

**IMO INTERNATIONAL MARITIME LAW INSTITUTE**

**MERCHANT SHIPPING (STOWAWAYS) REGULATIONS,  
2004**

**A legislative drafting project submitted in partial fulfilment of the  
requirements for the award of the degree of Master of Laws**

**Gordon Cutajar – Malta  
2003 – 2004  
Supervisor – Dr Ivan Vella**

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## EXPLANATORY NOTE

These regulations transpose into domestic legislation the majority of the recent measures relating to stowaways, which have been incorporated in the Annex to the Convention on Facilitation of International Maritime Traffic, 1965 (hereinafter “FAL Convention”) and which entered into force on the 1<sup>st</sup> May 2003.

It is to be noted that the standards and recommended practices for stowaways found in the Annex reflect the “*Guidelines on the Allocation of Responsibilities to Seek the Successful Resolution of Stowaway Cases*” (Resolution A. 871 (20)), adopted by the International Maritime Organization in 1997, which established basic principles to be applied in dealing with stowaways.

It is to be pointed out at the outset that these regulations give effect only to those provisions in the Annex to the FAL Convention, which imply obligations on the flag State, shipowners, the master and the officer authorized by the master. Consequently, those provisions dealing with administrative requirements of other port authorities and other “Contracting Governments” were not and could not be legislated upon owing to the limits of jurisdiction. A typical example of one of these provisions is Standard 4.3.1.1 which provides:

*“Contracting Governments shall ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stow away on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close co-operation with relevant public authorities, shipowners and shore-side entities, with the aim of preventing stowaway occurrences in the individual port.”*

Our Merchant Shipping Act (Cap. 234) (hereinafter “the Act”) deals with the issue of stowaways under articles 184 to 189. The provisions under the Act seem however to cater for situations where a stowaway is on board a “ship” which is at “any port in Malta”. Article 186 (1) of the Act lays down:

*“The master of any ship arriving at any port in Malta with any stowaway on board shall, without delay, report the matter to the Minister and shall take all reasonable measures to prevent such person from landing without the written authority of the Minister; and may for that purpose keep the stowaway in custody while the ship is in port.”*

It appears therefore that this provision applies to both foreign and Maltese ships arriving at any port in Malta. Furthermore, there exists no provision which caters for situations where stowaways are on board Maltese ships when these are on the high seas.

Essentially, the idea behind these regulations is to supplement the existing provisions relating to stowaways under the Act. In so doing, any lacuna will hopefully be provided for.

Section 1 of the Annex to the FAL Convention defines *inter alia* “attempted stowaway”, “port” and “stowaway”. Although the term “stowaway” is defined under article 184 of the Act, it was deemed necessary to reproduce in the regulations the definition found in the Annex, which is definitely more complete. The terms “attempted stowaway” and “port” are also reproduced under regulation 2.

Regulation 3 provides that:

*“The purpose of these regulations is to implement the majority of the provisions relating to stowaways found in the Annex to the Convention on Facilitation of International Maritime Traffic, 1965.”*

This regulation was modeled on regulation 3 of the Merchant Shipping (Hours of Work) Regulations, 2002 which provides:

*“The purpose of these regulations is to implement the majority of the provisions of the Seafarer’s Hours of Work and the Manning of Ships Convention, 1996.....”*

By virtue of regulation 4, these regulations apply to all Maltese ships, except those listed in sub-regulation (1), namely fishing vessels, pleasure yachts, oil rigs and drilling

platforms and warships. These regulations will not hinder the operation of articles 184 to 189 of the Act but will purely complement it.

Regulations 5 and 6 give effect to Standard 4.2 in so far as it relates to the obligations of the shipowner and master. Regulation 7 deals with “*Preventive measures on board ships*” and transposes the contents of Recommended Practice 4.3.2.2. Standards 4.3.2.3 and 4.3.2.4 are given effect nearly in their entirety by regulations 8 (“*Search on board*”) and 9 (“*Fumigation or sealing of ships*”).

Regulations 10 (1) and 10 (2) mirror the provisions of Standards 4.4.2 and 4.5.1 respectively. Regulation 10 (3) partially adopts the wording used in article 185 of the Act. This sub-regulation was deemed necessary for the sake of uniformity between the contents of these regulations and those of the Act.

Regulation 11 gives effect to Standards 4.6.1 and 4.6.3 and to Recommended Practice 4.6.2. The “*Form of Stowaway Details*” appearing in the Schedule to these regulations is a reproduction of the form found in Appendix 3 to the Annex of the FAL Convention.

Regulation 12 requires the Registrar-General to report all stowaway incidents to the Secretary General of the International Maritime Organization. This is in accordance with Recommended Practice 4.7.1.

Standard 4.8 is echoed under regulation 13 (“*No deviation from the planned route*”), whilst regulations 14 and 15 partially transpose Standards 4.9.3 and 4.10.1 respectively. The provisions of the latter Standards could not be transposed in their entirety for the reasons of limitations of jurisdiction above mentioned. This is why the responsibility under both regulations has to be borne by the owner.

Regulation 16 refers to “*attempted stowaways*” whilst regulation 17 requires the Registrar-General to assist and co-operate with the master and owner of a ship or with the appropriate authorities of the ports of call in the identification of the stowaway and in

making representations to the appropriate authorities for the removal of the stowaway from the ship.

The last regulation deals with penalties. It should be pointed out that article 372C of the Act speaks of the “*Value of unit*”. The said article provides as follows:

*“The term “unit” with reference to any fine (multa) that may be imposed under this Act shall be equivalent to one lira or to such other sum as the Minister with the concurrence of the Minister responsible for justice may by order from time to time determine.”*

Finally, it should be noted that the provisions of the International Convention Relating to Stowaways, 1957 (CMI – Brussels), which has not entered into force and is unlikely to do so, were also examined. However, it was not deemed necessary to reproduce any of the provisions found in this Convention, in view of the fact that the new measures in the FAL Convention (to which Malta is Party) reflect the current state of affairs on the whole issue.

## SCHEDULE

(Regulation 11)

### Form of Stowaway Details

<b>SHIP DETAILS</b>	
<i>Name of ship:</i>	<i>ID-document type, e.g. Passport No.:</i>
<i>IMO number:</i>	<i>ID Card No. or Seaman's book No.:</i>
<i>Flag:</i>	<i>If yes,</i>
<i>Company:</i>	<i>When issued:</i>
<i>Company address:</i>	<i>Where issued:</i>
<i>Agent in next port:</i>	<i>Date of expiry:</i>
<i>Agent address:</i>	<i>Issued by:</i>
<i>IRCS:</i>	<i>Photograph of the stowaway:</i>
<i>INMARSAT number:</i>	
<i>Port of registry:</i>	
<i>Name of the Master:</i>	
<b>STOWAWAY DETAILS</b>	
<i>Date/time found on board:</i>	<i>General physical description of the stowaway:</i>
<i>Place of boarding:</i>	
<i>Country of boarding:</i>	
<i>Date/time of boarding:</i>	
<i>Intended final destination:</i>	
<i>Stated reasons for boarding the ship*:</i>	
<i>Surname:</i>	
<i>Given name:</i>	
<i>Name by which known:</i>	
<i>Gender:</i>	

\* If the stowaway declares himself to be a refugee or an asylum seeker, this information shall be treated as confidential to the extent necessary to the security of the stowaway.

<i>Date of birth:</i>	<i>First language:</i>
<i>Place of birth:</i>	<i>Spoken:</i>
<i>Claimed nationality:</i>	<i>Read:</i>
<i>Home address:</i>	<i>Written:</i>
	<i>Other languages:</i>
<i>Country of domicile:</i>	<i>Spoken:</i>
	<i>Read:</i>
	<i>Written:</i>

**Other details:**

1. *Method of boarding, including other persons involved (e.g. crew, port workers, etc.) and whether the Stowaway was secreted in cargo/container or hidden in the ship:*
  
2. *Inventory of the Stowaway's possessions:*
  
3. *Statement made by the Stowaway:*
  
4. *Statement made by the Master (including any observations on the credibility of the information provided by the Stowaway).*

*Date(s) of Interview(s):*

*Stowaway's signature:*

*Date:*

*Master's signature:*

*Date:*