

CAYMAN ISLANDS



Merchant Shipping Law

**MERCHANT SHIPPING (MARITIME
LABOUR CONVENTION) (CREW
ACCOMMODATION) REGULATIONS, 2014**

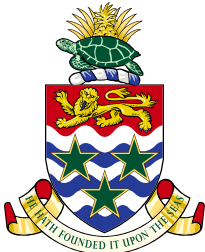
(SL 46 of 2014)

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Arrangement of Regulations

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MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (CREW ACCOMMODATION) REGULATIONS, 2014

(SL 46 of 2014)

The Cabinet, in exercise of the powers conferred by sections 106 and 463 of the Merchant Shipping Law (2011 Revision), makes the following Regulations —

Citation

1. These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Crew Accommodation) Regulations, 2014.

Definitions

2. (1) In these Regulations —

“**authorized person**” means a person authorized by the Chief Executive Officer to carry out inspections and audits for the purposes of these Regulations and includes any surveyor of ships appointed under section 419 of the Law;

“**Chief Executive Officer**” means the Chief Executive Officer of MACI appointed under section 9 of the *Maritime Authority Law (2013 Revision)*;

“**CISN 03/2014**” means Shipping Notice CISN 03/2014 published by MACI regarding requirements and guidance for Crew Accommodation upon Cayman Islands ships constructed after the date on which these Regulations come into force;

“**Convention Government**” means a Government, other than the Cayman Islands, which is a Party to the Maritime Labour Convention;

“**Declaration of Maritime Labour Compliance**” means, in relation to a ship, the valid 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;

“**Maritime Labour Certificate**” and “**interim Maritime Labour Certificate**” means a Certificate issued in accordance with the Maritime Labour Convention;

“**Maritime Labour Convention**” means the Convention adopted on 23rd February 2006 by the General Conference of the International Labour Organization, as may be amended from time to time;

“**seafarer**” means any person, including a master, who is employed or engages or works in any capacity on board a ship and whose normal place of work is on a ship; and

“**shipowner**” means —

- (a) in relation to a ship which has a valid Maritime Labour Certificate, the person identified as the shipowner on that Certificate; or
- (b) in relation to any other ship, the owner of the ship or, if different, any other organization or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner.

Application

3. (1) Subject to paragraph (3), these Regulations (other than regulations 11 and 12) apply to —
- (a) Cayman Islands ships, wherever they may be; and
 - (b) while they are in Cayman Islands waters, to ships —
 - (i) which are not Cayman Islands ships; and
 - (ii) to which regulations 11 and 12 do not apply.
- (2) Regulations 11 and 12 apply to non-Cayman Islands ships, while they are within Cayman Islands waters if —
- (a) the Maritime Labour Convention is in 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) These Regulations do not apply to —
 - (a) pleasure vessels;
 - (b) fishing vessels;
 - (c) warships or naval auxiliaries;
 - (d) offshore installations whilst on their working stations;

Exemptions

4. (1) The Chief Executive Officer may exempt a ship of less than 200 gross tonnage from some or all of the requirements of these Regulations if —
- (a) the exemption —
 - (i) is reasonable taking account of the size of the ship and the number of persons on board;
 - (ii) does not result in overall facilities less favourable than those which would result if no exemption had been given; and
 - (iii) relates to Standard A3.1.7(b), 11(d) and 13 of the Maritime Labour Convention or, as respects floor area only, Standard A3.1.9(f) and (h) to (l) of the Maritime Labour Convention; or
 - (b) the exemption is otherwise expressly permitted in Standard A3.1 of the Maritime Labour Convention.
- (2) An exemption under this Regulation —
- (a) is valid only if given in writing,
 - (b) may only be granted for particular circumstances in which the exemption can be clearly justified on strong grounds and subject to protecting seafarer's health and safety;
 - (c) may be given subject to such conditions and limitations as the Chief Executive Officer considers fit, and
 - (d) may be altered or cancelled by the Chief Executive Officer giving written notice to the shipowner.
- (3) In this regulation, “gross tonnage” means gross tonnage as determined under the Merchant Shipping (Tonnage) Regulations, 2002.

Equivalences

5. (1) As respects a particular ship, or ships of a particular description, the Chief Executive Officer may approve requirements which, when taken together with the conditions and limitations to which the approval is subject, the Chief Executive Officer considers are substantially equivalent to the requirements which are set out in CISN 03/2014.

- (2) An approval under this regulation —
 - (a) is valid only if given in writing;
 - (b) may be given subject to such conditions and limitations as the Chief Executive Officer may specify; and
 - (c) may be altered or cancelled by the Chief Executive Officer giving written notice to the shipowner.

Crew accommodation requirements

- 6. (1) Subject to regulation 16, a ship shall comply with the requirements relating to crew accommodation set out in CISM 03/2014.
- (2) Crew accommodation shall be cleaned and maintained to conform with the requirements set out in CISM 03/2014.
- (3) At intervals not exceeding 7 days, the master or a person authorized by the master shall —
 - (a) inspect —
 - (i) the crew accommodation, and
 - (ii) the cleanliness and maintenance of the crew accommodation, and
 - (b) record the findings of that inspection in the official log book of the ship.

Offences and penalties

- 7. (1) If a ship proceeds or attempts to proceed to sea or on a voyage or excursion without complying with the requirements of regulation 6(1), 6(2) or 16, the shipowner commits an offence and is liable —
 - (a) on summary conviction, to a fine of ten thousand dollars, notwithstanding sections 6(2) and 8 of the *Criminal Procedure Code (2013 Revision)*; and
 - (b) on conviction on indictment, to a fine of fifty thousand dollars.
- (2) If a ship proceeds or attempts to proceed to sea or on a voyage or excursion without complying with a condition or limitation of an exemption under regulation 4 or of an approval under regulation 5, the shipowner commits an offence and is liable —
 - (a) on summary conviction, to a fine of ten thousand dollars, notwithstanding sections 6(2) and 8 of the *Criminal Procedure Code (2013 Revision)*; and
 - (b) on conviction on indictment, to a fine of twenty-five thousand dollars.
- (3) Any contravention of regulation 6(3)(a) or (b) is an offence by the master punishable on summary conviction by a fine of ten thousand dollars, notwithstanding sections 6(2) and 8 of the *Criminal Procedure Code (2013 Revision)*.



- (4) In any proceedings for an offence under this regulation, it is a defence for the person charged to prove that all reasonable steps had been taken by that person to ensure compliance with the requirements of the provision in question or, as respects an offence under paragraph (2), the requirements of the exemption or approval in question.

Inspection of ships

8. (1) For the purpose of checking compliance with these Regulations, an authorized person may at all reasonable times go on board a ship and inspect the ship, its equipment, any article and any document carried on it.
- (2) Sections 421(2) and (4) of the Law apply in relation to paragraph (1) as if references in those subsections to “subsection (1)” were references to paragraph (1).
- (3) Sections 422 (1), (2), (3) and (5) to (8) and 423(1) and (2) of the Law apply in relation to the inspection of a ship for the purposes of checking compliance with these Regulations as they apply in relation to the inspection of a ship for the purposes of checking compliance with the Law, as if —
- (a) references in those sections to “this Law” were to these Regulations;
 - (b) for section 422(1)(b) there were substituted a reference to any ship to which this regulation applies; and
 - (c) in section 422(2)(h)(iii) the words “or any instrument made under it” were omitted.
- (4) Sections 423 to 429 of the Law apply for the purposes of these Regulations as if the relevant statutory provisions included these Regulations.

Detention of ships

9. (1) Where an authorized person has clear grounds for believing that, in relation to a ship to which these Regulations apply —
- (a) a ship is not in compliance with —
 - (i) regulation 6; or
 - (ii) a condition or limitation of an exemption under regulation 4 or an approval under regulation 5; and
 - (b) the non-compliance represents —
 - (i) a significant danger to the safety, health or security of seafarers, or
 - (ii) a serious breach or the latest in a series of repeated breaches of the requirements of regulation 6, or a condition or limitation of an exemption under regulation 4 or an approval under regulation 5,
- the ship is liable to be detained.

- (2) The power under this regulation to detain a ship shall only be exercised if the ship in question is —
 - (a) Cayman Islands ship; or
 - (b) a non-Cayman Islands ship without a Maritime Labour Certificate whilst in a Cayman Islands port or Cayman Islands waters.
- (3) Section 444 of the Law applies where a ship is liable to be or is detained under this regulation as if references to the detention of a ship under that Law were references to these Regulations.
- (4) Where a ship is liable to be detained under these Regulations an authorized person shall serve on the master of the ship or other person for the time being in charge of the ship a detention notice which states the grounds for detention and the requirements to be complied with in respect of the notice in order for the ship to be released from the detention.
- (5) Where a ship which is detained under these Regulations is not a Cayman Islands ship the Chief Executive Officer shall immediately inform the Consul or a diplomatic representative of the State whose flag the ship is entitled to fly, or the appropriate maritime authorities of that State, of the detention and the grounds therefor.
- (6) Where a ship is detained under these Regulations an authorized person shall release the ship in accordance with the applicable provisions of section 444 of the Law.
- (7) It is prohibited for a ship on which a detention notice has been served to proceed to sea or attempt to proceed to sea unless a release from the detention has been issued in writing by an authorized person.
- (8) Notwithstanding that a detained ship may be eligible for release where any applicable fine, cost and expenses have been paid by the master or owner of the ship, or a security paid, in accordance with section 444 of the Law the ship shall not be released until any deficiency for which the vessel was detained has been rectified to the satisfaction of the Chief Executive Officer.

Crew accommodation requirements for non-Cayman Islands ships with Maritime Labour Certificates

- 10.** (1) A ship to which this regulation applies shall comply with the requirements of Regulation 3.1 and Standard A3.1 of the Maritime Labour Convention.
- (2) The master or a person acting under the master's authority shall —
 - (a) carry out inspections of a ship to which this regulation applies in accordance with Standard A3.1.18 of the Maritime Labour Convention; and
 - (b) record the findings of such inspections and keep them available for review.



- (3) If a ship to which this regulation applies proceeds to sea in Cayman Islands waters or attempts to proceed to sea or on a voyage or excursion in Cayman Islands waters without complying with the requirements of paragraph (1), the shipowner commits an offence and is liable —
 - (a) on summary conviction, to a fine of ten thousand dollars, notwithstanding sections 6(2) and 8 of the *Criminal Procedure Code (2013 Revision)*; and
 - (b) on conviction on indictment, to a fine of fifty thousand dollars.
- (4) Any contravention of paragraph (2)(a) or (b) is an offence by the master punishable on summary conviction by a fine of ten thousand dollars, notwithstanding sections 6(2) and 8 of the *Criminal Procedure Code (2013 Revision)*.
- (5) In any proceedings for an offence under this regulation, it is a defence for the person charged to prove that all reasonable steps had been taken by that person to ensure compliance with the provision in question.

Inspection of non-Cayman Islands ships with Maritime Labour Certificates

- 11.** (1) An authorized person 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 applies, carry out a more detailed inspection in accordance with that Standard.
- (2) Where an authorized person has power to inspect a ship under paragraph (1)(b), regulation 10 applies to that ship.

Detention of non-Cayman Islands ships with Maritime Labour Certificates

- 12.** (1) Where an authorized person inspects a ship under regulation 11 and has clear grounds for believing that —
- (a) the ship does not comply with the requirements of the Maritime Labour Convention; and
 - (b) the non-compliance represents a serious or repeated breach of the requirements of the Maritime Labour Convention,
- the ship is liable to be detained.
- (2) Where a ship is liable to be detained or is detained under this regulation, section 444 of the Law applies as if —

- (a) references to the detention of a ship under the Law were references to the detention of the ship in question under this regulation; and
 - (b) subsection (7) were omitted.
- (3) Where a ship is detained under this regulation, the Chief Executive Officer shall 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.
- (4) 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 shall, at the request of the shipowner or master, immediately release the ship.

Right of appeal and compensation

- 13.** Regulations 12 and 13 of the Merchant Shipping (Port State Control) Regulations, 2003, shall have effect in relation to a detention notice served under these Regulations subject to the reference in those Regulations to inspector being taken to include a reference to a surveyor.

Defence

- 14.** It is a defence for a person charged with an offence under these Regulations to show that the offence was committed without that person's knowledge or, where the person had such knowledge, that the person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

Repeal

- 15.** The Merchant Shipping (Crew Accommodation) Regulations 1988 are repealed.

Transitional provisions

- 16.** (1) A ship the keel of which was laid or which was at a similar stage of construction before 11th July 1997 —
- (a) as respects crew accommodation which has not been substantially reconstructed or altered on or after 11th July 1997, shall comply with the requirements of Part II and Schedule 6 to the Merchant Shipping (Crew Accommodation) Regulations 1988, as if they had not been repealed; and
 - (b) as respects crew accommodation which has been substantially reconstructed or altered on or after 11th July 1997 but before the date on which these Regulations come into force, shall comply with the requirements of Part I of the Merchant Shipping (Crew Accommodation) Regulations 1988 as if they had not been repealed.
- (2) A ship the keel of which was laid or which was at a similar stage of construction on or after 11th July 1997 but before the date on which these



Regulations come into force shall, as respects crew accommodation which has not been substantially reconstructed or altered on or after the date on which these Regulations come into force, comply with the requirements of Part I of the Merchant Shipping (Crew Accommodation) Regulations 1988 as if they had not been repealed.

- (3) In this regulation, “similar stage of construction” means the stage at which —
- (a) construction identifiable with a specific ship begins; and
 - (b) assembly of that ship has commenced comprising at least 50 tonnes or one per cent of the estimated mass of all structural material, whichever is less.

Made in Cabinet the 19th day of August, 2014.

Meredith Hew
Acting Clerk of the Cabinet.