STATUTORY INSTRUMENTS

2018 No. 58

MERCHANT SHIPPING

The Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018

Made - - - -	*29th January 2018*
Laid before Parliament	*6th February 2018*
Coming into force - -	*6th April 2018*

Whereas the Secretary of State is a Minister designated for the purposes of section 2(2) of the European Communities Act 1972 [F1] in relation to measures relating to the safety of ships and the health and safety of persons on them [F2].

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and sections 85(1)(a) and (b), (3), (5) and (7) and 86(1) and (2) of the Merchant Shipping Act 1995 [F3].

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.

F1 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 I of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The Maritime Labour Convention 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).

F2 S.I. 1993/595.

F3 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), to which that article refers). There are other amendments not relevant to these Regulations.

Citation and commencement

1. These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 and come into force on 6th April 2018.

Interpretation

2.—(1) In these Regulations—

"collective agreement" means a collective agreement within the meaning of section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992 [F4], the trade union parties to which are independent trade unions within the meaning of section 5 of that Act;

"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;

"hours of rest" means time outside hours of work and does not include short breaks;

"hours of work" means time during which a seafarer is required to do work on the business of the ship;

"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 [F5];

"master" in the application of these Regulations to a hovercraft includes the captain of a hovercraft;

"MCA" means the Maritime and Coastguard Agency [F6];

"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;

"MLC ship" means a sea-going ship which is not a United Kingdom ship 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;

"non-MLC ship" means a sea-going ship which is neither a United Kingdom ship nor an MLC ship;

"pleasure vessel" means—

(a) any vessel which at the time it is being used is—

  (i) in the case of a vessel wholly owned by—

  (aa) 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) 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 **[**[F7]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 paragraph (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;

"relevant inspector" means any of the persons mentioned in section 258(1) of the Merchant Shipping Act 1995 [F8];

"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) [F9];

(b) a ship to which the Merchant Shipping (Survey and Certification) Regulations 2015 [F10] apply and in respect of which no exemption granted under regulation 5(3) 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 [F11] 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 [F12];

"ship" includes hovercraft;

"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 responsibility for the operation of the ship from the owner;

"United Kingdom ship" means a ship which is—

(a) a United Kingdom ship within the meaning of section 85(2) of the Merchant Shipping Act 1995 [F13];

(b) a Government ship within the meaning given by section 308(4) of the Merchant Shipping Act 1995 which is ordinarily engaged in commercial maritime operations; or

(c) a hovercraft registered under the Hovercraft Act 1968 [F14];

"workforce agreement" means an agreement between an employer and persons employed by that employer or their representatives in respect of which the conditions set out in Schedule 1 to these Regulations are satisfied.

(2) For the purposes of these Regulations—

(a) "seafarer" means any person, including a master, who is employed or engaged or who works in any capacity on board a ship and whose normal place of work is on a ship, other than a seafarer who is subject to any requirement contained in the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 [F15];

(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;

(c) "employed seafarer" means a seafarer who is employed under a contract of employment or engaged (or where the employment has ceased, was employed or engaged);

(d) "employer" in relation to an employed seafarer means the person by whom the employed seafarer is or was employed or engaged; and

(e) "employment" in relation to an employed seafarer is to be construed accordingly.

F4 1992 c.52.
F5 Cm. 7049. ISBN 978 010 1889 766.
F6 The Maritime and Coastguard Agency is an executive agency of the Department for Transport.
F7 Words in reg. 2(1) substituted (6.4.2018) by The Merchant Shipping (Maritime Labour Convention) (Miscellaneous Amendments) Regulations 2018 (S.I. 2018/242), regs. 1, **7(2)**
F8 Section 258(1) was amended by paragraph 4(2)(a) of Schedule 1 to the Merchant Shipping and Maritime Security Act 1997 (c.28).
F9 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 SI 1992/2356, as the notice which currently replaces Merchant Shipping Notice M1504 pursuant to regulation 2 of those Regulations.
F10 S.I. 2015/508.
F11 S.I. 1998/2771; amended by S.I. 2000/482, **S.I**. 2002/1473, S.I. 2005/2114, **S.I**. 2013/1785, S.I. 2014/1614 and S.I. 2016/353.
F12 S.I. 2004/302; amended by S.I. 2012/2636
F13 Section 85(2) was amended by section 2(3) of the British Overseas Territories Act 2002 (c.8).
F14 1968 c.59.
F15 S.I. 2003/3049; amended by S.I. 1996/1921, **S.I**. 2009/3348, S.I. 2013/1956S.I. 2014/386, **S.I**. 2014/431 and S.I. 2017/1149.

Application to ships

3.—(1) The following regulations apply to a sea-going United Kingdom ship wherever it may be and a non-MLC ship while it is in United Kingdom waters—

(a) regulation 5 (general duty of shipowner, master, employer to provide hours of rest);

(b) regulation 9 (requirement to post up table);

(c) regulation 11 (exception to hours of rest in emergencies);

(d) regulation 12 (requirement to keep records of hours of rest);

(e) regulation 14 (provision of information on request);

(f) regulation 15 (annual and additional leave);

(g) regulation 17 (shore leave) (but see paragraph (3));

(h) regulation 19 (inspection);

(i) regulation 21 (detention);

(j) regulation 22 (release of ships).

(2) The following regulations apply to an MLC ship while that ship is in United Kingdom waters—

(a) regulation 8 (general duty of shipowner, master, employer to provide hours of rest);

(b) regulation 10 (requirement to post up table);

(c) regulation 11 (exception to hours of rest in emergencies);

(d) regulation 13 (requirement to keep records of hours of rest);

(e) regulation 16 (annual leave);

(f) regulation 17 (shore leave) (but see paragraph (3));

(g) regulation 20 (inspection);

(h) regulation 21 (detention);

(i) regulation 22 (release of ships).

(3) Regulation 17 (shore leave) does not apply to ships of traditional build.

(4) These Regulations do not apply to—

(a) pleasure vessels;

(b) fishing vessels;

(c) warships or naval auxiliaries;

(d) vessels which are not ordinarily engaged in commercial activities.

Northern Ireland

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

(a) in regulation 2(1) (interpretation)—

(i) 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 [F16], the trade union parties to which are independent trade unions within the meaning of that Article;"; and

(ii) there were inserted in the appropriate place—

""industrial tribunal" means a tribunal established under Article 3 of the Industrial Tribunals (Northern Ireland) Order 1996 [F17];";

(b) in regulations 26(1), (2), (3) and (5) (remedies) and 28(1)(b) and (3)(c) (contracting out), for the words "employment tribunal" there were substituted " industrial tribunal ";

[[F18](c) in regulation 27(3)(b) for the words "section 18A(1) of the Employment Tribunals Act 1996 (requirement to contact ACAS before instituting proceedings)" substitute "Article 20A(1) of the Industrial Tribunals (Northern Ireland) Order 1996 (requirement to contact the Labour Relations Agency before instituting proceedings)";**]**

[[F19](ca) in regulation 27(3)(c) for the words "(by virtue of the regulations made under section 18A(11) of the Employment Tribunals Act 1996) the certificate issued under subsection (4) of that section" substitute " (by virtue of regulations made under paragraph (11) of that Article) the certificate issued under paragraph (4) of that Article";**]**

(d) In regulation 28(2)(a)—

(i) for the words "a conciliation officer" there were substituted " the Agency "; and