



STATUTORY INSTRUMENTS.

S.I. No. 375 of 2014

MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)
(SHIPOWNERS' LIABILITIES AND REPATRIATION) REGULATIONS
2014

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I, PASCHAL DONOHOE, 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 (S.I. No. 141 of 2011)) and for the purpose of giving effect to Council Directive 2009/13/EC of 16 February 2009¹, hereby make the following regulations:

Citation and commencement

1. (1) These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Shipowners' Liabilities and Repatriation) Regulations 2014.

(2) These Regulations come into operation on 20 August 2014.

Definitions

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);

“agreement” means a seafarer employment agreement (SEA);

“competent authority” means that part of the Department of Transport, Tourism and Sport which is known as the Marine Survey Office;

“Convention” means the Maritime Labour Convention 2006 adopted at Geneva on 23 February 2006;

“enactment” means—

(a) an Act of the Oireachtas,

(b) a statute that was in force in Saorstát Éireann immediately before the date of the coming into operation of the Constitution and that continues in force by virtue of Article 50 of the Constitution, or

(c) an instrument made under—

(i) an Act of the Oireachtas, or

¹OJ No. L 124, 20.5.2009, p. 30

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 12th August, 2014.*

(ii) a statute referred to in paragraph (b);

“international voyage” means a voyage from a port in one country to a port in another country;

“Irish ship” has the meaning assigned to it by section 2 of the Act of 2010;

“Minister” means the Minister for Transport, Tourism and Sport;

“registered medical practitioner” means a medical practitioner who is registered in the register established under section 43 of the Medical Practitioners Act 2007 (No. 25 of 2007);

“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, 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 pilot within the meaning of section 2 of the Harbours Act 1996 (No. 11 of 1996);

“seafarer employment agreement” includes both a contract of employment and articles of agreement;

“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 that proceeds to sea of Class P3, P4, P5 or P6, in respect of which a passenger boat licence is required to be in force in accordance with the Act of 1992,
- (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,
- (f) a Dynamically Supported Craft (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, or

- (g) any other ship that proceeds to sea beyond the limits of smooth or partially smooth waters;

“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 in the Convention and includes an owner within the meaning of section 2 of the Act of 2010.

Application

3. (1) Subject to paragraph (2), these Regulations apply to seagoing Irish ships wherever they may be.

(2) These Regulations do not apply to seagoing Irish ships of less than 200 gross tonnage not engaged in international voyages.

Provision of financial security

4. (1) A shipowner of a ship to which these Regulations apply shall ensure that before the ship proceeds to sea or, if already at sea, whilst it remains at sea and at any relevant time thereafter, there is in force a contract of insurance or other form of financial security adequate to ensure that the shipowner will be able to meet any liabilities the shipowner may have by or under any enactment (including these Regulations) or a seafarer employment agreement to provide compensation in the event of death or long term disability to seafarers arising from occupational injury, illness or hazard.

(2) A shipowner shall ensure—

- (a) that proof, in the form of a certificate or certificates issued by the provider of the insurance or financial security referred to in paragraph (1), is carried on board the ship, and
- (b) that such certificate or certificates are displayed in a prominent position on board the ship.

Shipowner duty to make provision for seafarer medical care and other expenses

5. (1) This Regulation applies in relation to a seafarer who experiences sickness or injury which—

- (a) first occurs during a period which starts on the date on which that seafarer’s agreement commences and ends on the date on which the shipowner’s duty to repatriate that seafarer under Regulation 11 ends, or
- (b) first occurs subsequent to that period but is caused by circumstances or events arising during that period referred to in subparagraph (a).

(2) Subject to paragraphs (4), (5) and (7), the shipowner shall meet any medical care expenses reasonably incurred in connection with the seafarer’s sickness or injury.

(3) Medical care expenses referred to in paragraph (2) include—

- (a) expenses of medical treatment, essential dental treatment and the supply of necessary medicines and therapeutic appliances, and
- (b) expenses for board and lodging.

(4) The duty under paragraph (2) is limited to medical care expenses incurred during whichever of the following periods is the shorter—

- (a) a period of 16 weeks beginning on the day on which the sickness or injury first occurs, or
- (b) a period beginning on the day on which the sickness or injury first occurs and ending on the day—
 - (i) on which a registered medical practitioner notifies the seafarer of a decision that the seafarer is not fit to carry out the duties which that seafarer is required to carry out under the terms of his or her agreement and the seafarer is unlikely to be fit to carry out duties of that nature in the future, or
 - (ii) on which the seafarer has recovered from his or her sickness or injury.

(5) If subparagraph (b)(i) of paragraph (4) applies and a registered medical practitioner subsequently notifies the seafarer that the decision referred to in that subparagraph no longer applies from a date specified in the notification, the duty under paragraph (2) is limited to medical care expenses incurred during the period set out in paragraph (4)(a).

(6) Any medical care expenses incurred by a seafarer to which the duty under paragraph (2) applies may be recovered by the seafarer as a simple contract debt in any court of competent jurisdiction.

(7) Where medical services are provided in the State to a seafarer, the duty of a shipowner under paragraph (2) shall be limited to such amount that the seafarer is required to pay having regard to—

- (a) the medical services provided, and
- (b) the relevant enactments.

(8) For the purposes of paragraphs (4)(b)(i) and (5), if it is not practicable that the notifications referred to in those provisions be performed by a registered medical practitioner, they may be performed by a medical practitioner duly registered under the law of a country or territory other than the State.

(9) In this Regulation, “relevant enactments” means—

- (a) Regulation 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, or

- (b) the Health Acts, or
- (c) any other enactment relating to the provision of medical services.

Right to seek medical attention

6. When a ship to which these Regulations apply is in a port of call, the shipowner shall permit a seafarer to seek medical attention, where reasonably practicable, without delay.

Shipowner liability for seafarer wages following sickness or injury resulting in incapacity for work

7. (1) Subject to paragraph (6), this Regulation applies in relation to a seafarer who experiences sickness or injury which—

- (a) first occurs during a period which starts on the date on which that seafarer's agreement commences and ends on—
 - (i) the date on which the shipowner's duty to repatriate that seafarer under Regulation 11 ends, or
 - (ii) the date on which the seafarer otherwise leaves the ship,
- or
- (b) first occurs subsequent to that period but is caused by circumstances or events arising during that period,

and results in the seafarer's incapacity for work.

(2) If a seafarer does not receive the full wages payable under his or her agreement for the period starting on the date of the injury or the first day of the sickness referred to in paragraph (1)(a) and ending on the date on which the seafarer is repatriated under Regulation 11 or otherwise leaves the ship, the shipowner shall be liable to pay the seafarer sums equal to the difference between—

- (a) any wages received by the seafarer for that period under that agreement, and
- (b) the full wages which would have been payable to the seafarer under that agreement if the seafarer had remained fit for work throughout that period.

(3) Subject to paragraphs (4) and (5), if the seafarer remains incapacitated for work after being repatriated under Regulation 11 or otherwise leaving the ship, and does not receive the full wages payable under his or her agreement for the period starting on the day after repatriation or departure from the ship and ending on the date on which the seafarer is again fit for work, the shipowner shall be liable to pay to the seafarer sums equal to the difference between—

- (a) any wages received by the seafarer for that period under his or her agreement, and
- (b) the full wages which would have been payable to the seafarer under that agreement if the seafarer had remained fit for work throughout the period.

(4) In computing the amount payable under paragraph (3) in respect of any period, there shall be deducted an amount equal to any sums which the seafarer is entitled to receive in respect of that period under the Social Welfare Consolidation Act 2005 (No. 26 of 2005).

(5) The duty under paragraph (3) ends on the expiry of the period of 16 weeks commencing on the day following the date of the injury or the first day of the sickness referred to in paragraph (1).

(6) The sums payable to a seafarer under paragraphs (2) and (3) shall be paid in the same manner and at the same frequency as wages payable under his or her agreement.

(7) The duties of a shipowner under paragraphs (2) and (3) do not apply to a seafarer insofar as—

- (a) the injury referred to in paragraph (1) was incurred while the seafarer was not at work,
- (b) the injury or sickness referred to in paragraph (1) was incurred due to the seafarer's wilful misconduct, or
- (c) the sickness or incapacity for work existed on the date on which the seafarer entered his or her agreement, and the seafarer intentionally concealed the sickness or incapacity from the shipowner.

(8) Any sum which a shipowner is liable to pay a seafarer under paragraph (2) or (3) may be recovered by the seafarer as a simple contract debt in any court of competent jurisdiction.

Shipowner liability for seafarer unemployment and losses following wreck or loss of ship

8. (1) Subject to paragraph (2), if the wreck or loss of the ship causes a seafarer to suffer injury or loss, the shipowner shall pay compensation to the seafarer in respect of such loss or injury.

(2) In relation to loss other than personal injury or death, the duty referred to in paragraph (1) is limited to the amount specified (if any) in the seafarer's agreement.

(3) The liability of a shipowner under this Regulation is in addition to any liability the shipowner may have under section 1 of the Merchant Shipping (International Labour Conventions) Act 1933 (No. 29 of 1933).

Shipowner liability in respect of burial expenses

9. (1) Subject to paragraph (2), if a seafarer dies during the period of his or her engagement to work on a ship, the shipowner shall be liable to meet the cost of expenses reasonably incurred in connection with the seafarer's burial or cremation.

(2) In computing the amount payable under paragraph (1), there shall be deducted an amount equal to any sums payable in respect of the matters referred to in that paragraph under Chapter 13 of Part 2 of the Social Welfare Consolidation Act 2005 (No. 26 of 2005).

Safeguarding of property of seafarer

10. (1) A shipowner shall take measures to ensure that property left on board by a sick, injured or deceased seafarer is kept safely and that arrangements are made for returning it to the seafarer or his or her next of kin.

(2) Paragraphs (2) to (9) of Regulation 15 apply in respect of property left on board the ship by a seafarer in the circumstances set out in paragraph (1).

Duty to repatriate seafarers

11. (1) Subject to Regulations 12 and 13, a shipowner shall make such provision as is necessary in accordance with this Regulation for the repatriation of a seafarer as soon as is practicable in any case to which paragraph (2) applies.

(2) This paragraph applies to each of the following cases:

- (a) where the seafarer's agreement expires,
- (b) where, for justified reasons, a seafarer's agreement is terminated by the shipowner or by the seafarer,
- (c) where the seafarer is no longer able to carry out his or her duties under his or her agreement or cannot be expected to carry out those duties in the specific circumstances,
- (d) where the seafarer has completed the maximum duration of service periods on board, as set out in his or her agreement, following which, in accordance with a provision in that regard in the agreement, he or she is entitled to repatriation.

(3) The circumstances in which paragraph (2)(b) and (c) apply include the following—

- (a) where the seafarer has an illness, injury or other medical condition which requires that the seafarer be repatriated when found medically fit to travel,
- (b) in the event of shipwreck,

- (c) where the shipowner is unable to fulfil his or her legal or contractual obligations to the seafarer following insolvency, sale of the ship or a change in the ship's registration.
- (4) The costs of repatriation which shall be borne by a shipowner in meeting his or her obligation under paragraph (1) include the following:
- (a) the cost of passage, by the most appropriate mode of transport, to the destination selected for repatriation in accordance with Regulation 12,
 - (b) accommodation and food from the time when the seafarer leaves the ship until his or her arrival at the repatriation destination, and
 - (c) pay and allowances due to the seafarer under his or her agreement from the time when the seafarer leaves the ship until his or her arrival at the repatriation destination.
- (5) Nothing in this Regulation affects any right of a shipowner to recover the cost of repatriation under third party contractual arrangements.

Place of return

12. (1) Subject to paragraph (2), a seafarer is entitled to repatriation to the destination provided for in or under his or her agreement, or such other place as may subsequently be agreed with the shipowner.

(2) If the agreement does not identify a destination, a seafarer is entitled to repatriation to the seafarer's choice of the following destinations—

- (a) the place at which the seafarer entered into the agreement,
- (b) a place agreed with the shipowner, or
- (c) the seafarer's country of residence.

Limitations on and exceptions to duty to repatriate

13. The duty to repatriate referred to in Regulation 11(1) ends when—

- (a) the seafarer is repatriated in accordance with Regulation 12,
- (b) the shipowner makes reasonable arrangements for repatriation which are unsuccessful because of the seafarer's unreasonable conduct,
- (c) notwithstanding reasonable endeavours, the shipowner is unable to contact the seafarer for a period of three months or more, or
- (d) the seafarer confirms in writing to the shipowner that repatriation is not required.

Prohibition on recovering costs from seafarer

14. (1) Subject to paragraph (2), a shipowner shall not enter into an agreement with a seafarer under which the seafarer is obliged to make payment for his or her repatriation in accordance with Regulation 11.

(2) A seafarer's agreement may provide that the seafarer shall reimburse repatriation costs where the agreement is terminated because of the seafarer's misconduct.

(3) If an agreement does make provision as is described in paragraph (2), a deduction equivalent to the costs of repatriation may be made from the wages due to the seafarer under that agreement.

(4) If an agreement does not make provision as is described in paragraph (2), the shipowner may only recover damages in respect of the costs of repatriation referred to in Regulation 11 where the agreement is terminated because of the seafarer's misconduct.

Seafarer property

15. (1) This Regulation applies where a shipowner is under a duty under Regulation 11 to repatriate a seafarer and property belonging to that seafarer is left behind on a ship belonging to the shipowner.

(2) Where paragraph (1) applies, the master shall take charge of the property and enter a description of each item in the official log book.

(3) Subject to paragraph (4), the shipowner and the master shall ensure that reasonable care is taken of the property pending its delivery in accordance with paragraph (7).

(4) The master may at any time—

(a) sell any of the property which is of a perishable or deteriorating nature, or

(b) destroy or otherwise dispose of any part of the property considered a potential risk to the health or safety of any person.

(5) The proceeds of any sale under paragraph (4)(a) shall be the property of the seafarer (or his or her estate in the case of a deceased seafarer) and details of the sale shall be entered in the official log book.

(6) Details of any destruction or disposal of the property under paragraph (4)(b) shall be entered in the official log book.

(7) Subject to paragraphs (8) and (9), the shipowner shall cause the property and a document containing the information entered in the log book pursuant to paragraphs (5) and (6) to be delivered to the seafarer or to the seafarer's next of kin.

(8) The duty under paragraph (7) is discharged if the shipowner causes the delivery to be made to the last known address of the seafarer or the next of kin, as the case may be.

(9) The seafarer, or the next of kin, as the case may be, shall reimburse the shipowner for the delivery costs.

Duty to carry documents

16. (1) A shipowner shall ensure that copies of these Regulations are carried on board the ship and are available to seafarers.

(2) If the working language of the ship is not English, the shipowner shall ensure that the Regulations are translated into the working language of the ship and that copies of those translated versions are also carried on board the ship and available to seafarers.

Offences

17. (1) A shipowner who fails to comply with any of the provisions specified in paragraph (2) commits an offence.

(2) The provisions mentioned in paragraph (1) are:

(a) Regulation 4(1) or (2),

(b) Regulation 5(2),

(c) Regulation 6,

(d) Regulation 7(2) or (3),

(e) Regulation 8(1),

(f) Regulation 9(1),

(g) Regulation 10(1),

(h) Regulation 11(1),

(i) Regulation 14(1),

(j) Regulation 15(3) or (7),

(k) Regulation 16(1).

(3) A master who fails to comply with Regulation 15(2) or (3) commits an offence.



GIVEN under my Official Seal,
7 August 2014.

PASCHAL DONOHOE,
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 the Maritime Labour Convention 2006 relating to shipowners' liability and repatriation; and
- (b) implement provisions of 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.

These Regulations set out the requirements of the Maritime Labour Convention regarding shipowners' liability and repatriation.

The Regulations provide that a shipowner of a ship to which the Regulations apply shall ensure that a contract of insurance or other form of financial security is in force which is adequate to ensure that the shipowner will be able to meet any liabilities the shipowner may have by or under any enactment (including these Regulations), or a seafarer employment agreement to provide compensation in the event of death or long term disability to seafarers arising from occupational injury, illness or hazard.

The Regulations provide that a shipowner has a duty to make provision for seafarer medical care and other expenses; they also set out provisions relating to shipowners' liability for seafarer wages following sickness or injury resulting in incapacity for work. The Regulations include provisions regarding shipowners' duty to repatriate seafarers under specific circumstances.

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(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€3.81



Wt. (B30754). 315. 8/14. Clondalkin. Gr 30-15.