulation 8, to be equivalent to a medical fitness certificate issued under Regulation 6.

Review by a medical referee

10. (1) A person who, having been medically examined under these Regulations—

- (a) has been issued with a medical fitness certificate stating that he or she is not fit to carry out his or her duties as a seafarer,

- (b) has had restrictions or conditions recorded on his or her medical fitness certificate in accordance with Regulation 6(6), or
- (c) has had his or her medical fitness certificate suspended for a period of more than 3 months or revoked pursuant to Regulation 9,

may apply to the Minister for the matter to be reviewed by a medical referee.

(2) The Minister shall specify, by way of Marine Notice, the procedures governing the conduct and consideration of a review under paragraph (1).

(3) The decision of a medical referee shall be final.

Offences and penalties

11. (1) A shipowner or a master who contravenes Regulation 5(1), (2) or (5) commits an offence and is liable on summary conviction to a class A fine.

(2) A seafarer who fails to comply with Regulation 6(7)(a) or 9(3) commits an offence and is liable on summary conviction to a class A fine.

(3) A person who—

- (a) knowingly gives false or misleading information for the purposes of the issuing of a medical fitness certificate,
- (b) forges a document which purports to be a medical fitness certificate,
- (c) with intent to deceive, uses or alters a medical fitness certificate,
- (d) with intent to deceive, permits the use of or the alteration of a medical fitness certificate, or
- (e) with intent to deceive, uses a forged document purporting to be a medical fitness certificate,

commits an offence and is liable on summary conviction to a class A fine.

Summary proceedings

12. Summary proceedings for an offence under these Regulations may be brought and prosecuted by the Minister.

Transitional

13. Subject to Regulation 9, a medical fitness certificate issued to a seafarer under the Merchant Shipping (Medical Examinations) Regulations 2005 (S.I. No. 701 of 2005) continues in force until the expiry date specified in the certificate.

Revocation

14. The Merchant Shipping (Medical Examinations) Regulations 2005 (S.I. No. 701 of 2005) are revoked.



GIVEN under my Official Seal,
4 June 2014.

LEO VARADKAR,
Minister for Transport, Tourism and Sport.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations:

- (a) implement the provisions 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, and amending Directive 1999/63/EC;
- (b) implement certain provisions of Directive 2008/106/EC of the European Parliament and of the Council on the minimum level of training of seafarers (as amended by Directive 2012/35/EU).

These Regulations replace the Merchant Shipping (Medical Examinations) Regulations 2005 and reflect the latest Guidelines set down by the International Labour Organization (ILO), the International Maritime Organization (IMO) and the World Health Organization (WHO). The Regulations apply to seafarers on all seagoing Irish ships wherever they may be.

Medical examination standards for seafarers are outlined in a Marine Notice. The medical standards provide for a comprehensive medical assessment. Eyesight testing, including colour vision screening, is part of the overall medical assessment. The Regulations provide for confirmatory colour vision testing at a designated centre when the initial test is in doubt.

A panel of Approved Doctors, details of which are available in a Marine Notice, administer the standards. The Regulations provide for the Approved Doctors to suspend or revoke a medical fitness certificate where certain irregularities have been found. A seafarer aggrieved by an assessment that he/she is unfit, the imposition of restrictions or conditions on the certificate, or a suspension/revocation of a certificate, may apply to the Minister for Transport, Tourism and Sport for a further examination to be undertaken by a medical referee. The decision of the medical referee is final.

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