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THE MERCHANT SHIPPING (HOURS OF WORK) REGULATIONS 2012.

A Legislative Drafting Project submitted in partial fulfilment of the requirements for the award of the Degree of Master of Laws (LL.M.) at the IMO International Maritime Law Institute

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EXPLANATORY NOTE

1.1 The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW)

The STCW Convention is one of the International Maritime Organisation's (IMO) key international conventions and was the first international convention to establish competency requirements for seafarers on an international level. Since its inception in 1978 and subsequent entry into force in 1984, it has been amended in 1991, 1994, 1995, 1997, 1998, 2004, 2006 and 2010, with the major amendments occurring in 1995 and 2010.

Presently, the STCW regime is composed of the STCW Convention and its Annex which is made up of a number of regulations on various relevant subject matters. The Convention and its Annex, which provide the general legal framework, are supported by the STCW Code. The STCW Code is divided into Part A and Part B. Part A contains mandatory provisions which specify the minimum standards required to be observed by the parties to the STCW Convention; whilst Part B consists of recommendatory guidance in order to assist parties in implementing and enforcing the STCW Convention, its Annex and Part A of the STCW Code. The STCW Convention, its Annex and Part A of the Code are binding upon States party to the Convention.

The most recent revision to the STCW Convention was made via the 2010 amendments. These amendments entered into force on the 1st of January 2012. However, their implementation is staggered with 2017 being the final year of this staggered implementation process.

The 2010 amendments are the final result of a Conference of Parties to the STCW Convention held in Manila (Philippines) from the 21st to the 25th of June 2010. The 2010 Manila amendments, as they are generally referred to, completely replace the STCW Code and the Annex to the STCW Convention. It is of no surprise therefore that the 2010 Manila amendments address a significant number of areas. These include new definitions, security training, changes to the competency tables, quality standards,

medical standards, responsibility of ship owning companies, training for particular types of ship, new seafarer grades and certification, watchkeeping arrangements, recognition and revalidation of certificates and seafarers fitness for duty.

1.1.1 Seafarers Fitness For Duty

For the purposes of this drafting project, the provisions concerning seafarers' fitness for duty shall be focused upon. The 'Fitness for Duty' provisions aim to remove any working schedules present on board ships conducive to the fatigue experienced by seafarers and the dangers posed by such fatigue. In this respect, seafarers' minimum hours of rest and rest periods as well as the prevention of drug and alcohol abuse by seafarers are addressed. The relevant amended provisions are found in:

- (a) Regulation VIII/1 of Chapter VIII of the Annex to the STCW Convention
- (b) Section A-VIII/1 of Chapter VIII in Part A of the STCW Code
- (c) Section B-VIII/1 of Chapter VIII in Part B of the STCW Code.¹

The 'Fitness for Duty' provisions came into force on the 1st January 2012. Therefore, State parties to the STCW Convention are bound to give effect to these provisions. Furthermore, every 'Company' as defined in Regulation I/1 of the Annex to the STCW Convention is bound to comply with the relevant rules and ensure that watch schedules are in line with the amended hours of rest requirements.

Moreover, the 2010 Manila amendments harmonise these provisions with the hours of rest requirements in International Labour Organisation (ILO) instruments, namely the 'Seafarers' Hours of Work and Manning of Ships Convention 1996 (ILO Convention No.180) and the 'Merchant Shipping (Minimum Standards) Convention 1976 (ILO Convention No.147) and its 'Protocol of 1996'. Moreover, the amended STCW provisions are harmonised with the Maritime Labour Convention 2006, which is not yet in force.

The contents of the 'Fitness for Duty' provisions as amended by the 2010 Manila amendments are concerned with seafarers' rights to the minimum hours of daily and weekly rest and the manner in which such rest periods may be divided. The provisions

¹ See Appendices 1 – 3.

also address the instances when such rest periods may be rightfully interrupted or suspended by the Master of the ship as well as the exceptions to the general hours of rest provisions that may be permitted by flag States. The latter exceptions are implemented at the discretion of each individual State party; therefore, not all flag State administrations may allow the use of such exceptions. Furthermore, the posting of watch schedules as well as the keeping of individual seafarer hours of rest records is also required by the STCW ‘Fitness for Duty Provisions’. Each individual record must be signed by the seafarer concerned. Generally, the 2010 Manila amendments introduce more onerous requirements than those present in the STCW regime prior to the amendments. For instance, the amended hours of rest rules will apply to most seafarers and not solely to watchkeepers, the minimum weekly rest period has been increased from seventy to seventy seven hours and the maintenance of individual seafarer hours of rest records is now mandatory.

The amended ‘Fitness for Duty’ provisions also address the prevention of alcohol and drug abuse by seafarers whilst on duty. With regard to the former substance, Section A-VIII/1 of Chapter VIII in Part A of the STCW Code obliges State parties to fix a maximum permissible blood or breathe alcohol level. A similar situation is not present with respect to drug abuse. The Annex to the STCW Convention states that:

Each Administration shall, for the purpose of preventing drug and alcohol abuse, ensure that adequate measures are established in accordance with the provisions of section A-VIII/1 while taking into account the guidance given in section B-VII/1 of the STCW Code.²

However, Section A-VIII/1 of Chapter VIII in Part A of the STCW Code is silent on the issue of drug abuse by seafarers; it does not address the subject in any manner. Nonetheless, Section B-VIII/1 of Chapter VIII in Part B of the STCW Code does provide guidance on the subject matter.³

Apart from the responsibility of State parties to give effect to the ‘Fitness for Duty’ provisions, the implementation and enforcement of these provisions is also addressed via

² The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers; 7 July 1978; in force 28 April 1984; International Maritime Organisation; STCW Including 2010 Manila Amendments, 3rd edition, International Maritime Organisation, London, England, 2011; Regulation VIII/1 of Chapter VIII of the Annex to the STCW Convention, Para.2.

³ See Appendix 3.

port State control. Paragraph 2(5) of Regulation I/4 of the Annex to the STCW Convention states that the ‘inability to provide, for the first watch at the commencement of a voyage and for subsequent relieving watches, persons who are sufficiently rested and otherwise fit for duty’ is one of the deficiencies which if left uncorrected may lead to the detention of the ship concerned. For instance, port State officers may inspect individual seafarers’ hours of rest records which if found to be in a situation of non compliance may possibly lead to the detention of the ship. The inspection of these records by port State control officers may already be carried out by port States that have ratified the ILO Convention No.180 and the Protocol to ILO 147. The Maritime Labour Convention will also permit such inspections once in force.

1.2 The STCW Convention in the Maltese Legal Scenario

Malta is one of the many States that has ratified or acceded to the STCW Convention, with the latter’s presence evident in a number of domestic pieces of legislation including the Merchant Shipping (A.B and E.D.H Certificates) Regulations (Subsidiary Legislation 234.15 of the Laws of Malta), the Merchant Shipping (Training and Certification) Regulations (Subsidiary Legislation 234. 17 of the Laws of Malta) and the Merchant Shipping (Safe Manning and Watchkeeping) Regulations (Subsidiary Legislation 234.32 of the Laws of Malta).

As a State party to the STCW Convention, Malta has also accepted the 2010 Manila amendments which have entered into force under the tacit acceptance procedure. Subsequently, Malta is bound to align its domestic legislation with the STCW regime as modified by the 2010 Manila Amendments.

As stated above, the focus of this drafting project shall be on the ‘Fitness for Duty’ provisions in the STCW regime. In this respect, Malta already has existing legislation in place addressing seafarers’ hours of work and rest with the relevant piece of legislation being the Merchant Shipping (Hours of Work) Regulations (Subsidiary Legislation 234.27 of the Laws of Malta). Subsidiary Legislation 234.27 of the Laws of Malta (S.L. 234.27) is in many areas compliant with the amended ‘Fitness for Duty’ provisions. This is largely due to the fact that the purpose of the Regulations contained in S.L. 234.27 is to bring into effect certain ILO instruments. Regulation 3 of S.L 234.27 states that:

The purpose of these regulations is to implement the majority regulations of the provisions of the Seafarer's Hours of Work and the Manning of Ships Convention, 1996 (ILO Convention No. 180), and also to give effect in part to the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147) and its Protocol of 1996.⁴

Therefore, S.L. 234.27 already provides for a minimum weekly rest period of seventy seven hours, a maximum fourteen hour interval between consecutive rest periods, the granting of compensatory rest in the event of the disturbance of ordinary rest periods and the mandatory keeping and posting of watch schedules as well as the maintenance of individual seafarer records. With regard to watch schedules and individual seafarer records, S.L. 234.27 contains standard forms. Moreover, the definition of the term 'seafarer' in S.L. 234.27 is in line with the extended scope of the amended 'Fitness for Duty' provisions.⁵

Furthermore, S.L. 234.27 provides for the enforcement of its provisions with respect to Maltese ships in the form of what is commonly known as 'Flag State control' and non Maltese ships through what has been coined as 'Port State control'. Once S.L. 234.27 is amended, the enforcement of its applicable provisions shall take place both on the STCW level as well as on the level of the ILO instruments quoted above.

Despite the partial pre-existing alignment of S.L. 234.27 with the STCW 2010 Manila amendments, a number of amendments still need to be made. Firstly, S.L. 234.27 does not address the use of drugs and the consumption of alcohol by seafarers on board; namely, S.L. 234.27 does not fix a maximum alcohol level for seafarers as prescribed by Paragraph 10 of Section A-VIII/1 of Chapter VIII in Part A of the STCW Code. Similarly to fatigue, drug and alcohol abuse adversely affects seafarers' fitness for duty, albeit in a different manner. Therefore, it is apt to include provisions on the issue in S.L. 234.27. These newly created provisions include the placing of a maximum alcohol level and the imposition of penalties with regard to alcohol consumption above such level. This necessitates amendments to the wording of Regulation 19 of S.L. 234.47 for the purposes of port state control vis-à-vis alcohol consumption by seafarers above the

⁴ Merchant Shipping (Hours of Work) Regulations 2002 Subsidiary Legislation 234.27 Laws of Malta, Reg.3.

⁵ Merchant Shipping (Hours of Work) Regulations 2002 Subsidiary Legislation 234.27 Laws of Malta, Reg.2; International Shipping Federation; Guidelines on the IMO STCW Convention Including the 2010 'Manila Amendments', 3rd edition, Marisec Publications, London, England, 2011, p. 86.

maximum permitted level. Moreover, Regulation 19 is also amended to include within its scope seafarers performing designated safety, prevention of pollution and security duties. On a superficial level spelling errors in the present legislation are corrected.

Another set of required amendments is concerned with the standard form on shipboard working arrangements contained in Schedule 1 of S.L. 234.27. The selected provisions of the STCW Code attached to this standard form are presently outdated and consequently require replacement.

Added exceptions to the general minimum hours of rest and rest periods provided for in S.L. 234.27 are also proposed. These exceptions, stipulated in Paragraph 9 of Section A-VIII/1 of Chapter VIII in Part A of the STCW Code, are dependent upon the discretion of the flag state and may either be used simultaneously or independently.⁶ Therefore, a provision shall be inserted in S.L. 234.27 stating such exceptions and permitting their use. It is believed that these exceptions shall provide greater flexibility to the ‘company’ and to ships’ masters in times where increased hours of work are needed.

1.3 Implementation into Maltese Law

As stated above, Malta is a party to the STCW Convention and has already accepted the 2010 Manila amendments. Therefore, the ratification or accession of Malta to the STCW Convention is no longer an issue. Nevertheless, Maltese law stipulates a procedure that must be followed for the necessary amendments to materialise in Maltese legislation.

Accordingly, Article 374 of the Merchant Shipping Act⁷ empowers the relevant Minister at the time, currently the Minister for Transport, Infrastructure and Communications, to create regulations. Article 374(2) states that:

Regulations, rules and orders made under the provisions of this Act shall include such requirements, in regard to the matters in respect of which the regulations, rules or orders are made, as appear to the Minister to implement the provisions in regard to those matters of international conventions or protocols ratified or acceded to by the Government of Malta.⁸

⁶ International Shipping Federation; Guidelines on the IMO STCW Convention Including the 2010 ‘Manila Amendments’, 3rd edition, Marisec Publications, London, England, 2011, p. 89.

⁷ Merchant Shipping Act 1973 Cap.234 Laws of Malta.

⁸ Merchant Shipping Act 1973 Cap.234 Laws of Malta, Art. 374(2).

Furthermore, the Minister is empowered to amend or repeal any existing regulations as may be required. The creation, amendment or repeal of such regulations by the Minister is made by means of a Legal Notice which enters into force once published in the Government Gazette.

This power granted to the Minister is not left unchecked and is available for review by the House of Representatives with the law stating that:

Regulations, rules and orders made under this Act shall be laid on the Table of the House of Representatives as soon as may be after they are made and if, within the period of twenty-eight days after they are so laid, the House resolves that they be annulled or amended, the same shall thereupon cease to have effect or shall be so amended, as the case may require, but without prejudice to the validity of anything previously done thereunder or to the making of new regulations, rules or orders.⁹

Therefore, in order to amend S.L. 234.27 for the purposes of the 2010 Manila amendments the procedure discussed above must be followed. In compliance with this procedure and for the purposes of this project, the required amendments are drafted in a Legal Notice which is subsequently consolidated into the existing S.L. 234.27. For the sake of clarity and completeness, a number of Appendices are added to this drafting project. Appendices 1-3 contain the relevant ‘Fitness for Duty’ provisions found in the Annex to the STCW Convention and in the STCW Code, whilst Appendix 4 contains the current version of S.L. 234.27.

⁹ Merchant Shipping Act 1973 Cap.234 Laws of Malta, Art. 374(4).

LEGAL NOTICE

L.N. ____ of 2012

**MERCHANT SHIPPING ACT
(CAP. 234)**

**Merchant Shipping (Hours of Work) (Amendment) Regulations
2012**

In exercise of the powers conferred by Article 374 of the Merchant Shipping Act, the Minister for Infrastructure, Transport and Communications has made the following regulations:

1. The title of these regulations is the Merchant Shipping (Hours of Work) (Amendment) Regulations, 2012 and shall be read and construed as one with the Merchant Shipping (Hours of Work) Regulations, 2002, hereinafter referred to as the “principal regulations”.

Citation and
Scope.

S.L. 234.27

2 (1) The words “orv” in the definition of the word “company” in regulation 2(1) of the “principal regulations” shall be replaced with the word “or”.

Amends
regulation 2(1) of
the “principal
regulations”

(2) The words “regulations 5, 8, 9(3), 10 and 11” in the definition of the words “relevant requirements” in regulation 2(1) of the “principal regulations” shall be replaced with the words “regulations 5, 6, 6A(2), 6A(3), 6A(4), 8, 9(3), 10 and 11.”

3. The words “, and also to give effect to the relevant provisions of the STCW Convention 1978 and the STCW Code 1995 as duly amended and accepted by the Government of Malta” shall be inserted immediately after the words “Protocol of 1996” in regulation 3 of the “principal regulations”.

Amends
regulation 3 of the
“principal
regulations”

4. The words “regulations 7 and 9” in regulation 6(1) of the “principal regulations” shall be replaced with the words “regulations 7, 7A and 9,”.

Amends
regulation 6(1) of
the “principal
regulations”

5. Regulation “6A” shall be inserted immediately after regulation 6 and immediately before regulation 7 of the “principal regulations”. Regulation “6A” shall read as follows:

Adds new
regulation 6A to
the “principal
regulations”

“6A (1) A company that adopts a written policy on drug and, or, alcohol abuse prevention by seafarers undertaking hours of work on its ship or ships, shall forthwith send a copy of such written policy to the Registrar-General.

(2) It is prohibited for any seafarer, during his hours of work, to hold a higher level of alcohol beyond the maximum permitted level.

(3) For the purposes of subregulation (2) the maximum permitted level is 0.25mg/l alcohol in the breath.

(4) For the purpose of identifying the maximum permitted level referred to in subregulation (2) and (3), a company shall provide the master of a ship with the necessary apparatus.

(5) Compliance with the maximum permitted level shall be established by the master or a person authorised by the master who may require any seafarer performing hours of work to be subject to a test using the necessary apparatus.

6. Regulation “7A” shall be inserted immediately after regulation 7 and immediately before regulation 8 of the “principal regulations”. Regulation “7A” shall read as follows:

Adds new regulation 7A to the “principal regulations”

“7A (1) The minimum 77 hours of rest in any seven-day period referred to in regulation 6(1)(b) may be subject to an exception and reduced to no less than 70 hours of rest in any seven-day period.

Provided that such exception shall not be permitted for more than two consecutive seven-day periods.

(2) The intervals between two periods of exceptions permitted under subregulation (1) shall not be less than twice the duration of any such exception.

(3) The hours of rest periods referred to in regulation 6(2) may be subject to an exception and divided into no more than three periods.

Provided that one period of rest shall be at least 6 hours in length and neither of the other two periods of rest shall be less than 1 hour in length.

(4) The intervals between consecutive periods of rest shall not exceed 14 hours.

(5) Any exception permitted under subregulation (3) shall not extend beyond two 24 hour periods in any 7-day period.”

7. The number “9” in regulation 9(3) of the “principal regulations” shall be replaced with the number “8”

Amends regulation 9(3) of the “principal regulations”

8. The word “infoomation” in regulation 13 of the “principal regulations” shall be replaced with the word “information”

Amends regulation 13 of the “principal regulations”

9. The words “or which pose a danger to persons, property or the environment” shall be inserted immediately after the words “clearly hazardous to the safety or health of seafarers” in regulation 19(1) of the “principal regulations”.

Amends regulation 19(1) of the “principal regulations”

10 (1) The words “or any other seafarers whose duties involve designated safety, security and prevention of pollution duties” shall be inserted immediately after the words “watchkeeping personnel” in regulation 19(2) of the “principal regulations”

Amends regulation 19(2) of the “principal regulations”

(2). The words “or otherwise unfit for duty,” shall be inserted immediately after the words “unduly fatigued” in regulation 19(2) of the “principal regulations”.

11. The words “6A(2), (3) or (5),” shall be inserted immediately after the word “regulations” in regulation 21(1)(a) of the “principal regulations”.

Amends regulation 21(1) of the “principal regulations”

(2). The word “sub-regulation” in regulation 21(1)(c) of the “principal regulations” shall be replaced with the words “regulations 6A(2), (3) or (5),”

(3) The word “6A(4),” shall be inserted immediately after the word “sub-regulation” in regulation 21(1)(d) of the “principal regulations”.

12. Regulation 21(5) shall be inserted immediately after regulation 21(4) of the “principal regulations” and shall read as follows:

Adds new regulation 21(5) to the “principal regulations”.

“Where there is a contravention of regulation 6A(2) or (3), a seafarer, except the master or a person authorised by him for the purposes of regulation 6A(5), shall be liable to a fine (*multa*) of not more than two hundred euro (€200).”

Amends First Schedule of the “principal regulations”

13. For “STOW Conrention Section A-VIII/I of the STCW Code (mandatory)” in the First Schedule of the “principal regulations” there shall

be substituted the following:

“ STCW Convention

Section A-VIII/1 of the STCW Code (mandatory)

1 Administrations shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve the safe and secure operation of a ship.

2 All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch and those whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than:

.1 a minimum of 10 hours of rest in any 24-hour period; and

.2 77 hours in any 7-day period.

3 The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours.

4 The requirements for rest periods laid down in paragraphs 2 and 3 need not be maintained in the case of an emergency or in other overriding operational conditions. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

5 Administrations shall require that watch schedules be posted where they are easily accessible. The schedules shall be established in a standardized format in the working language or languages of the ship and in English.

6 When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.

7 Administrations shall require that records of daily hours of rest of seafarers be maintained in a standardized format□, in the working language or languages of the ship and in English, to allow monitoring and verification of compliance with the provisions of this section. The seafarers shall receive a copy of the records pertaining to them, which shall be endorsed by the master or by a person authorized by the master and by the seafarers.

8 Nothing in this section shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

9 Parties may allow exceptions from the required hours of rest in paragraphs 2.2 and 3 above provided that the rest period is not less than 70 hours in any 7-day period. Exceptions from the weekly rest period provided for in paragraph 2.2 shall not be allowed for more than two consecutive weeks. The intervals between two periods of exceptions on board shall not be less than twice the duration of the exception.

The hours of rest provided for in paragraph 2.1 may be divided into no more than three periods, one of which shall be at least 6 hours in length and neither of the other two periods shall be less than one hour in length. The intervals between

consecutive periods of rest shall not exceed 14 hours. Exceptions shall not extend beyond two 24-hour periods in any 7-day period.”

**MERCHANT SHIPPING (HOURS OF WORK)
REGULATIONS (SUBSIDIARY LEGISLATION 234.27 OF
THE LAWS OF MALTA) AS AMENDED BY LEGAL
NOTICE ... of 2012.**

SUBSIDIARY LEGISLATION 234.27
MERCHANT SHIPPING (HOURS OF WORK)
REGULATIONS

1st December, 2002;
 10th January, 2003;
 30th April, 2004

*LEGAL NOTICE 213 of 2002, as amended by Legal Notices 179 of 2004,
 411 of 2007 and --- of 2012*

PART I

General

1. The title of these regulations is the Merchant Shipping (Hours of Work) Regulations.

Short title.

2. (1) In these regulations, unless the context otherwise requires -

Interpretation.
Amended by: L.N ... of 2012

"the Act" means the Merchant Shipping Act;

Cap. 234.

"appropriate inspector" means a person so charged in terms of article 154 of the Act;

"company", in relation to a ship, means the owner or other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

"complaint" means any information or report submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew;

"duly qualified medical practitioner" shall have the same meaning as is assigned to it by article 108(5) of the Act;

"employer", in relation to a seafarer, means the person by whom the worker is (or, where the employment has ceased, was) employed;

"employment", in relation to a seafarer, means employment under his contract, and "employed" shall be construed accordingly;

"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 account of the ship;

"night" means a period -

- (a) the duration of which is not less than nine consecutive hours; and
- (b) which includes the period between midnight and 5 a.m.;

"relevant requirements" means the requirements of regulations 5,

6, 6A(2), 6A(3), 6A(4), 8, 9(3), 10 and 11;

"seafarer" means any person who is employed or engaged in any capacity on board a sea-going ship, on the business of the ship.

(2) The Registrar-General is designated as the competent authority for Malta for the purposes of these regulations.

(3) In relation to any other State, "competent authority" means the national maritime administration maintained by that State for the inspection of ships.

Purpose of
regulations
Amended
by: L.N. ...
of 2012

3. The purpose of these regulations is to implement the majority regulations of the provisions of the Seafarer's Hours of Work and the Manning of Ships Convention, 1996 (ILO Convention No. 180), and also to give effect in part to the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147) and its Protocol of 1996, and also to give effect to the relevant provisions of the STCW Convention 1978 and the STCW Code 1995 as duly amended and accepted by the Government of Malta.

Application.

4. (1) These regulations shall not apply to -

- (a) fishing vessels;
- (b) pleasure yachts;
- (c) oil rigs and drilling platforms when engaged in navigation; and
- (d) any seafarer who is subject to the provisions of the Seamen Wages Council Wage Regulation Order.

S.L.452.51

(2) Subject to subregulation (1) -

- (a) these regulations other than regulations 17 to 19 apply to sea-going Maltese ships; and
- (b) regulations 17 to 19 apply to sea-going ships other than Maltese ships, when they are in a Maltese port and the territorial waters thereof.

PART 2

Hours of Work and Annual Leave

General duties of a
person employing
a seafarer, master,
etc.

5. Subject to regulation 9, it shall be the duty of an employer of a seafarer and a master of a ship to ensure that a seafarer is provided with at least the minimum hours of rest.

Minimum hours of
rest.
Amended by: L.N.
... of 2012

6. (1) Subject to regulations 7, 7A and 9, the minimum hours of rest shall be not less than -

- (a) ten hours in any 24-hour period; and
- (b) 77 hours in any seven-day period.

(2) Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between such consecutive periods shall not exceed 14 hours.

(3) Musters, fire-fighting and lifeboat drills shall be conducted in a manner which minimises the disturbances of rest periods and does not induce fatigue.

(4) A seafarer who is on call shall have adequate compensatory

rest period if his normal period of rest is disturbed by call-outs of work.

6A. (1) A company that adopts a written policy on drug and, or, alcohol abuse prevention by seafarers undertaking hours of work on its ship or ships, shall forthwith send a copy of such written policy to the Registrar-General.

Fitness for duty.
Added by: L.N...
of 2012

(2) It is prohibited for any seafarer, during his hours of work, to hold a higher level of alcohol beyond the maximum permitted level.

(3) For the purposes of subregulation (2) the maximum permitted level is 0.25mg/l alcohol in the breath.

(4) For the purpose of identifying the maximum permitted level referred to in subregulation (2) and (3), a company shall provide the master of a ship with the necessary apparatus.

(5) Compliance with the maximum permitted level shall be established by the master or a person authorised by the master who may require any seafarer performing hours of work to be subject to a test using the necessary apparatus.

7. The Registrar-General may authorise collective agreements permitting exceptions to the limits in regulation 6(1) and (2) but shall have due regard for the general principles of the protection of the health and safety of seafarers.

Minimum
hours of rest:
further
provision.

7A. (1) The minimum 77 hours of rest in any seven-day period referred to in regulation 6(1)(b) may be subject to an exception and reduced to no less than 70 hours of rest in any seven-day period.

Minimum
hours of rest:
exceptions
Added by: L.N...
of 2012

Provided that such exception shall not be permitted for more than two consecutive seven-day periods.

(2) The intervals between two periods of exceptions permitted under subregulation (1) shall not be less than twice the duration of any such exception.

(3) The hours of rest periods referred to in regulation 6(2) may be subject to an exception and divided into no more than three periods.

Provided that one period of rest shall be at least 6 hours in length and neither of the other two periods of rest shall be less than 1 hour in length.

(4) The intervals between consecutive periods of rest shall not exceed 14 hours.

(5) Any exception permitted under subregulation (3) shall not extend beyond two 24 hour periods in any 7-day period..

8. (1) The master of a ship, or a person authorised by the master, shall ensure that a table with the shipboard working arrangements complying with subregulations (2) and (3) is posted-up in a prominent and accessible place in the ship.

Posting-up of table.

(2) A table under subregulation (1) shall contain for every position at least:

- (a) the schedule of service at sea and service in port; and
- (b) the minimum hours of rest as required by these regulations or any collective agreements in force.

(3) A table under subregulation (1) shall be in the format appearing in the First Schedule and shall be in English and in the working language of the ship if that is not English.

9. (1) The master of a ship may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board ship or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea.

Exception for emergencies.

(2) For the purposes of subregulation (1), the master may suspend the hours of rest scheduled in the table under regulation 8 and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

(3) As soon as practicable after the normal situation has been restored the master shall ensure that any seafarer who has performed work in a rest period scheduled in the table under regulation 8 is provided with an adequate rest period.

10. (1) A record of a seafarer's daily hours of rest shall be maintained by the master or a person authorised by the master.

Records.

(2) The record kept under subregulation (1) shall -

- (a) be in the format appearing in the Second Schedule;
- (b) be in English and in the working language of the ship if that is not English;
- (c) be completed monthly in arrears;
- (d) reflect all deviations from the scheduled hours of rest as per the provisions of regulation 9;
- (e) be endorsed by the master or a person authorised by the master, and by the seafarer in question, and a copy thereof shall be given to the seafarer by the master or the person authorised by the master;
- (f) be kept for a period of two years and shall be available for inspection and endorsement by the Registrar-General or an appropriate inspector.

(3) The company and the master shall ensure that a copy of

these regulations and any collective agreements referred to under regulation 7 are carried at all times on board ship and are easily accessible to the seafarers on board.

Young persons.
Amended by:
L.N. 179 of 2004.
S.L. 452.92

11. (1) Notwithstanding the provisions of regulation 5 of the Young Persons (Employment) Regulations, and subject to subregulation (2) hereof, no seafarer under the age of 18 years shall work at night.

(2) A seafarer of the age of 16 years and 17 years may work at night if the work forms part of an established programme of training the effectiveness of which would be impaired by the prohibition in subregulation (1).

Health assessment
and transfer of
seafarers on
watchkeeping
duties to day work.

12. Where -

- (a) a duly qualified medical practitioner has certified that a seafarer engaged on watchkeeping duties is suffering from health problems which the practitioner considers to be due to the fact that the seafarer performs night work, and
- (b) it is possible for the employer to transfer the seafarer to work -
 - (i) to which the seafarer is suited, and
 - (ii) which is to be undertaken during periods such that the seafarer will cease to perform night work,

the seafarer shall be transferred accordingly.

Power to require
information.

13. A company shall provide the Registrar-General with such information on watch-keepers and other seafarers working at night as may be specified by the Registrar-General.

Entitlement to
annual leave.

14. (1) Subject to subregulation (3), a seafarer is entitled in each leave year to a period of leave of at least four weeks.

(2) For the purposes of this regulation, a seafarer's leave year begins -

- (a) on such date during the calendar year as may be agreed in writing by the employer and the seafarer; or
- (b) in absence of such agreement -
 - (i) if the seafarer's employment began on or before the coming into force of this regulation, on that date and each subsequent anniversary of that date; or
 - (ii) if the seafarer's employment begins after the coming into force of this regulation, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where the date on which a seafarer's employment begins is later than the date on which, by agreement as described in subregulation (2)(a), his first leave year begins, the leave to which he is entitled in that leave year shall be a proportion of the period of four weeks equal to the proportion of that leave year remaining on the date on which his employment begins.

(4) Where by virtue of subregulation (3) the period of leave to which a seafarer is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(5) Leave to which a seafarer is entitled under this regulation may not be replaced by a payment in lieu except where the seafarer's employment is terminated.

(6) Subject to subregulation (5) a seafarer shall be paid at the rate of a week's pay in respect of each week of leave to which he is entitled under this regulation.

15. Where during any period a seafarer is entitled to hours of rest or annual leave both under a provision of these regulations and under a separate provision (including a provision of his contract), he may exercise the two rights separately, but may, in taking hours of rest or annual leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

Entitlements under other provisions.

PART 3

Enforcement

16. The Registrar-General, or an appropriate inspector, may inspect any Maltese ship to which these regulations apply and if satisfied that there has been a failure to comply in relation to that ship with the relevant requirements the Registrar-General may:

Inspection and detention of Maltese ship.

- (i) take such measures as are necessary to rectify those conditions and any expenses incurred therefor shall be a charge on the ship;
- (ii) detain the ship.

17. (1) Where -

- (a) the Registrar-General receives a complaint which is not considered manifestly unfounded, or obtains evidence that a ship, which is not a Maltese ship and is in a Maltese port does not comply with the relevant requirements; and
- (b) the ship has called voluntarily at that port in the normal course of its business or for operational reasons,

Reports on ships other than Maltese ships.

the Registrar-General shall prepare a report addressed to the government of the country in which the ship is registered and copied to the Director-General of the International Labour Office.

(2) The identity of the person lodging the complaint must not be revealed to the master of the ship concerned or the company in respect of the ship.

18. (1) When carrying out an inspection in order to obtain evidence that a ship does not comply with the relevant requirements the Registrar-General, or an appropriate inspector shall determine whether -

Inspections of ships other than Maltese ships,

- (a) a table complying with regulation 8(2) is posted-up in a prominent and accessible place on the ship; and

- (b) records are being maintained in compliance with regulation 10; and
- (c) there is proof such records have been endorsed by the competent authority of the country in which the ship is registered.

(2) Where -

- (a) a complaint has been received, or
- (b) the Registrar-General, or an appropriate inspector, from own observations on board believes that seafarers may be unduly fatigued,

the Registrar-General, or the inspector shall carry out a more detailed inspection, in accordance with subregulation (1), to determine whether the hours of rest recorded comply with the standards laid down in regulation 6 and that they have been duly observed, and shall inspect and take into account other records relating to the operation of the ship.

Rectification of
deficiencies.
Amended by:
L.N. ... of 2012.

19. (1) If the inspection or more detailed inspection in accordance with regulation 18 reveals that the ship does not comply with the relevant requirements the Registrar-General shall, in the case of deficiencies which are clearly hazardous to the safety or health of seafarers or which pose a danger to persons, property or the environment, take such measures as are necessary to ensure that such deficiencies are rectified and any expenses incurred therefor shall be a charge on the ship, and may detain the ship until deficiencies have been rectified or the seafarers in question have been sufficiently rested.

(2) If there is clear evidence that watchkeeping personnel or any other seafarers whose duties involve designated safety, security and prevention of pollution duties for the first watch, or subsequent relieving watches, are unduly fatigued or otherwise unfit for duty the Registrar-General shall detain the ship until the deficiencies found have been rectified or the seafarers in question have been sufficiently rested.

(3) If the Registrar-General takes either of the measures specified in subregulations (1) and (2), the Registrar-General shall forthwith notify -

- (a) the master of the ship;
- (b) the company in respect of the ship; and
- (c) the maritime administration and the nearest maritime, consular or diplomatic representative of the flag State of the ship,

and shall inform them of the results of any inspection in accordance with regulation 18, of any decisions taken and of any corrective actions required.

(4) The Registrar-General shall not in exercise of his power under this regulation detain or delay the ship unreasonably.

Release of
information.

20. The Registrar-General shall ensure the publication, at least every month, of the information specified in the Third Schedule concerning ships to which regulations 17 to 19 apply which during the previous month have been detained in a port in Malta.

PART 4

Penalties

21. (1) Any contravention by -

- (a) the master of a ship of regulation 5, regulations 6 A (2), (3) or (5), 8(1), 9(3) or 10(1), (2)(e) or (3);
- (b) an employer of regulation 5;
- (c) a person authorised by the master of a ship of regulations 6A(2), (3) or (5), 8(1) or 10(1) or (2)(e); or
- (d) a company of sub-regulation 6A(4), 10(3) or regulation 13.

Penalties

*Amended by:**L.N. 411 of 2007.**Amended by: L.N. ... of 2012*

shall be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37) for each offence.

(2) Where there is a contravention of regulation 6(3) or (4) the master of the ship shall for each offence be liable to a fine (*multa*) of not more than one thousand and one hundred and sixty-four euros and sixty-nine cents (€1,164.69).

(3) Where there is a contravention of regulation 11(1) the employer of the seafarer under the age of 18 years shall be liable to a fine (*multa*) of not more than one thousand and one hundred and sixty-four euros and sixty-nine cents (€1,164.69).

(4) Where there is a contravention of regulation 14 the employer of the seafarer shall be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37).

(5) Where there is a contravention of regulation 6A(2) or (3), a seafarer, except the master or a person authorised by him for the purposes of regulation 6A(5), shall be liable to a fine (*multa*) of not more than two hundred euro (€200).

FIRST SCHEDULE

(Regulation 8)

SCHEDULE I
(Regulation 8)

Model format for a table of shipboard working arrangements¹

c of ship: _____ Flag of ship: _____ IMO number (if any): _____ Latest update of table: _____ () of () pages

maximum hours of work or minimum hours of rest are applicable in accordance with: _____ (national law or regulation) issued in conformity with ILO's Seafarers' Convention, 1978, and with any applicable collective agreement registered or authorized in accordance with that Convention and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention).

_____ minimum hours of work or minimum hours of rest.³

_____ requirements:

[illegible]

Signature of master

The terms used in this model table are to appear in the working language or languages of the ship and in English.

see overleaf for selected extracts from ILO Convention 180 and the STCW Convention.

Delete as applicable.

For those positions/ranks that are also listed in the ship's safe manning document, the terminology used should be the same as in that document.

For watchkeeping personnel, the comments section may be used to indicate the anticipated number of hours to be devoted to unscheduled work and any such hours should be included in the appropriate total daily work hours column.

Selected texts from ILO Convention 180 and the STCW Convention

ILO Convention 180

- Art. 5 paragraph 1 The limits on hours of work or rest shall be as follows: (a) maximum hours of work shall not exceed: (i) 14 hours in any 24-hour periods and (ii) 72 hours in any 7-day period; or (b) minimum hours of rest shall not be less than: (i) 10 hours in any 24-hour period; and (ii) 77 hours in any 7-day period.
- Art. 5 paragraph 2 Hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.
- Art. 5 paragraph 6 Nothing in paragraphs 1 and 2 shall prevent the Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall as far as possible, follow the standards set out but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.
- Art. 7 paragraph 1 Nothing in this Convention shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.
- Art. 7 paragraph 3 As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

STCW Convention

Section A-VIII/I of the STCW Code (mandatory)

1. Administrations shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve the safe and secure operation of a ship.
2. All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch and those whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than:
 - .1 a minimum of 10 hours of rest in any 24-hour period; and
 - .2 77 hours in any 7-day period.
3. The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours.
4. The requirements for rest periods laid down in paragraphs 2 and 3 need not be maintained in the case of an emergency or in other overriding operational conditions. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.
5. Administrations shall require that watch schedules be posted where they are easily accessible. The schedules shall be established in a standardized format in the working language or languages of the ship and in English.

6. When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.
7. Administrations shall require that records of daily hours of rest of seafarers be maintained in a standardized format[□], in the working language or languages of the ship and in English, to allow monitoring and verification of compliance with the provisions of this section. The seafarers shall receive a copy of the records pertaining to them, which shall be endorsed by the master or by a person authorized by the master and by the seafarers.
8. Nothing in this section shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.
9. Parties may allow exceptions from the required hours of rest in paragraphs 2.2 and 3 above provided that the rest period is not less than 70 hours in any 7-day period. Exceptions from the weekly rest period provided for in paragraph 2.2 shall not be allowed for more than two consecutive weeks. The intervals between two periods of exceptions on board shall not be less than twice the duration of the exception.

The hours of rest provided for in paragraph 2.1 may be divided into no more than three periods, one of which shall be at least 6 hours in length and neither of the other two periods shall be less than one hour in length. The intervals between consecutive periods of rest shall not exceed 14 hours. Exceptions shall not extend beyond two 24-hour periods in any 7-day period.

Section B-VIII/1 of the STCW Code (guidance)

3. In applying regulation VIII/1, the following should be taken into account:
- .1 provisions made to prevent fatigue should ensure that excessive or unreasonable overall working hours are not undertaken. In particular, the minimum rest periods specified in section A-VIII/1 should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties;
 - .2 that the frequency and length of leave periods, and the granting of compensatory leave, are material factors in preventing fatigue from building up over a period of time; and
 - .3 the provisions may be varied for ships on short-sea voyages, provided special safety arrangements are put in place.
-

SECOND SCHEDULE

(Regulation 10)

SCHEDULE II
(Regulation 10)

Model format for record of hours of work or hours of rest of seafarers¹

Name of ship: _____ IMO number (if any): _____ Flag of ship: _____

Seafarer (full name): _____ Position / rank: _____

Month and year: _____ Watchkeeper:² yes ☐ no ☐

Page 1 of 2

Record of hours of work/rest³

Please mark periods of work or rest, as applicable, with an X, or using a continuous line or arrow.

COMPLETE THE TABLE ON THE REVERSE SIDE

The following national laws, regulations and/or collective agreements governing limitations on working hours or minimum rest periods apply to this ship:

I agree that this record is an accurate reflection of the hours of work or rest of the seafarer concerned.

Name of master or person authorized by master to sign this record _____

Signature of master or authorized person _____

Signature of seafarer _____

A copy of this record is to be given to the seafarer. This form is subject to examination and endorsement under procedures established by _____ (name of competent authority)

¹ The terms used in this model table are to appear in the working language or languages of the ship and in English.² Check ☒ as appropriate.³ Delete as appropriate.

NOT TO BE COMPLETED BY THE SEAFARER¹

Hours of work or rest, as applicable, in any 24-hour period ²		Hours of work or rest, as applicable, in any 7-day period ²	
Hours	Comments	Hours of rest in 24-hour period	
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THIRD SCHEDULE

(Regulation 20)

Publication of information related to detentions and inspections in accordance with regulation 20

- name of the ship,
 - IMO number,
 - type of ship,
 - tonnage (gt),
 - year of construction as determined on the basis of the date indicated in the ship's safety certificates,
 - name and address of the shipowner or operator of the ship,
 - in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,
 - flag State,
 - the classification society or classification societies, where relevant, which has/ have issued to this ship the class certificates, if any,
 - the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
 - port and date of the last expanded inspection stating, where appropriate, whether a detention was ordered,
 - port and date of the last special survey and the name of the organisation which carried out the survey,
 - number of detentions during the 24 previous months,
 - country and port of detention,
 - date when the detention was lifted,
 - duration of detention, in days,
 - number of deficiencies found and the reasons for detention, in clear and explicit terms,
 - description of the measures taken by the competent authority and, where relevant, by the classification society as a follow-up to detention,
 - if the ship has been refused access to any port, the reasons for such measure in clear and explicit terms,
 - indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention,
 - description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, or which has been refused access to any port.
-

APPENDICES

APPENDIX 1

CHAPTER VIII Watchkeeping

Regulation VIII/1

Fitness for duty

1 Each Administration shall, for the purpose of preventing fatigue:

.1 establish and enforce rest periods for watchkeeping personnel and those whose duties involve designated safety, security and prevention of pollution duties in accordance with the provisions of section A-VIII/1 of the STCW Code; and

.2 require that watch systems are so arranged that the efficiency of all watchkeeping personnel is not impaired by fatigue and that duties are so organized that the first watch at the commencement of a voyage and subsequent relieving watches are sufficiently rested and otherwise fit for duty.

2 Each Administration shall, for the purpose of preventing drug and alcohol abuse, ensure that adequate measures are established in accordance with the provisions of section A-VIII/1 while taking into account the guidance given in section B-VIII/1 of the STCW Code.

APPENDIX 2

CHAPTER VIII Standards regarding watchkeeping

Section A-VIII/1

Fitness for duty

1 Administrations shall take account of the danger posed by fatigue of seafarers, especially those whose duties involve the safe and secure operation of a ship.

2 All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch and those whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than:

1 a minimum of 10 hours of rest in any 24-hour period; and

2 77 hours in any 7-day period.

3 The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the intervals between consecutive periods of rest shall not exceed 14 hours.

4 The requirements for rest periods laid down in paragraphs 2 and 3 need not be maintained in the case of an emergency or in other overriding operational conditions. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

5 Administrations shall require that watch schedules be posted where they are easily accessible. The schedules shall be established in a standardized format* in the working language or languages of the ship and in English.

6 When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.

7 Administrations shall require that records of daily hours of rest of seafarers be maintained in a standardized format,¹⁰ in the working language or languages of the ship and in English, to allow monitoring and verification of compliance with the provisions of this section. The seafarers shall receive a copy of the records pertaining to them, which shall be endorsed by the master or by a person authorized by the master and by the seafarers.

¹⁰ The IMO/ILO Guidelines for the development of tables of seafarers' shipboard working arrangements and formats of records of seafarers' hours of work or hours of rest may be used.

8 Nothing in this section shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

9 Parties may allow exceptions from the required hours of rest in paragraphs 2.2 and 3 above provided that the rest period is not less than 70 hours in any 7-day period.

Exceptions from the weekly rest period provided for in paragraph 2.2 shall not be allowed for more than two consecutive weeks. The intervals between two periods of exceptions on board shall not be less than twice the duration of the exception.

The hours of rest provided for in paragraph 2.1 may be divided into no more than three periods, one of which shall be at least 6 hours in length and neither of the other two periods shall be less than one hour in length.

The intervals between consecutive periods of rest shall not exceed 14 hours.

Exceptions shall not extend beyond two 24-hour periods in any 7-day period.

Exceptions shall, as far as possible, take into account the guidance regarding prevention of fatigue in section B-VIII/1.

10 Each Administration shall establish, for the purpose of preventing alcohol abuse, a limit of not greater than 0.05% blood alcohol level (BAC) or 0.25 mg/l alcohol in the breath or a quantity of alcohol leading to such alcohol concentration for masters, officers and other seafarers while performing designated safety, security and marine environmental duties.

APPENDIX 3

CHAPTER VIII Guidance regarding watchkeeping

Section B-VIII/1

Guidance regarding fitness for duty

Prevention of fatigue

1 In observing the rest period requirements, “overriding operational conditions” should be construed to mean only essential shipboard work which cannot be delayed for safety, security or environmental reasons or which could not reasonably have been anticipated at the commencement of the voyage.

2 Although there is no universally accepted technical definition of fatigue, everyone involved in ship operations should be alert to the factors which can contribute to fatigue, including, but not limited to, those identified by the Organization¹¹, and take them into account when making decisions on ship operations.

3 In applying regulation VIII/1, the following should be taken into account:

.1 provisions made to prevent fatigue should ensure that excessive or unreasonable overall working hours are not undertaken. In particular, the minimum rest periods specified in section A-VIII/1 should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties;

.2 the frequency and length of leave periods, and the granting of compensatory leave, are material factors in preventing fatigue from building up over a period of time; and

.3 the provisions may be varied for ships on short sea voyages, provided special safety arrangements are put in place.

4 Exceptions provided for in section A-VIII/1, paragraph 9, should be construed to mean the exceptions laid down by the ILO Convention on Seafarers’ Hours of Work and the Manning of Ships, 1996 (No.180) or the Maritime Labour Convention, 2006, when it enters into force. The circumstances under which such exceptions are applied should be defined by the Parties.

5 Based on information received as a result of investigating maritime casualties, Administrations should keep their provisions on prevention of fatigue under review.

¹¹ See the annex to IMO Assembly resolution A.772(18) on Fatigue factor in manning and safety, paragraphs 2 to 4.4.1 and MSC/Circ.1014 on Guidance on fatigue mitigation and management

Prevention of drug and alcohol abuse

6 Drug and alcohol abuse directly affect the fitness and ability of a seafarer to perform watchkeeping duties or duties that involve designated safety, prevention of pollution and security duties. Seafarers found to be under the influence of drugs or alcohol should not be permitted to perform watchkeeping duties or duties that involve designated safety, prevention of pollution and security duties, until they are no longer impaired in their ability to perform those duties.

7 Administrations should ensure that adequate measures are taken to prevent alcohol and drugs from impairing the ability of watchkeeping personnel and those whose duties involve designated safety, prevention of pollution and security duties, and should establish screening programmes as necessary which:

- .1 identify drug and alcohol abuse;
- .2 respect the dignity, privacy, confidentiality and fundamental legal rights of the individuals concerned; and
- .3 take into account relevant international guidelines.

8 Companies should consider the implementation of a clearly written policy of drug and alcohol abuse prevention, including prohibition to consume alcohol within four hours prior to serving as a member of a watch either by inclusion in the company's quality-management system or by means of providing adequate information and education to the seafarers.

9 Those involved in establishing drug and alcohol abuse prevention programmes should take into account the guidance contained in the ILO publication *Drug and Alcohol Prevention Programmes in the Maritime Industry (A Manual for Planners)*,¹² as may be amended.

¹² Annex III of this manual includes "Guiding Principles on Drug and Alcohol Testing procedures for Worldwide Application in the Maritime Industry". These guiding principles were adopted by the Joint ILO/WHO Committee on the Health of Seafarers (May 1993).

APPENDIX 4

SUBSIDIARY LEGISLATION 234.27

MERCHANT SHIPPING (HOURS OF WORK) REGULATIONS

1st December, 2002;
10th January, 2003;
30th April, 2004

*LEGAL NOTICE 213 of 2002, as amended by Legal Notices 179 of 2004
and 411 of 2007.*

PART I

General

1. The title of these regulations is the Merchant Shipping (Hours of Work) Regulations. Short title.

2. (1) In these regulations, unless the context otherwise requires - Interpretation.

"the Act" means the Merchant Shipping Act; Cap. 234.

"appropriate inspector" means a person so charged in terms of article 154 of the Act;

"company", in relation to a ship, means the owner or other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

"complaint" means any information or report submitted by a member of the crew, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew;

"duly qualified medical practitioner" shall have the same meaning as is assigned to it by article 108(5) of the Act;

"employer", in relation to a seafarer, means the person by whom the worker is (or, where the employment has ceased, was) employed;

"employment", in relation to a seafarer, means employment under his contract, and "employed" shall be construed accordingly;

"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 account of the ship;

"night" means a period -

- (a) the duration of which is not less than nine consecutive hours; and
- (b) which includes the period between midnight and 5 a.m.;

"relevant requirements" means the requirements of regulations 5

	8, 9(3), 10 and 11;
	"seafarer" means any person who is employed or engaged in any capacity on board a sea-going ship, on the business of the ship.
	(2) The Registrar-General is designated as the competent authority for Malta for the purposes of these regulations.
	(3) In relation to any other State, "competent authority" means the national maritime administration maintained by that State for the inspection of ships.
Purpose of regulations,	3. The purpose of these regulations is to implement the majority regulations. of the provisions of the Seafarer's Hours of Work and the Manning of Ships Convention, 1996 (ILO Convention No. 180), and also to give effect in part to the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147) and its Protocol of 1996.
Application.	4. (1) These regulations shall not apply to - (a) fishing vessels; (b) pleasure yachts; (c) oil rigs and drilling platforms when engaged in navigation; and (d) any seafarer who is subject to the provisions of the Seamen Wages Council Wage Regulation Order.
S.L.452.51	(2) Subject to subregulation (1) - (a) these regulations other than regulations 17 to 19 apply to sea-going Maltese ships; and (b) regulations 17 to 19 apply to sea-going ships other than Maltese ships, when they are in a Maltese port and the territorial waters thereof.

PART 2

Hours of Work and Annual Leave

General duties of a person employing a seafarer, master, etc.	5. Subject to regulation 9, it shall be the duty of an employer of a seafarer and a master of a ship to ensure that a seafarer is provided with at least the minimum hours of rest.
Minimum hours of rest.	6. (1) Subject to regulations 7 and 9, the minimum hours of rest shall be not less than - (a) ten hours in any 24-hour period; and (b) 77 hours in any seven-day period. (2) Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between such consecutive periods shall not exceed 14 hours. (3) Musters, fire-fighting and lifeboat drills shall be conducted in a manner which minimises the disturbances of rest periods and does not induce fatigue. (4) A seafarer who is on call shall have adequate compensatory

rest period if his normal period of rest is disturbed by call-outs of work.

7. The Registrar-General may authorise collective agreements permitting exceptions to the limits in regulation 6(1) and (2) but shall have due regard for the general principles of the protection of the health and safety of seafarers.

Minimum hours of rest: further provision.

8. (1) The master of a ship, or a person authorised by the master, shall ensure that a table with the shipboard working arrangements complying with subregulations (2) and (3) is posted-up in a prominent and accessible place in the ship.

Posting-up of table.

(2) A table under subregulation (1) shall contain for every position at least:

- (a) the schedule of service at sea and service in port; and
- (b) the minimum hours of rest as required by these regulations or any collective agreements in force.

(3) A table under subregulation (1) shall be in the format appearing in the First Schedule and shall be in English and in the working language of the ship if that is not English.

9. (1) The master of a ship may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board ship or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea.

Exception for emergencies.

(2) For the purposes of subregulation (1), the master may suspend the hours of rest scheduled in the table under regulation 8 and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

(3) As soon as practicable after the normal situation has been restored the master shall ensure that any seafarer who has performed work in a rest period scheduled in the table under regulation 9 is provided with an adequate rest period.

10. (1) A record of a seafarer's daily hours of rest shall be maintained by the master or a person authorised by the master.

Records.

(2) The record kept under subregulation (1) shall -

- (a) be in the format appearing in the Second Schedule;
- (b) be in English and in the working language of the ship if that is not English;
- (c) be completed monthly in arrears;
- (d) reflect all deviations from the scheduled hours of rest as per the provisions of regulation 9;
- (e) be endorsed by the master or a person authorised by the master, and by the seafarer in question, and a copy thereof shall be given to the seafarer by the master or the person authorised by the master;
- (f) be kept for a period of two years and shall be available for inspection and endorsement by the Registrar-General or an appropriate inspector.

(3) The company and the master shall ensure that a copy of

these regulations and any collective agreements referred to under regulation 7 are carried at all times on board ship and are easily accessible to the seafarers on board.

Young persons.
Amended by:
L.N. 179 of 2004.
S.L. 452.92

11. (1) Notwithstanding the provisions of regulation 5 of the Young Persons (Employment) Regulations, and subject to subregulation (2) hereof, no seafarer under the age of 18 years shall work at night.

(2) A seafarer of the age of 16 years and 17 years may work at night if the work forms part of an established programme of training the effectiveness of which would be impaired by the prohibition in subregulation (1).

Health assessment
and transfer of
seafarers on
watchkeeping
duties to day work.

12. Where -

- (a) a duly qualified medical practitioner has certified that a seafarer engaged on watchkeeping duties is suffering from health problems which the practitioner considers to be due to the fact that the seafarer performs night work, and
- (b) it is possible for the employer to transfer the seafarer to work -
 - (i) to which the seafarer is suited, and
 - (ii) which is to be undertaken during periods such that the seafarer will cease to perform night work,

the seafarer shall be transferred accordingly.

Power to require
information.

13. A company shall provide the Registrar-General with such information on watch-keepers and other seafarers working at night as may be specified by the Registrar-General.

Entitlement to
annual leave.

14. (1) Subject to subregulation (3), a seafarer is entitled in each leave year to a period of leave of at least four weeks.

(2) For the purposes of this regulation, a seafarer's leave year begins -

- (a) on such date during the calendar year as may be agreed in writing by the employer and the seafarer; or
- (b) in absence of such agreement -
 - (i) if the seafarer's employment began on or before the coming into force of this regulation, on that date and each subsequent anniversary of that date; or
 - (ii) if the seafarer's employment begins after the coming into force of this regulation, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where the date on which a seafarer's employment begins is later than the date on which, by agreement as described in subregulation (2)(a), his first leave year begins, the leave to which he is entitled in that leave year shall be a proportion of the period of four weeks equal to the proportion of that leave year remaining on the date on which his employment begins.

(4) Where by virtue of subregulation (3) the period of leave to which a seafarer is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(5) Leave to which a seafarer is entitled under this regulation may not be replaced by a payment in lieu except where the seafarer's employment is terminated.

(6) Subject to subregulation (5) a seafarer shall be paid at the rate of a week's pay in respect of each week of leave to which he is entitled under this regulation.

15. Where during any period a seafarer is entitled to hours of rest or annual leave both under a provision of these regulations and under a separate provision (including a provision of his contract), he may exercise the two rights separately, but may, in taking hours of rest or annual leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

Entitlements under other provisions.

PART 3

Enforcement

16. The Registrar-General, or an appropriate inspector, may inspect any Maltese ship to which these regulations apply and if satisfied that there has been a failure to comply in relation to that ship with the relevant requirements the Registrar-General may:

Inspection and detention of Maltese ship.

- (i) take such measures as are necessary to rectify those conditions and any expenses incurred therefor shall be a charge on the ship;
- (ii) detain the ship.

17. (1) Where -

- (a) the Registrar-General receives a complaint which is not considered manifestly unfounded, or obtains evidence that a ship, which is not a Maltese ship and is in a Maltese port does not comply with the relevant requirements; and
- (b) the ship has called voluntarily at that port in the normal course of its business or for operational reasons,

Reports on ships other than Maltese ships.

the Registrar-General shall prepare a report addressed to the government of the country in which the ship is registered and copied to the Director-General of the International Labour Office.

(2) The identity of the person lodging the complaint must not be revealed to the master of the ship concerned or the company in respect of the ship.

18. (1) When carrying out an inspection in order to obtain evidence that a ship does not comply with the relevant requirements the Registrar-General, or an appropriate inspector shall determine whether -

Inspections of ships other than Maltese ships,

- (a) a table complying with regulation 8(2) is posted-up in a prominent and accessible place on the ship; and

- (b) records are being maintained in compliance with regulation 10; and
- (c) there is proof such records have been endorsed by the competent authority of the country in which the ship is registered.

(2) Where -

- (a) a complaint has been received, or
- (b) the Registrar-General, or an appropriate inspector, from own observations on board believes that seafarers may be unduly fatigued,

the Registrar-General, or the inspector shall carry out a more detailed inspection, in accordance with subregulation (1), to determine whether the hours of rest recorded comply with the standards laid down in regulation 6 and that they have been duly observed, and shall inspect and take into account other records relating to the operation of the ship.

Rectification of deficiencies.

19. (1) If the inspection or more detailed inspection in accordance with regulation 18 reveals that the ship does not comply with the relevant requirements the Registrar-General shall, in the case of deficiencies which are clearly hazardous to the safety or health of seafarers, take such measures as are necessary to ensure that such deficiencies are rectified and any expenses incurred therefor shall be a charge on the ship, and may detain the ship until deficiencies have been rectified or the seafarers in question have been sufficiently rested.

(2) If there is clear evidence that watchkeeping personnel for the first watch, or subsequent relieving watches, are unduly fatigued the Registrar-General shall detain the ship until the deficiencies found have been rectified or the seafarers in question have been sufficiently rested.

(3) If the Registrar-General takes either of the measures specified in subregulations (1) and (2), the Registrar-General shall forthwith notify -

- (a) the master of the ship;
- (b) the company in respect of the ship; and
- (c) the maritime administration and the nearest maritime, consular or diplomatic representative of the flag State of the ship,

and shall inform them of the results of any inspection in accordance with regulation 18, of any decisions taken and of any corrective actions required.

(4) The Registrar-General shall not in exercise of his power under this regulation detain or delay the ship unreasonably.

Release of information.

20. The Registrar-General shall ensure the publication, at least every month, of the information specified in the Third Schedule concerning ships to which regulations 17 to 19 apply which during the previous month have been detained in a port in Malta.

PART 4

Penalties

21. (1) Any contravention by -

- (a) the master of a ship of regulation 5, regulations 8(1), 9(3) or 10(1), (2)(e) or (3);
- (b) an employer of regulation 5;
- (c) a person authorised by the master of a ship of sub-regulation 8(1) or 10(1) or (2)(e); or
- (d) a company of sub-regulation 10(3) or regulation 13,

Penalties.
Amended by:
L.N. 411 of 2007.

shall be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37) for each offence.

(2) Where there is a contravention of regulation 6(3) or (4) the master of the ship shall for each offence be liable to a fine (*multa*) of not more than one thousand and one hundred and sixty-four euros and sixty-nine cents (€1,164.69).

(3) Where there is a contravention of regulation 11(1) the employer of the seafarer under the age of 18 years shall be liable to a fine (*multa*) of not more than one thousand and one hundred and sixty-four euros and sixty-nine cents (€1,164.69).

(4) Where there is a contravention of regulation 14 the employer of the seafarer shall be liable to a fine (*multa*) of not more than two thousand and three hundred and twenty-nine euros and thirty-seven cents (€2,329.37).

FIRST SCHEDULE

(Regulation 8)

SCHEDULE I
(Regulation 8)

Model format for a table of shipboard working arrangements¹

e of ship: _____ Flag of ship: _____ IMO number (if any): _____ Latest update of table: _____ () of () pages
 maximum hours of work or minimum hours of rest are applicable in accordance with: _____ (national law or regulation) issued in conformity with ILO's Seafarers' Convention, 1978, as amended (STCW Convention), and with any applicable collective agreement registered or authorized in accordance with that Convention and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention).
 minimum hours of work or minimum hours of rest:³ _____ requirements: _____

[illegible]

Signature of master

The terms used in this model table are to appear in the working language or languages of the ship and in English.

See overleaf for selected extracts from ILO Convention 180 and the STCW Convention.

Delete as applicable.

For those positions/ranks that are also listed in the ship's safe manning document, the terminology used should be the same as in that document.

For watchkeeping personnel, the comments section may be used to indicate the anticipated number of hours to be devoted to unscheduled work and any such hours should be included in the appropriate total daily work hours column.

Selected texts from ILO Convention 180 and the STCW Convention

ILO Convention 180

- Art. 5 paragraph 1 The limits on hours of work or rest shall be as follows: (a) maximum hours of work shall not exceed: (i) 14 hours in any 24-hour periods and (ii) 72 hours in any 7-day period; or (b) minimum hours of rest shall not be less than: (i) 10 hours in any 24-hour period; and (ii) 77 hours in any 7-day period.
- Art. 5 paragraph 2 Hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.
- Art. 5 paragraph 6 Nothing in paragraphs 1 and 2 shall prevent the Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall as far as possible, follow the standards set out but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.
- Art. 7 paragraph 1 Nothing in this Convention shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.
- Art. 7 paragraph 3 As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

STOW Conrention

Section A-VIII/I of the STCW Code (mandatory)

1. All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch shall be provided a minimum of 10 hours rest in any 24-hour period.
2. The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length.
3. The requirements for rest periods laid down in paragraph 1 and 2 need not be maintained in the case of an emergency or drill or in other overriding operational conditions.
4. Notwithstanding the provisions of paragraphs 1 and 2, the minimum period of 10 hours may be reduced to not less than 6 consecutive hours provided that any such reduction shall not extend beyond 2 days and not less than 70 hours of rest are provided each 7-day period.
5. Administrations shall require that watch schedules be posted where they are easily accessible.

Section B-VIII/1 of the STCW Code (guidance)

3. In applying regulation VIII/1, the following should be taken into account:
- .1 provisions made to prevent fatigue should ensure that excessive or unreasonable overall working hours are not undertaken. In particular, the minimum rest periods specified in section A-VIII/1 should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties;
 - .2 that the frequency and length of leave periods, and the granting of compensatory leave, are material factors in preventing fatigue from building up over a period of time; and
 - .3 the provisions may be varied for ships on short-sea voyages, provided special safety arrangements are put in place.
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SECOND SCHEDULE

(Regulation 10)

Page 1 of 2

SCHEDULE II
(Regulation 10)

Model format for record of hours of work or hours of rest of seafarers¹

Name of ship: _____ IMO number (if any): _____ Flag of ship: _____

Seafarer (full name): _____ Position / rank: _____

Month and year: _____ Watchkeeper:² yes ☐ no ☐

Record of hours of work/rest³

Please mark periods of work or rest, as applicable, with an X, or using a continuous line or arrow.

COMPLETE THE TABLE ON THE REVERSE SIDE

The following national laws, regulations and/or collective agreements governing limitations on working hours or minimum rest periods apply to this ship: _____

I agree that this record is an accurate reflection of the hours of work or rest of the seafarer concerned.

Name of master or person authorized by master to sign this record: _____

Signature of master or authorized person: _____ Signature of seafarer: _____

A copy of this record is to be given to the seafarer. This form is subject to examination and endorsement under procedures established by _____ (name of competent authority)

¹ The terms used in this model table are to appear in the working language or languages of the ship and in English.

² Check ☒ as appropriate.

³ Delete as appropriate.

NOT TO BE COMPLETED BY THE SEAFARER!																								
Please mark periods of work or rest as applicable, with an "X", or using a continuous line or arrow																								
Hours	Hours of work or rest as applicable in any 24-hour period																							
	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Date																								
Comments																								
Hours of work or rest as applicable in any 24-hour period																								
Hours of work or rest as applicable in any 7-day period																								
Hours	00	01	02	03	04	05	06	07	08	09	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Date																								
Comments																								
Hours of work or rest as applicable in any 24-hour period																								
Hours of work or rest as applicable in any 7-day period																								

¹ For completion and use in accordance with the procedures established by the competent authority in compliance with the relevant requirements of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (Convention No. 180).

² Additional calculations or verifications may be necessary to ensure compliance with the relevant requirements of the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (Convention No. 180) and the International Convention on Standards of Training, Certification and Watchkeeping, 1978, as amended (STCW Convention).

THIRD SCHEDULE

(Regulation 20)

Publication of information related to detentions and inspections in accordance with regulation 20

- name of the ship,
 - IMO number,
 - type of ship,
 - tonnage (gt),
 - year of construction as determined on the basis of the date indicated in the ship's safety certificates,
 - name and address of the shipowner or operator of the ship,
 - in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,
 - flag State,
 - the classification society or classification societies, where relevant, which has/ have issued to this ship the class certificates, if any,
 - the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
 - port and date of the last expanded inspection stating, where appropriate, whether a detention was ordered,
 - port and date of the last special survey and the name of the organisation which carried out the survey,
 - number of detentions during the 24 previous months,
 - country and port of detention,
 - date when the detention was lifted,
 - duration of detention, in days,
 - number of deficiencies found and the reasons for detention, in clear and explicit terms,
 - description of the measures taken by the competent authority and, where relevant, by the classification society as a follow-up to detention,
 - if the ship has been refused access to any port, the reasons for such measure in clear and explicit terms,
 - indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention,
 - description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, or which has been refused access to any port.
-

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