



STATUTORY INSTRUMENTS.

S.I. No. 88 of 2020

MERCHANT SHIPPING (MARITIME LABOUR CONVENTION)
(SHIPOWNERS' LIABILITIES AND REPATRIATION) (AMENDMENT)
REGULATIONS 2020

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I, Shane Ross, 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 further effect to Council Directive 2009/13/EC of 16 February 2009¹, as amended by Council Directive (EU) 2018/131 of 23 January 2018², hereby make the following regulations:

1. (1) These Regulations may be cited as the Merchant Shipping (Maritime Labour Convention) (Shipowners' Liabilities and Repatriation) (Amendment) Regulations 2020.

(2) These Regulations come into operation on 16 February 2020.

2. The Merchant Shipping (Maritime Labour Convention) (Shipowners' Liabilities and Repatriation) Regulations 2014 (S.I. No. 375 of 2014) are amended—

(a) in Regulation 2—

(i) by substituting for the definition of “Convention” the following definition:

“ ‘Convention’ means the Maritime Labour Convention 2006 adopted at Geneva on 23 February 2006 and amended by the 2014 amendments to the Maritime Labour Convention which were approved in Geneva on 11 June 2014 and entered into force on 18 January 2017;”

(ii) by inserting after the definition of “Irish ship” the following:

“ ‘Maritime Labour Certificate’ means a certificate issued under Regulation 11 of the Merchant Shipping (Maritime Labour Convention)(Flag State Inspection and Certification) Regulations 2014 (S.I. No. 376 of 2014);”, and

(iii) by inserting after paragraph (1) the following:

“(2) A word or expression that is used in these Regulations and is also used in Council Directive 2009/13/EC of 16 February 2009¹ as amended by Council Directive (EU) 2018/131 of 23 January

¹ O.J. No. L124, 20.5.2009, p.30

² O.J. No. L 22, 26.1.2018, p.28

2018², has, unless the contrary intention appears, the same meaning in these Regulations as it has in those Directives.”,

- (b) in Regulation 4–
- (i) in paragraph (1) by inserting “or collective agreement” after “or a seafarer employment agreement”, and
 - (ii) by substituting for paragraph (2) the following:

“(2) A financial security to assure compensation as provided by paragraph (1) shall meet the following minimum requirements:

 - (a) subject to subparagraph (c), contractual compensation where set out in a seafarer’s employment agreement shall be paid to the seafarer in full and without delay;
 - (b) there shall be no pressure put on a seafarer to accept payment less than the contractual amount;
 - (c) where the nature of a seafarer’s long-term disability makes it difficult to assess the full contractual compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer, so as to avoid undue hardship;
 - (d) a seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident;
 - (e) a claim for contractual compensation may be made to the shipowner’s financial security provider and may be brought directly by the seafarer concerned or his or her next of kin or a representative of the seafarer or designated beneficiary.
- (3) Where financial security for a ship is to be cancelled or terminated, the shipowner shall ensure the seafarers on board the ship are given prior notification.
 - (4) A financial security provider shall notify the competent authority if the shipowner’s financial security is cancelled or terminated.
 - (5) A financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority.
 - (6) Financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which it is valid.

- (7) A shipowner shall ensure—
- (a) that proof of financial security, in the form of a certificate or other documentary evidence issued by the financial security provider—
 - (i) is carried on board the ship, and
 - (ii) a copy is posted in a conspicuous place on board the ship, and
 - (b) that the certificate or other documentary evidence of financial security—
 - (i) is in English or accompanied by an English translation, and
 - (ii) contains the following information:
 - (I) name of the ship;
 - (II) port of registry of the ship;
 - (III) call sign of the ship;
 - (IV) IMO number of the ship;
 - (V) name and address of the financial security provider;
 - (VI) contact details of the persons or entity responsible for handling seafarers' claims for contractual compensation;
 - (VII) name of the shipowner;
 - (VIII) period of validity of the financial security;
 - (IX) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1 of the Convention.

- (8) in this Regulation—

‘contractual compensation’ means compensation in the event of the death or long-term disability of a seafarer arising from an occupational injury, illness or hazard, and which is set out in the seafarer’s agreement, a collective agreement or in an enactment;

‘financial security provider’ means the provider of the insurance or financial security in accordance with paragraph (1).”;

- (c) by inserting after Regulation 11 the following:

“Repatriation costs

11A (1) If the owner fails to make provision for or to bear the cost of repatriation of a seafarer who is entitled to be repatriated in accordance with Regulation 11, the Minister shall make arrangements, or have arrangements made on his or her behalf, for the repatriation of the seafarer and shall be entitled to recover the cost of repatriation from the owner as a simple contract debt in any court of competent jurisdiction.

(2) The costs which the Minister may recover under paragraph (1) include—

- (a) costs incurred by the Minister, or by a person on the Minister's behalf, for the repatriation of a seafarer, and
- (b) costs incurred by the Minister, in reimbursing another person or a state other than the State, who or which has assisted with the repatriation of the seafarer.

(3) If the owner fails to make provision for or to bear the cost of the repatriation of a seafarer who is entitled to be repatriated in accordance with Regulation 11 and the Minister has not made arrangements for the repatriation of the seafarer under paragraph (1), the seafarer may make arrangements for his or her own repatriation and recover the costs incurred by him or her from the owner as a simple contract debt in any court of competent jurisdiction.

(4) The costs incurred by the seafarer referred to in paragraph (3) may not be recovered by the—

- (a) seafarer under paragraph (3), if they have been recovered by the Minister under paragraph (2), or
- (b) Minister under paragraph (2), if they have been recovered by the seafarer under paragraph (3).”,

(d) by inserting after Regulation 16 the following:

“Provision of financial security in cases of abandonment

16A (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), a seafarer's employment agreement or collective agreement to provide financial assistance to seafarers in the event of their abandonment.

(2) A seafarer is deemed to have been abandoned where the shipowner in violation of this Regulation or the terms of the seafarers employment agreement—

- (a) fails to cover the cost of a seafarer's repatriation under Regulation 11,

- (b) has left the seafarer without the necessary maintenance and support, including—
 - (i) adequate food,
 - (ii) accommodation,
 - (iii) drinking water supplies,
 - (iv) essential fuel for survival on board the ship, and
 - (v) necessary medical care,or
- (c) has otherwise unilaterally severed ties with the seafarer, including failure to pay the full wages payable under the seafarer's employment agreement for a period of at least 2 months.

(3) Where a ship is required to carry a Maritime Labour Certificate or to do so at the request of the shipowner, the shipowner shall ensure—

- (a) that proof of financial security, in the form of a certificate or other documentary evidence of financial security issued by the financial security provider as referred to in paragraph (1)—
 - (i) is carried on board the ship, and
 - (ii) a copy is posted in a conspicuous place on board the ship, and
- (b) that the certificate or other documentary evidence of financial security—
 - (i) is in English or accompanied by an English translation, and
 - (ii) contains the following information:
 - (I) name of the ship;
 - (II) port of registry of the ship;
 - (III) call sign of the ship;
 - (IV) IMO number of the ship;
 - (V) name and address of the financial security provider;
 - (VI) contact details of the persons or entity responsible for handling claims for financial assistance from abandoned seafarers;
 - (VII) name of the shipowner;
 - (VIII) period of validity of the financial security;
 - (IX) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2 of the Convention.

(4) A claim for financial assistance by the seafarer or his or her nominated representative made to the shipowner's financial security provider—

- (a) shall be granted promptly upon a request, and
- (b) be supported by necessary justification of entitlement that the seafarer has been abandoned in accordance with paragraph (2).

(5) Financial assistance provided to an abandoned seafarer by the financial security provider shall be sufficient to cover the following costs during the abandonment period:

- (a) up to 4 months wages and up to 4 months of other entitlements due under the seafarer's agreement, collective agreement or any enactment (including these Regulations);
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation, which shall cover travel by appropriate and expeditious means, normally by air, including provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges of abandonment;
- (c) the essential needs of the seafarer including items such as:
 - (i) adequate food,
 - (ii) clothing where necessary,
 - (iii) accommodation,
 - (iv) drinking water supplies,
 - (v) essential fuel for survival on board the ship,
 - (vi) necessary medical care, and
 - (vii) any other reasonable costs or charges constituting abandonment until the seafarer's arrival at home.

(6) A financial security shall not cease before the end of the period of validity of the financial security, unless the financial security provider has given prior notification of at least 30 days to the competent authority.

(7) If the provider of insurance or other financial security has made any payment to a seafarer under this Regulation, the financial security provider shall, up to the amount it has paid, acquire the rights which the seafarer would have enjoyed.

(8) Nothing in this Regulation shall prejudice any right of recourse of the financial security provider against third parties.

(9) A seafarer shall receive financial assistance without prejudice to any other rights, but the amount of any such financial assistance may be deducted by the financial security provider from payments received under said other rights where they relate to the abandonment of a seafarer.”,

and

(e) in Regulation 17(2)–

(i) by substituting for subparagraph (a) the following:

“(a) Regulation 4(1), (3) or (7),”

(ii) by substituting for subparagraph (k) the following:

“(k) Regulation 16(1),

(l) Regulation 16A(1) or (3).”

and

(iii) by inserting after paragraph (3) the following:

“(4) A financial security provider, as defined in Regulation 4(8), who fails to comply with Regulation 4(2)(a) or (c), (4) or (5) commits an offence.

(5) A financial security provider who fails to comply with Regulation 16A(5) or (6) commits an offence.

(6) A person who fails to comply with Regulation 4(2)(b) commits an offence.”



GIVEN under my Official Seal,
20 March, 2020.

SHANE ROSS,
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 give effect to Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the 2014 amendments to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014.

The Regulations amend the Merchant Shipping (Maritime Labour Convention) (Shipowners' Liabilities and Repatriation) Regulations 2014 (S.I. No. 375 of 2014).

They make additional provisions in relation to the contract of insurance or other form of financial security required by a shipowner to meet any financial liabilities they may have with regard to compensation in the event of death or long term disability of seafarers arising from occupational injury, illness or hazard.

The Regulations also provide that a shipowner must ensure that a contract of insurance or other form of financial security is in force which is adequate to meet any financial liabilities the shipowner may have in the event of the abandonment of a seafarer.

Shipowners must ensure that a copy of each certificate or other documentary evidence relating to both financial security systems are displayed in a conspicuous place on board the ship.

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