

Merchant Shipping (Seamen's Code) Regulations 1993

GN No. 78 of 1993

THE MERCHANT SHIPPING ACT 1986

**Regulations made by the Minister under section 199
of The Merchant Shipping Act 1986**

1. These regulations may be cited as the Merchant Shipping (Seamen's Code) Regulations 1993.

2. In these regulations-

"Act" means the Merchant Shipping Act 1996;

"collective agreement" means an agreement between seamen and shipowner or any association representing them or either of them;

"crew agreement" means the crew agreement referred to in the Act;

"Maritime Authority" means the Director of Shipping or his representative;

"Maritime Authority" means any person who is entrusted with the command of a vessel or who actually assumes temporary command of a vessel for any valid reason;

"seaman" means any person, except the master, who enters into an agreement with a shipowner or his representative to serve on board a ship and includes apprentices.

3. Every qualified person who is desirous of entering into Articles of Agreement for employment as a seaman shall do so through the Superintendent of Shipping or his representative.

4. No seaman shall be required to make any payment for placement operations.

5. No agreement may be made with any seaman unless he is free from all other agreements for service as a seaman.

6. Every seaman seeking employment as deckcrew, engine room crew or in general duties on board a merchant vessel of over 250 tons gross tonnage or a fishing vessel of more than 50 tons gross shall produce evidence of being a certified seaman.

7. All the causes and stipulations of a seamen's Agreement shall be entered in or appended to the ship's Articles, failing which they shall be null and void.

8. (1) If the engagement is for a fixed period, the Agreement shall indicate its duration. If the engagement is for one voyage, the Articles of Agreement shall specify by name and with sufficient precision the port where the voyager is to end and shall fix the point in the commercial and maritime operations carried out at that port when the voyage shall be deemed to be completed.

(2) Where the specification of the port does not make it possible estimate the approximate duration of the voyage, the Articles of Agreement shall specify

a minimum period after which the seaman can request to be put ashore at the first port of discharge.

9. Particulars of the general conditions of employment shall be held by the shipowners at the disposal of the seamen and shall be read aloud by the Maritime Authority in Mauritius when a seaman is being entered on the ship's Articles.

10. A seaman's engagement for sea service shall be recorded in his Continuous Discharge Book, which shall remain in the custody of the master and returned to the seaman on his discharge from the Agreement.

11. The master of every vessel shall keep on board the Agreement of every seaman and communicate it to him on request.

12. Every seaman shall be bound to report on board the vessel which he is to serve on the day and at the time indicated to him by the shipowner, his representative or the master.

13. Every seaman shall perform his duties in accordance with the conditions laid down in the Agreement.

14. Except in case of force majeure or when the safety of the vessel, the persons on board or the cargo is at stake (of which the master shall be the sole judge), a seaman shall not be bound to perform work proper to seaman of a different rating from that at which he was engaged, unless he has signed on as a General Purpose (GP) seaman.

15. The master shall lay down the conditions upon which a seaman who is not on duty may go ashore.

16. Every seaman shall obey the lawful orders of his superiors concerning the service of the vessel and to take care of the vessel and the cargo. He shall be sober and respectful to his superiors and shall abstain from using foul language to any person on board.

17. Every seaman shall clean his quarters and related premises and his bedding outside his hours of duty and shall not be entitled to any extra pay for his work.

18. Every seaman shall help in the salvage of the vessel, its wreckage, wrecked articles and cargo.

19. Normal work on board ship shall be organised on the basis eight hours a day for six days or 48 hours a week or in some equivalent manner over a period other than a week, whenever it is possible to do so.

20. Subject to the other provisions of these regulations, the rights of seamen as regards their normal hours of work shall be governed by the following provisions which take into account a fixed-week of 45 hours, exclusive of the special obligations to put in additional work as provided in regulation 14-

- (a) every hour worked in excess of the daily limit & specified in the preceding paragraph shall be treated as overtime for which the seaman concerned shall be entitled to a wage adjustment;

- (b) if a seaman is engaged for service in a vessel (other than a fishing vessel) in a capacity that implies that he is a "day worker", he shall be granted a full day's rest for every six days worked, and days of rest may be accumulated;
- (c) a day's rest means 24 consecutive hours of rest reckoned from the normal time at which the seaman concerned was due to begin his daily work, whenever it is possible to do so;
- (d) any work done on a day of rest, shall cancel the effect of the rest day, unless it is occasioned by an Act of God and does not last longer than 4 hours;
- (e) if a seaman is employed in a capacity that implies keeping watches (such as quarter masters or oilers), he shall work according to the watches set on board which shall be 4 hours on duty and 8 hours off duty.

21. After consultation with the Organisation of ship-owners and seamen, the Minister shall lay down rules for the administration of regulation 20 for each type of navigation and each class of seamen and shall more particularly specify-

- (a) any permanent exceptions, that have to be allowed for the preparatory or supplementary work needed to be done-outside the limit fixed for general, work on board the vessel or for certain types of navigation where the ordinary work is intermittent;
- (b) any temporary exceptions that have to be made to enable the master to deal with exceptional pressure of work, or vital or urgent needs,
- (c) the wages adjustment granted through overtime;
- (a) (d) the arrangements for supervising the hours of work and rest and the actual number of hours worked and the procedure for granting and making use of an exception;
- (d) the limits for the working of overtime.

22. Subject to the relevant collective agreements, the rate of a seaman's pay shall be fixed in his Articles of Agreement. This rate shall be adjusted for each hour of overtime as follows-

- (a) 50 per cent increase of hours worked in excess of 45 hour week, provided that this latter adjustment shall not be combined with any special allowances provided for by collective agreement, or administrative derision, unless provision to the contrary is made by the agreement
- (b) a seaman shall not be paid for hours in excess of 45 hour week for which he is ordered to work on account of force majeure or circumstances in which the safety of the vessel, the persons on board or the cargo is at stake.

23. A seaman, other than a GP seaman who is called upon to perform duties other than those for which he was engaged shall, if such duties carry a higher rate of remuneration than his own, be entitled to the wages payable for the new job for such time as he performs it.

24. (1) A seaman who is paid by the month shall be remunerated in proportion to the time for which he has actually served.

(2) Every day that has begun shall be reckoned in full.

25. A voyage shall be deemed to have begun as soon as the master has received his clearance for departure from the appropriate Authorities, provided that, for the purpose of calculating wages, a voyage shall be deemed to have begun as soon as the seaman reports for duty on board in accordance with his contract.

26. (1) Subject to paragraph (2), when a voyage cannot be undertaken or continued on account of an act of God or force majeure, the seaman shall be paid in proportion to the number of days spent in the service of the vessel and shall also be entitled to compensation equal to half the wages that would have been due for the estimated duration of the voyage, provided that such compensation shall not exceed 30 days on half pay.

(2) Paragraph (1) shall not be applicable where the shipowner or his agent offers alternative employment to the seaman.

27. (1) Where a vessel is seized or captured, the shipowner or master may declare a contract for sea service to be terminated from the moment that the vessel ceases to sail unless it is impossible on account of such events to repatriate the seaman to his port of embarkation.

(2) If a seaman remains on board while the vessel is immobilised, he shall be entitled by way of compensation to half pay at the monthly rate for such time as he remains on board, provided that, if he remains on board while the vessel is interned and is required to work by the shipowner or the master, he shall be entitled to full pay at the monthly rate for any days so worked.

28. (1) Where a seaman dies during the currency of his contract, his wages shall be payable to his dependents down to the date of his death or to any other person in accordance with law.

(2) Where a seaman is engaged for the duration of an outward voyage, the wages that he would have drawn during the voyage shall be paid in full if he dies after the voyage began.

(3) If he is engaged for the outward and return voyages, half his wages shall be payable if he dies on the outward voyage or in the port of destination and the whole if he dies during the return voyage.

(4) Where a seaman is engaged for a predetermined period, as stipulated in the Agreement, and in the course of such voyage he sustains a serious injury, or he dies, he shall be paid such compensation to which he may be entitled under the Workmen's Compensation Act.

(5) Where a seaman is killed while performing an act of self sacrifice for the safety of the vessel or in its defence, his wages shall, be payable in full

for the whole voyage if the vessel reaches port or until the date on which the crew ceases to serve if the vessel is seized, ship-wrecked or declared unseaworthy.

29. The cost of burying, cremating or repatriating a seaman's body or ashes shall be borne by the shipowner if the seaman dies on board or if he dies ashore in another port than his own country and at the time of his death was still in the shipowner's employment.

30. (1) Where a vessel is lost without trace, a seaman's dependents shall be entitled to receive the compensation provided for in section 52(2) the Act.

(2) Where the seaman dies, his dependents shall be entitled receive the benefits as provided by the Workmen's Compensation Act,

31. Seamen employed on board a vessel other than crew employed by a salvage undertaking who have saved or helped to save another vessel, or have rendered assistance to another vessel, shall be entitled to share in the remuneration awarded to their own vessel.

32. (1) A seaman who is absent without leave when he is required to go on duty or who absents himself without permission during the currency of his contract shall forfeit his right to receive his pay for the period of such absence, without prejudice to any damages claimable by the shipowner. A seaman shall likewise forfeit his claim to wages from the moment he is deprived of his liberty and for so long as he may be deprived of his liberty through arrest or otherwise on suspicion of having committed a criminal offence.

(2) The contract of a seaman may be terminated without compensation-

(a) if he is arrested and charged with a crime or offence;

(b) if it is duly established that he has committed a serious fault for which he is put ashore as disciplinary penalty.

33. Where a contract is wrongfully terminated by a seaman, the shipowner may be awarded compensation at a fixed rate by mutual agreement or claim damages through legal proceedings.

34. A seaman serving on board a vessel shall be entitled to his food for as long as he remains a member of the crew.

35. (1) The food supplied to seamen shall be wholesome, sufficient in quantity, of good quality and of a type suitable to the voyage being made.

(2) Such food and the composition of the menus served to the crew may be inspected at any time by the Maritime Authority.

(3) The composition of the minimum daily ration scale shall be fixed by mutual agreement between any Organisation of shipowners and any Seamen's Union.

36. (1) Any reduction in the daily ration scale shall be entered in the official log with an indication of the circumstances of force majeure to which it was attributable.

(2) The log book shall be signed by the master, the ship's doctor, of any, and a representative of the crew.

(3) No subsequent claim relating to the circumstances so recorded shall be entertainable.

37. Any unjustified reduction in the daily ration scale shall entitle the seaman to compensation equal to the value of the food that he has not received. The Maritime Authority shall fix the rate of compensation.

38. No shipowner shall contract with the master or any person signed on for service in the vessel for the feeding of the crew.

39. No seaman shall bring alcoholic beverages on board a ship.

40. (1) A shipowner shall provide every seaman on board with suitably equipped quarters having proportionate to the number of persons occupying them and shall be exclusively reserved for such persons' use.

(2) All articles of bedding on board shall, in the absence of agreement to the contrary, be supplied by the shipowner in accordance with regulations governing hygiene on board ship.

(3) A seaman shall be responsible for any articles of bedding that have been supplied to him and shall be liable for damages in the event of any damage caused by his fault or negligence.

41. The shipowner shall be liable if a seaman's personal effects are destroyed or lost by shipwreck, fire on board the vessel or any other act of God or case of force majeure.

42. (1) A seaman who is put ashore or left behind when his contract ends abroad shall be entitled to be repatriated at the vessel's expense to the port of disembarkation stipulated in the contract.

(2) Repatriation shall comprise transport, accommodation and food for the repatriated seaman.

(3) Repatriation shall not include the supply of clothing, provided that the master shall, in case of need, advance the necessary "to buy essential clothing and the money so advanced may be recovered from the credits standing to the seaman's account, if the seaman is put ashore because of an injury sustained or illness contracted, where the seaman is placed ashore for disciplinary reasons or if-

- (a) the seaman caused the sickness or injury by his own will act or gross negligence;
- (b) the sickness or injury is the direct result of the sea drunkenness;
- (c) the sickness or injury is attributable to a lack of discipline on the seaman's part, and especially if he leaves without permission.

(4) Repatriation will be at the seaman's account if he is guilty of disobedience, neglect of duty or persistent breach of Code of Conduct applicable to the vessel's crew.

43. A seaman serving on board a vessel shall be entitled after month's continuous service to an annual leave with pay at the owner's expense at the minimum rate of three working days for every month's employment on board the vessel.

44. (1) Where a seaman is entitled to annual leave, it shall be granted by agreement as soon as possible, having regard to the requirements of the service.

(2) Such leave shall not be refused by the shipowner after a seaman has been employed on board for 12 months;

(3) No seaman may be obliged without his consent to take annual leave entitlement in a port other than the port where he is at the locality in which he lives.

45. The following shall not be reckoned as part of annual leave pay-

(a) paid statutory public holidays;

(b) interruptions of duty attributed to sickness or an accident

46. (1) Every seaman taking leave under regulation 44 shall

his normal basic remuneration for the entire duration of the leave.',

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(2) The normal remuneration payable under paragraph (1) shall be calculated in the manner prescribed by collective agreement.

47. Every seaman leaving a shipowner's service or dismissed before having taken the leave to which he is entitled shall be paid the remuneration specified in regulation 46 for every day's leave due to him.

48. The days to be observed as paid public holidays shall be as follows: New Year's Day, Independence Day, Easter Monday, 1 May, 1 November and Christmas Day.

49. The fact that a seaman does not work for reasons covered by regulation 48 shall not afford grounds for reducing his wage.

50. A seaman employed on a paid public holiday shall be entitled at the shipowner's expense and in addition to his wages corresponding to the work done, to compensation equal to the leave remuneration referred to in regulation 44.

51. A shipowner shall be liable for all acts or omissions on the part of the master and members of the crew in the performance of their duties.

52, (1) The shipowner shall post up a notice on board each vessel indicating the existence of the collective agreement, the parties who have signed it, the date of the agreement and the place where it has been deposited.

(2) A copy of the agreement shall be available for inspection by any seaman and shall be appended to the crew list.

53. (1) A collective agreement for maritime employment may be concluded for an undetermined period or for a specified period not exceeding five years.

(2) In the absence of any stipulation to the contrary an agreement concluded for a specified period shall, on its expiry, be deemed to have been tacitly renewed.

54. A collective agreement concluded for an undetermined period may be denounced at any time by any of the parties (but in relation to that party only), on condition that notice of intention is given to the other parties at least a month beforehand.

55. (1) Shipowners or groups of seamen bound by a collective agreement shall refrain from any action whereby the proper performance of the agreement might be impaired.

(2) Every such group shall be responsible for the observance of the agreement by its members.

56. Any properly constituted group bound by a collective agreement may bring an action for damages in its own name

against any other group, against its own members or against any other person bound by the agreement if they fail to discharge their contractual obligations

57. Any person bound by a collective agreement may bring an action for damages, against any other persons or group bound by the agreement if they fail to discharge their contractual obligations towards him,

58. Every collective agreement for maritime employment that is concluded between Shipowners' and Seamen's Organisations shall be binding on all shipowners and seamen from the date on which they are approved by the Minister responsible for shipping.

59. Every collective agreement for maritime employment shall contain provisions governing at least the following matters-

(a) freedom of association and freedom of opinion-

(b) the remuneration to be paid in each occupational category, pay-rates corresponding to the different skills and the procedure for classifying seamen into such categories:

(c) rules for the recruitment and dismissal of seamen, provided they are not contrary to the freedom of association or freedom of opinion;

(d) the period of notice;

(e) rules for the operation of a joint committee to deal with difficulties of interpretation arising out of the application

of the agreement.

60. A seaman shall-

(a) obey the official orders of his superiors;

(b) neither neglect his own duties, nor obstruct any other members of the crew in the discharge of their duties;

time appointed by the master;

(c) embark on the vessel by the time appointed by the master; (d) not leave the vessel without permission of the master;

(e) not use a boat or any other important equipment without permission of the master;

not waste provision or fresh water on board;

(g) not smoke in any place where smoking is prohibited;

(h) not take into, or out of, the vessel any articles other than

daily necessities without permission of the master;

(i) not quarrel with violence, get intoxicated, or be guilty of any form of bad or insolent behaviour;

not commit such other acts as will disturb good order onboard the vessel;

(k) not engage in smuggling or drug trafficking or any similar prohibited activities.

61. The master shall not inflict disciplinary punishment on any sea-man without giving a hearing to two witnesses who are seamen and without examining the seaman and the persons concerned in the presence of the witnesses.

In serious cases, the master may set up a ship's Disciplinary or Trial representatives from the various occupational groups with disciplinary offences.

63. The complaints procedure for a seaman serving on a Mauritius Ship shall be as set out in section 75 of the Act.

64. (1) Disputes arising out of contracts for sea service between ship-owners or their representatives and seamen, with the exception of the master, shall be settled by conciliation, and otherwise by an award in accordance with the rules of competence and procedure laid down in these regulations.

(2) The same procedure shall apply to proceedings instituted to enforce liability for offences committed in the performance of a contract.

65. Disputes covered by regulation 64 shall be submitted for an attempt at conciliation to the Director of Shipping of Mauritius.

66. (1) Conciliation proceedings shall be opened on application, whether oral or in writing, by either of the parties to the Director of Shipping who shall convene the other party through administrative channels.

(2) The master shall afford a seaman every opportunity of availing himself of this procedure.

(3) Failure to appear at a conciliatory meeting shall be held against the party at fault.

67. (1) The Director of Shipping shall hear the parties and witnesses and give its decision as a matter of urgency, and a report shall be prepared forthwith stating whether or not the parties have been able to agree.

(2) The report shall indicate the terms of the agreement reached between the parties or the reasons why no agreement could be reached

(3) The report shall be signed by the parties or, shall indicate if they are unable to do so.

(4) A certified copy shall be delivered to either party on request (5) The terms of the agreement shall be binding on parties.

68. (1) Where no agreement can be reached, the Maritime Authority shall prepare a report, a copy of which shall be handed to the plaintiff,

(2) This copy shall authorise him to summon the defendant before the Industrial Court or any other competent court or tribunal.

69. (1) Where the defendant refuses or fails to appear, the plaintiff shall be given confirmation of his application.

(2) Such confirmation shall authorise him to summon the defendant before the competent court.

70. After an unsuccessful attempt has been made to conciliate the parties, a dispute covered by regulation 64 may be reported under the Industrial Relations Act.

71. All seamen must undergo a comprehensive medical examination before signing the Articles of Agreement.

72. When travelling by air, a seaman's free luggage allowance shall not exceed the maximum for seamen allowed by the airlines.

73. Any seaman whose contract has been terminated because he has been put ashore on account of illness or an injury

or because he has been called for service by the State shall have prior claim to recruitment by the same shipowner for a period of one year, reckoned, from his moment, the stabilisation of his injury or his release.

74. Subject to any other enactment in force in Mauritius, these regulations shall apply to all foreign seamen engaged on board a Mauritius vessel.

75. (1) The competent authority to deal with any matter arising anywhere shall be the authority that has jurisdiction over the place where the matter has arisen.

(2) In the case of any dispute arising on the territory of Mauritius, the authority shall be the Director of Shipping, the Mauritius Marine Authority, the Permanent Arbitration Tribunal, the Industrial Court or any other court, as the case may be.

Made by the Minister on 24 November 1992.