

LEGISLATION DRAFTING PROJECT

MERCHANT SHIPPING (HOURS OF WORK) REGULATIONS 2002

A Legislation Drafting Project submitted to the International Maritime Organisation
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of the degree of Master of Laws (LL.M)

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Explanatory Note

(this note shall not form part of the Regulations)

When the International Maritime Organisation was established back in 1948, the principal aim of its founders was to promote safety at sea. By the time IMO began its operations some ten years later, its mandate was extended to include the protection of the marine environment. Integral to both these aspects of IMO's mandate is the Organisation's recognition of the so-called human element. It is a recognition that 80% of all shipboard accidents are due to human error and an acknowledgement that it is the human element on board the ship that can either provide the skills that may prevent a disaster, or human frailty or plain lack of competence that can cause one.

The rights and duties of seafarers within any maritime legal regime should occupy a central role to ensure order, discipline and above all safety at sea. Consideration of the human element has become a standing subject within the Organisation and all of the Organisation's sub-committees are now charged with addressing human element factors when deliberating new and existing regulations and providing guidance.

The monitoring of seafarers' hours of work and rest is seen as an important element in reducing seafarers' fatigue, thereby contributing to the promotion of maritime safety and also to seafarers' health.

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

ILO Convention 180 was adopted on 22 October 1996 at the 84th Maritime Convention of the International Labour Conference. The Convention aims to promote the health and safety of workers, improve maritime safety and protect the marine environment. The Convention establishes limits on seafarers' hours of work or rest on board ships. Notably it stipulates a maximum of 14 hours work per day and 72 hours per week for seafarers on board ships, with minimum rest periods of 10 hours daily and 77 hours weekly. Another provision effectively raises the minimum age for seafarers from 14 to 16, a

significant step in the context of the ILO's worldwide campaign to eliminate exploitative child labour.

The Merchant Shipping (Hours of Work) Regulations 2002

The Merchant Shipping (Hours of Work) Regulations implement–

- Seafarers' Hours of Work and Manning of Ships Convention, 1996 (No.180);
- the majority of the provisions of Council Directive 1999/63/EC concerning the Agreement on the organisation of working time of seafarers concluded by the European Community Ship owners' Association and the Federation of Transport Workers' Unions in the European Union; and
- European Parliament and Council Directive 1999/95/EC concerning the enforcement of provisions in respect of seafarers' hours of work on board ships calling at Community ports.

Part 1 of the Regulations provides for the citation, commencement, scope and definitions. Part 2 tackles the most important provisions of the ILO Convention, that is, it requires employers to ensure that seafarers have at least the specified minimum hours of rest, require records to be kept of seafarers' daily hours of rest, and establish seafarers' entitlement to annual leave. The Convention and the Directive set out limits on the maximum hours of work **or** prescription of minimum hours of rest. Prescribing minimum hours of rest would ensure that fatigue and safety concerns were addressed while allowing necessary operational flexibility. The Regulations have been written in terms of minimum hours of rest. This addresses the safety case for ensuring that seafarers are provided with a minimum period of rest. However there is scope for flexibility in setting the limits on hours provided that such flexibility is collectively agreed. The Regulations require that a table or schedule of duties is produced, setting out the hours of work and rest periods. It should provide that the master, officers and all other seafarers do not work more hours than is safe in relation to the safety of the ship. The Merchant Shipping Notice, which is to be issued by the Malta Maritime Authority, and a draft of which is annexed to the Regulations contains detailed requirements and gives guidance on the application of the Regulations. The Merchant Shipping Notice lays down factors which should be taken into account while devising the table.

Part 3 is concerned with the Manning of Ships. This Part makes reference to the above referred to Merchant Shipping Notice issued by the Malta Maritime Authority and which has to be read in conjunction with the Regulations. The Merchant Shipping Notice highlights the various responsibilities of the owner with regard to manning and also gives guidance to the establishment of Safe Manning Requirements.

Part 4 provides for the Enforcement of the Regulations. Compliance with the relevant requirements of the Regulations will be checked as part of the Malta Maritime Authority's inspection regime. In addition to examining records, the Malta Maritime Authority's inspectors will also have a range of measures available to them, to respond to complaints from seafarers or information received from other sources, for example, Port State Control inspectors in other ports. The measures include reports to the vessel's flag State, inspections and detailed inspections or, ultimately, detention. The concern that seafarers might be reluctant to report infringements of the rules because they were afraid of the consequences has been addressed. The Regulations make it clear that, where a complaint is received, the identity of the complainant must not be revealed. Inspection may also be triggered by a complaint from a person or body with a legitimate interest in the health and safety of the crew. Inspection would include a check that an appropriate table of working schedules is posted up and that records of work and rest periods are being maintained.

Part 5 of the Regulations lays down the penalties whereby a fine of not less than 1000 units and not more than 2000 units is prescribed for the master of a ship, the employer, the person authorised by the master of a ship or a company, who contravenes the relevant provisions of the Regulations.

Part 6 of the Regulations provides that the Civil Court First Hall shall have jurisdiction to try and determine cases and actions that in accordance with the Regulations are to be brought before it.

A draft of the Merchant Shipping Notice is annexed to the Regulations. Attachments A and B provide a format of the table setting out the hours of work and rest periods, and a format of the records which should be kept. The tables at Attachments C and D provide guidance on the numbers of certificated deck and engineer officers appropriate to different sizes of ships, tonnages and trading areas.

Incorporating the ILO Convention (No. 180) into the Laws of Malta

The Malta Merchant Shipping Act provides that ILO Convention (No.180) may be incorporated through regulations made by the Minister under the powers conferred to him under section 375 which states that:

'375. (1) For the purposes of the Ratification of Treaties Act, the Government of Malta is hereby empowered to ratify, or accede to the treaties or conventions ... and the Minister may upon the ratification or accession of any of the said treaties or conventions make regulations giving effect to the provisions thereof, and such power shall include the power to provide that any provisions of this Act inconsistent with the provisions of any such treaty or convention shall no longer apply.

*(2) The treaties and conventions to which sub-article (1) refers are the following: [...]
(x) Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (NO. 180) signed in Geneva on the 2nd October, 1996; ...'*

Furthermore, Article 122C of the Merchant Shipping Act empowers the Minister to lay down regulations governing the conditions of service of persons employed on Maltese ships and of Maltese citizens serving in foreign ships:

'122C. (1) Subject to the provisions of this article and notwithstanding the provisions of any other law or of any regulations, rules and orders made or deemed to be made thereunder, the conditions of service of persons employed on Maltese ships and of Maltese citizens serving in foreign ships shall be governed by regulations made by the Minister under this article.

(2) Without prejudice to the generality of the foregoing sub-article, regulations made thereunder may, in particular, make provision in respect of- [...]

(h) the maximum hours of work or the minimum hours of rest for persons employed on Maltese ships;

(i) the maintenance of records of daily hours of work or of daily hours of rest of persons employed on Maltese ships;

(k) the posting on board Maltese ships of a table containing the shipboard working arrangements;

(l) the employment of persons under the age of eighteen years; ...'

Article 106 (2) empowers the Minister to make regulations prescribing circumstances and capacities in which persons over the age of sixteen years but under the age of eighteen years or under such lower age as may be specified in the regulations may not be employed in a Maltese ship or may be so employed only subject to such conditions as may be specified in the regulations.

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The Merchant Shipping (Hours of Work) Regulations 2002

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L.N. of 2002

MERCHANT SHIPPING ACT (CAP. 234)

The Merchant Shipping (Hours of Work) Regulations 2002

IN exercise of the powers conferred by articles 106, 122C and 375 of the Merchant Shipping Act and of all other powers enabling him in that behalf, the Minister for Transport and Communications hereby makes the following Regulations:

PART 1

GENERAL

Citation and commencement

1. (1) These Regulations may be cited as the Merchant Shipping (Hours of Work) Regulations 2002.
- (2) These Regulations shall come into force on such date as the Minister may, by notice in the Gazette, appoint, and different dates may be so appointed for different provisions and different purposes of these Regulations.

Scope and Definitions

2. (1) These Regulations apply to sea-going Maltese ships wherever they may be, being ships other than fishing vessels and pleasure vessels.
- (2) Regulations 14 to 16 apply to sea-going ships of Member States other than Malta, being ships other than fishing vessels and pleasure vessels, when such ships are in a Maltese port or in Maltese waters.

- (3) In these Regulations, unless the context otherwise requires –

“Act” means the Merchant Shipping Act;

“Authority” means the Malta Maritime Authority as defined in the Act;

“company”, in relation to a ship, means the owner or any 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;

“Convention” means the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180);

“employer”, in relation to a seafarer, means the person by whom the seafarer 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;

“Member State” means a State which has ratified the Convention and for which the Convention is in force;

“Merchant Shipping Notice” means a Notice described as such and issued by the Malta Maritime Authority; and any reference to a particular Merchant Shipping Notice includes a reference to any such

document amending or replacing that Notice which is considered by the Minister to be relevant from time to time;

“Minister” means the Minister responsible for shipping and includes any public officer, or an officer of any body corporate established by law, acting under his authority;

“night” means a period–

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

“pleasure vessel” means–

(a) any vessel which at the time it is being used is:

(i) (aa) in the case of a vessel owned by an individual or individuals is used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or

(bb) in the case of a vessel owned by a body corporate, the persons on the vessel are employees or officers of the body corporate, or their immediate family or friends; and

(ii) on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or

(b) any vessel wholly owned by or on behalf of a members’ club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family; and for the use of which any charges levied are paid into club funds and applied for the general use of the club; and

(c) in the case of any vessel referred to in paragraphs (a) or (b) above no other payments are made by or on behalf of users of the vessel, other than by the owner.

In this definition “immediate family” means–

in relation to an individual, the husband or wife of the individual, and a relative of the individual or the individual’s husband or wife, and “relative” means brother, sister, ancestor or lineal descendant;

“seafarer” means any person who is employed or engaged in any capacity on board a seagoing ship to which these Regulations apply;

“sea-going ship” means a ship certificated for navigation at sea by the competent authority;

“surveyor” means a person mentioned in article 367 of the Act;

“unit” shall have the same meaning as is attributed to it under the Act.

(4) The Authority is designated as the Competent Authority for Malta for the purposes of these Regulations.

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

(6) Unless the context otherwise requires, words and expressions used in these Regulations shall have the same meaning assigned to them in the Convention.

PART 2

HOURS OF WORK AND ANNUAL LEAVE

General duties of person employing a seafarer, master, etc

3. It shall be the duty of the employer of a seafarer to ensure that the seafarer is provided with at least the minimum hours of rest as provided in regulation 4.

Minimum hours of rest

4. (1) 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 consecutive periods of rest shall not exceed 14 hours.
- (3) Musters, fire-fighting and lifeboat drills shall be conducted in a manner which minimises the disturbance of rest periods and does not induce fatigue.
- (4) A seafarer who is on call shall have an adequate compensatory rest period if his normal period of rest is disturbed by call-outs to work.
- (5) Seafarers under 18 years of age shall not work at night.

Minimum hours of rest: further provision

5. The competent authority may authorise or register collective agreements permitting exceptions to the limits in regulation 4.

Posting-up of table

6. (1) The master of a ship, or a person authorised by the master, shall ensure that a table complying with sub-regulation (2) of this regulation is posted-up in a prominent and accessible place in the ship.
- (2) A table under sub-regulation (1) of this regulation shall—
- (a) contain the information specified in the Merchant Shipping Notice;
 - (b) be in a format which complies with what is specified in that Merchant Shipping Notice; and
 - (c) be in the working language of the ship and in English.

Records

7. (1) A record of a seafarer's daily hours of rest shall be maintained by the master or a person authorised by the master.
- (2) The procedures for keeping such records, including the intervals at which the information is to be recorded, and the format of such records shall comply with the requirements specified in the Merchant Shipping Notice.
- (3) A record shall be in the working language of the ship and in English.
- (4) The record kept under sub-regulation (1) of this regulation shall be endorsed by the master or a person authorised by the master, and by the seafarer in question, and a copy of the record shall be given to the seafarer by the master or the person authorised by the master.
- (5) The company and the master shall ensure that a copy of these Regulations, including any relevant Merchant Shipping Notices, and any collective agreements under regulation 5 are carried at all times on board the ship and are easily accessible to the seafarers on board.

Power to require information

8. The Competent Authority has the power to require such information on watch-keepers and other seafarers working at night as may be specified by the Authority.

Exception for emergencies

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 the ship or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea.
- (2) For the purposes of sub-regulation (1) of this regulation, the master may suspend the hours of rest scheduled in the table under regulation 6 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 6 is provided with an adequate rest period.

Entitlement to annual leave

10. (1) Subject to sub-regulation (3) of this regulation, 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; and
 - (b) in the absence of such agreement—
 - (i) if the seafarer's employment began on or before the date of the coming into force of these Regulations, on that date and each subsequent anniversary of that date; or
 - (ii) if the seafarer's employment begins after the date of the coming into force of these Regulations, 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 sub-regulation (2) paragraph (a) of this regulation, 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 sub-regulation (3) of this regulation 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) 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.

Entitlements under other provisions

11. 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 not 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.

PART 3 MANNING OF SHIPS

Manning of Ships

12. Every ship to which these Regulations apply shall be sufficiently, safely and efficiently manned in accordance with the applicable Merchant Shipping Notice.

PART 4 ENFORCEMENT

Inspection and detention of a Maltese ship

13. A surveyor may inspect any ship registered in the Maltese territory, and, if he is satisfied that there has been a failure to comply in relation to that ship with the relevant requirements, he may detain the ship, but shall not in the exercise of these powers detain or delay the ship unreasonably.

Reports on ships of other member States

14. (1) Where the Competent Authority receives a complaint which it does not consider manifestly unfounded, or obtains evidence that a ship in a port in Malta does not comply with the relevant requirements; and the ship has called voluntarily at that port in the normal course of its business or for operational reasons, the competent authority shall prepare a report addressed to the government of the State in which the ship is registered.
- (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.

Inspections of ships of other member States

15. (1) When carrying out an inspection in order to obtain evidence that a ship does not comply with the relevant requirements a relevant surveyor shall determine whether—
 - (a) a table complying with regulation 6 is posted-up in a prominent and accessible place in the ship; and
 - (b) records are being maintained in compliance with regulation 7; and
 - (c) there is proof such records have been endorsed by the competent authority of the State in which the ship is registered.
- (2) Where a complaint has been received, or the surveyor from his own observations on board believes that seafarers may be unduly fatigued, the surveyor shall carry out a more detailed inspection, in accordance with sub-regulation 1 of this regulation, to determine whether the hours of rest recorded comply with the standards laid down in these Regulations 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

- 16. (1)** If the inspection or more detailed inspection under regulation 15 reveals that the ship does not comply with the relevant requirements the relevant surveyor shall, in the case of deficiencies which are clearly hazardous to the safety or health of seafarers, take the measures necessary to ensure that such deficiencies are rectified, and may detain the ship until deficiencies have been rectified or the seafarers in question have been sufficiently rested.
- (2)** If a ship is detained under sub-regulation (1) of this regulation, the Competent Authority shall inform
- (a)** the master of the ship;
 - (b)** the company in respect of the ship; and
 - (c)** either–
 - (i)** the administration of the State whose flag the ship is entitled to fly or the State in which the ship is registered; or
 - (ii)** the nearest consular or diplomatic representative of the State,
- of the results of any inspection, of any decisions taken by the surveyor and of any corrective actions required.
- (3)** The relevant surveyor shall not in exercise of his power under this regulation detain or delay the ship unreasonably.

Enforcement of detention

- 17. (1)** Where a ship is liable to be detained under this Part of these Regulations, article 371 of the Act (which relates to the detention ships) shall apply as if for the words “this Act”, wherever they appear, there were substituted “the Merchant Shipping (Hours of Work) Regulations 2002”.
- (2)** If a claim is brought before the Competent Court relating to a detention notice in relation to a ship, and the owner of the ship shows to the satisfaction of the court that–
- (a)** any matter did not constitute a valid basis for the relevant surveyor’s opinion; and
 - (b)** there were no reasonable grounds for the surveyor to form that opinion,
- the court may award the owner such compensation in respect of any loss suffered by him in consequence of the detention of the ship as it deems fit.

Release of information

- 18.** The Competent Authority shall ensure the publication, at least every month, of the information specified in Merchant Shipping Notice concerning ships to which this part of the Regulations apply, which during the previous month have been detained in a port in Malta.

PART 5 **PENALTIES**

Penalties

- 19. (1) Any contravention of the relevant provisions of these Regulations by the master of a ship, an employer, a person authorised by the master of a ship or a company, shall be an offence punishable by a fine of not less than 1000 units and not more than 2000 units.
- (2) In any proceedings for an offence under these Regulations it shall be a defence for the defendant to show that all reasonable steps had been taken by him to ensure compliance with the Regulations.

PART 6
PROCEDURE

Procedure

- 20. Notwithstanding the provisions of any other law the Civil Court, First Hall shall have jurisdiction to try and determine cases and action that in accordance with these Regulations are to be brought before it.

ANNEX

- Draft of the Merchant Shipping Notice
- Attachments A(i) and A(ii)
- Attachments B(i) and B(ii)
- Attachment C
- Attachment D

ANNEX

DRAFT MERCHANT SHIPPING NOTICE

MSN

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Hours of Work and Safe Manning
Revised Provisions from --/--/2002

Application of the Merchant Shipping (Hours of Work) Regulations 2002

Notice to Ship owners, Companies, Managers, Masters, Deck and Engineering Officers and all seafarers on Merchant Ships

from --/--/ 2002 this Notice should be read in conjunction with the Merchant Shipping (Hours of Work) Regulations 2002

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| Summary |
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This Merchant Shipping Notice contains the detailed mandatory requirements specified by the Minister under the Merchant Shipping (Hours of Work) Regulations 2002 which came into force on --/--/2002. It gives guidance on the application of the Regulations.

The guidance is laid out in 2 Sections with Annexes:

Section 1 - Hours of Work

Section 2 - Safe Manning

Key Points

Section 1 -The requirements of the new 2002 Regulations:

- apply to all seafarers employed or engaged in any capacity on board a seagoing ship
- provide for a minimum of 10 hours rest in any 24 hour period and 77 hours in any seven-day period and 4 weeks annual paid leave
- require records of hours of rest to be maintained (pro-formats at Annexes A and B)
- provide for inspection and enforcement by the Malta Maritime Authority

Sections 2 of this Notice clarify the manning guidance tables (at Annexes C and D) and incorporate International Maritime Organization Resolution A21/Res 890 on the Principles of Safe Manning.

SECTION 1 - HOURS OF WORK

1.0 Introduction

- 1.1 The Merchant Shipping (Hours of Work) Regulations 2002, which come into force on --/--/ 2002, implement the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)
- 1.2 The Regulations also implement Council Directive 99/63 and 99/95 EC concerning inspection and enforcement and provide for penalties in the event of non-compliance.

2.0 Application

2.1 The requirements of the of the ILO Convention apply to:
"every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime operations."

For the purposes of these Regulations, the definitions of a) "seafarer", b) "seagoing ship" and c) "ordinarily engaged in commercial maritime operations" are discussed [clarified]below.

2.2 Seafarer

2.2.1 A seafarer is defined as a person employed or engaged in any capacity on board a seagoing ship. This is taken to mean a person whose usual place of work is on board a seagoing ship, and includes crew members, resident entertainers and franchise employees on passenger ships.

2.3 Seagoing

2.3.1 [For the purpose of these Regulations] a seagoing ship is one which is **certificated** under Merchant Shipping legislation, for navigation at sea. The provisions apply whether or not the vessel actually goes to sea.

2.4 Commercial Maritime Operations

2.4.1 All vessels engaged in trade, carrying cargo or fare-paying passengers are covered.

2.5 Definition of Working Time

2.5.1 For the purposes of the Regulations, working time is when seafarers are at their employers' disposal and carrying out their activities or duties. This does not include:

- a) routine travel between home and work;
- b) rest breaks when no work is done;
- c) time spent travelling outside normal working time;
- d) Training, such as non-job-related evening classes or day release courses.

On-Call Time

2.5.2 - This is not yet clearly defined but a recent judgement by the European Court of Justice indicated that on-call time should be regarded as working time when a worker is required to be at their place of work. On-call time is not regarded as working time when a worker is on-call away from the workplace and is therefore free to pursue leisure activities.

3.0 General Duties

3.1 The Regulations require that the master, or any person authorised by the master, is responsible for ensuring compliance with the provisions. This will include the managers of

franchises, who are responsible for the personnel working for the franchise, and any other employer of a seafarer working on board the vessel.

3.2 It is the responsibility of the master, [any person authorised by the master] and the seafarer to ensure, as far as reasonably practicable, that they are properly rested when they begin duty on a ship and that they obtain adequate rest when not on duty. Manning levels should be such as to ensure that, so far as possible, the time and place for taking rest periods are appropriate for achieving a good quality of rest.

4.0 Minimum Hours of Rest (Regulation 4)

4.1 The Regulations require that any company/employer, the master or any person authorised by the master, must ensure that seafarers are provided with at least the minimum hours of rest. These shall be not less than:

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

4.2 It is expected that employers and employees will reach agreement on the arrangements for conducting musters, fire-fighting and lifeboat drills in a way which minimises the disturbance to rest periods and provides compensatory rest for seafarers whose normal rest is disturbed by call-outs to work. Where no adequate arrangements exist the Malta Maritime Authority will use its best efforts to bring both sides together in an agreement to secure sufficient rest for the seafarers concerned.

Minimum Hours of Rest : further provision (Regulation 5)

4.3 Exceptions to the limits on the hours of rest may be allowed provided that they are the result of a collective agreement between employers and seafarers and have due regard to the general principles of the protection of the health and safety of workers.

Such exceptions may take account of more frequent or longer leave periods or the granting of compensatory leave for watch-keeping seafarers or seafarers working on board ships on short voyages.

5.0 Night Workers

5.1 The definition of "night" relates to a period of 9 consecutive hours including the period between midnight and 5 am. Although the Regulations are expressed in "local" time, it is recognised that "ship's time" may be different when a vessel is at sea.

6.0 Posting-up of Table (Regulation 6)

6.1 Companies are required to ensure that a table or schedule of duties is produced setting out the hours of work and rest periods. The format of the notice must comply with the format of the notice attached as Attachment A to this Notice, and it is recommended that the notice in Attachment A be used. It should provide that the master, officers and all other seafarers do not work more hours than is safe in relation to the safety of the ship. In devising the table, operators should take account of factors such as:

- a) trade and type of operation;
- b) type and size of ship;
- c) construction and technical equipment of the ship;
- d) manning levels and changes in crew numbers due to crew changes and sickness;
- e) the maximum period of continuous watch-keeping;
- f) minimum rest periods;
- g) total workload;

h) the seriousness of irregular working hours and their contribution to causing fatigue and the importance of scheduling reasonably stable working hours over a voyage.

6.2 Changes should not be made to the table unless they can be justified by substantially altered work patterns made necessary, for example, by a change in trading pattern or other significant factor. Where it is known that a ship engages in an irregular trading pattern or that working hours are unlikely to be uniform; this can be taken into account and recorded in the schedule.

6.3 It is not necessary to draw up a new table for each voyage, so long as it is applicable to the voyage in question and the composition of the crew for whom it was originally intended has not changed.

6.4 It is the responsibility of the master or authorised person to post up the table in a prominent and accessible place in the ship. Where there is more than one table, the master is responsible for ensuring that all tables are posted in a suitable place. The table(s) must be in English and in the working language of the ship, if that is not English, and should be in the format, and should specify 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 the Regulations or any collective agreements in force.

6.5 **Consultation** - when first drawing up a schedule of duties for a ship, companies should seek the views of the master, who should in turn seek the views of the officers, the seafarers or their representatives or a trade union as appropriate. The final decision on the schedule rests with the operator who will be responsible for ensuring that the schedule is appropriate in relation to the safety of the ship and the performance of duties.

7.0 Exceptions for Emergencies (Regulation 9)

7.1 Regulation 9 recognizes that situations may arise in which a seafarer may be required to work during scheduled hours of rest. These include emergencies which threaten the safety of the ship or the cargo or put life at risk. In these circumstances, the limits may be exceeded provided compensatory arrangements are made to avoid fatigue.

8.0 Records (Regulation 7)

8.1 The master or authorised person is responsible for ensuring that records of hours of rest are maintained for each seafarer serving on the ship. The records should be completed monthly in arrears and these should be in the format attached as Attachment B to this Notice. Each record should be endorsed by the master or authorised person and a copy given to the seafarer.

8.2 In an emergency or when unforeseen events occur (as described in paragraph 7 above), changes may be unavoidable. In these cases records should reflect all deviations from the schedule.

8.3 All records should be kept for 5 years and should be available for inspection by the Malta Maritime Authority surveyors at any time. If during the 5 years, a company ceases to operate, the duty to retain the records remains with the last company.

9.0 Young Persons

9.1 The Convention, in Article 6, prohibits the employment on a ship of any young person *under the age of 16*.

9.2 The requirements of the Convention are in conformity with article 106 relating to young persons of the Merchant Shipping Act.

10.0 Annual Leave (Regulation 10)

10.1 For the purposes of these Regulations, a seafarer is entitled in each leave year to a period of leave of at least four weeks, for which he is entitled to be paid at the rate of a week's pay in respect of each week of leave. It is considered that this entitlement to annual leave will be separate from, and in addition to, periods of rest which seafarers receive as part of their working arrangements. However, it is for employers and employees to decide on the details of how this entitlement is to be provided by negotiation and arrangement between themselves.

10.2 Annual leave may not be replaced by a payment in lieu except where the seafarer's employment is terminated.

10.3 A seafarer's leave year is held to begin on a date set out in an agreement between employee and employer. However if there is no such agreement and the seafarer's employment began before --/--/ 2002 then the leave year begins on that date and each --/-- thereafter. If there is no agreement and the seafarer's employment begins after such date then the leave year begins on the date on which employment begins and each subsequent anniversary of that date.

10.4 Where, because of an agreement between employee and employer, a seafarer's employment begins after the date on which his first leave year begins, he is entitled, in that leave year, to a proportion of four weeks equal to the proportion of that leave year remaining when his employment begins.

10.5 Where a seafarer is entitled to a proportion of a week or a period which includes a proportion of a week, that proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

11.0 Enforcement Provisions (Regulations 13-16)

11.1 Compliance with the relevant requirements of the regulations will be checked as part of the Malta Maritime Authority's inspection regime. Inspection may also be triggered by a complaint from a person or body with a legitimate interest in the health and safety of the crew. In such cases the identity of the complainant will remain confidential. Inspection would include a check that an appropriate table of working schedules is posted up and that records of work and rest periods are being maintained. If the authorised surveyor has grounds for believing that seafarers may be unduly fatigued he will check in more detail that the hours of rest recorded conform to the standards and that they have actually been observed. Where conditions are clearly hazardous to safety or health, the ship may be detained.

SECTION 2 - SAFE MANNING

12.0 Introduction

12.1 The Regulations require all sea-going vessels to which the regulations apply to be sufficiently, safely and efficiently manned

13.0 Responsibilities of Owners and Operators

13.1 It is the responsibility of the owner or operator to ensure that ships are safely and sufficiently manned.

13.2 In preparing a proposal for the minimum safe manning level of a ship, the owner or operator should:

- 1 make an assessment of the tasks, duties and responsibilities of the ship's complement required for its safe operation, for the protection of the marine environment and dealing with emergency situations;
- 2 prepare and submit a proposal for the minimum safe manning level based upon assessment of the numbers and grades/capacities in the ship's complement required for the safe operation and for the protection of the environment, justifying the proposal by explaining how the proposed ship's complement will deal with emergency situations, including the evacuation of passengers where applicable;
- 3 ensure that the minimum safe manning level is adequate at all times and in all respects, including meeting peak workload situations, conditions and requirements, and is in accordance with the principles, recommendations and guidelines contained in this MSN;
- 4 In case of changes in trading area(s), operations, construction, machinery, equipment or operation and maintenance of the ship, which may affect the safe manning level, prepare and submit a new proposal for the minimum safe manning level.

13.3 In conjunction with these factors, and to ensure that personnel do not work more hours than is safe, the owner or operator should: -

- 1 identify all the functions to be undertaken on board during a representative voyage or operational period, including determination of the number of personnel required to undertake the relevant tasks and duties under both peak and routine work load conditions;
- 2 identify those functions that constitute a normal operation and determine the minimum numbers of personnel required to undertake the concurrent tasks and duties safely;
- 3 identify the skills and experience required to perform those functions;
- 4 establish working arrangements (including on passenger ships, the establishment of a working language - in accordance with regulation 13 of Chapter V of the Safety of Life at Sea Convention (SOLAS) to ensure that the master and crew are capable of undertaking concurrent and continuing operations at the appropriate level(s) of responsibility, as specified, with respect to their skills and training; and
- 5 ensure that the working arrangements allow for sufficient rest periods to avoid fatigue, and draw up work schedules accordingly.

13.4 In applying these principles, proper account should be taken of the International Maritime Organization (IMO) Resolution A.481 (XII), International Labour Organization (ILO), International Trade Union (ITU) and World Health Organization (WHO) instruments with respect to:

- 1 watch-keeping;
- 2 hours of work or rest;
- 3 safety management;
- 4 certification of seafarers;
- 5 training of seafarers;
- 6 occupational health and hygiene;
- 7 crew accommodation.

14.0 Establishing Safe Manning Requirements

14.1 The Malta Maritime Authority requires all ships to be sufficiently manned for their safe operation, having regard to the nature of their work. To ensure safe operation, a minimum level of manning should be determined in accordance with the principles in paragraph 13 above. To make that assessment, the minimum safe manning level should take into account all relevant factors including:

- 1 frequency of port calls, length and nature of the voyage;
- 2 trading area(s), waters and type of operations in which the ship or vessel is involved and any special requirements of the trade or operation;
- 3 number, size (kW) and type of main propulsion units and auxiliaries;
- 4 size, type of ship, equipment and layout;
- 5 construction and technical equipment of ship;
- 6 cargo to be carried or operational requirements;
- 7 method of maintenance;
- 8 extent to which training activities are conducted on board; and

- 9 how the proposed complement will deal with various emergency situations that may arise;
- 10 navigational duties and responsibilities as required by STCW 95 including the following:
 - .1 plan and conduct safe navigation;
 - .2 maintain a safe navigational watch;
 - .3 manoeuvre and handle the ship in all conditions and during all operations;
 - .4 safely moor and unmoor the ship; and
 - .5 maintain safety whilst in port.
- 11 Cargo handling and stowage:
 - .1 plan and monitor the safe loading, stowage, securing, carriage and unloading of cargo.
- 12 Ship specific operations:
 - .1 the nature and duration of the operation(s) the ship undertakes and local environmental conditions.
- 13 Ship operations and care for persons onboard, and maintaining life-saving, fire-fighting and other safety systems in operational condition:
 - .1 maintain the safety and security of all persons on board and keep life saving, fire fighting and other safety systems in operational condition, including the ability to muster and disembark passengers and non-essential personnel;
 - .2 operate and maintain watertight closing arrangements;
 - .3 perform operations necessary to protect the marine environment;
 - .4 provide medical care on board; and
 - .5 undertake administrative tasks required for the safe operation of the ship.
- 14 Marine engineering tasks and duties:
 - .1 operate and monitor the ship's main propulsion and auxiliary machinery;
 - .2 maintain a safe engineering watch;
 - .3 manage and perform fuel and ballast operations; and
 - .4 maintain ship's engine equipment, system and services.
- 15 Electrical, electronic and control engineering duties:
 - .1 operate ship's electrical and electronic equipment; and

- .2 maintain ship's electric and electronic systems.
- 16 Radio communications:
 - .1 transmit and receive information using ship communication equipment;
 - .2 maintain safe radio watch;
 - .3 provide communications in emergencies.
- 17 Maintenance and repair:
 - .1 carry out maintenance and repair work to the ship and its machinery, equipment and systems, as appropriate to the method of maintenance and the repair system used.
- 14.4 In addition, the level of safe manning should also take into consideration:
 - 1 the management of safety functions of a ship underway, not underway or operating in near stationary mode;
 - 2 except in ships of limited size, the provision of qualified deck officers to ensure that is not necessary for the master to keep regular watches by adopting a three watch system;
 - 3 except in ships of limited propulsion power or operating under provisions for unattended machinery spaces, the provision of qualified engineering officers to ensure that it is not necessary for the chief engineer to keep regular watches by adopting a three watch system;
 - 4 the maintenance of applicable occupational health and hygiene standards on board; and
 - 5 the provision of proper food and drinking water for all persons on board.

15.0 Guidance on Appropriate Manning Levels

15.1 In determining what constitutes a minimum safe manning level, useful guidance may also be obtained by use of risk and hazard management tools such as formal safety assessment.

15.2 The minimum safe manning levels referred to in this Notice are those required for all reasonably foreseeable circumstances and working conditions to permit the safe operation of the ship under normal operational conditions.

15.3 The tables at Attachments C and D provide guidance on the numbers of certificated deck and engineer officers appropriate to different sizes of ships, tonnages and trading areas. As the watch-keeping arrangements for the engineering department and the demands placed on personnel vary significantly according to the level of automation these tables only provide guidance; owners and operators must take all relevant factors into account before finalising their manning proposals.

15.4 The number of ratings required will be determined by the factors summarised in paragraph 13 above.

16.0 Consultation and Schedule

16.1 In order to avoid potential problems, it is recommended that when new ships are at the design stage and in advance of registering existing ships in Malta, owners and operators consult with the master, seafarers, seafarers' representatives (where applicable) and the Malta Maritime Authority on their proposed manning levels, and draw up a manning schedule. The schedule should take into account all the factors described in paragraphs 13-15 above.

16.2 If agreement cannot be reached between the owners or operator and master, and seafarers' or seafarers' representatives regarding manning levels, the Malta Maritime Authority will consider the views put forward and, if appropriate, require the manning levels to be revised. When disagreement occurs, it may be necessary to arrange a practical demonstration of the crew's ability to carry out the essential tasks in the context of the principles of safe manning.

16.3 Similarly, in the event of any change in equipment, construction or use of the ship, which may affect the safe manning level, the owner or operator should make an application for the issue of a new Safe Manning Document.

16.4 A manning schedule need not be rewritten for each voyage or operational cycle provided it is applicable to the voyage or cycle in question and the composition of the crew for whom it was originally intended has not changed.

16.5 Changes should not be made to the schedule unless they can be justified by substantially altered work patterns made necessary, for example, by a change in trading pattern, operation or other significant factor. Where a vessel is known to engage in an irregular trading pattern or have working hours that are unlikely to be uniform, this should be taken into account and recorded in the schedule.

16.6 The schedule and safe manning level should also take into consideration the number of qualified and other personnel required to meet peak workload situations and conditions, with regards to the number of hours of shipboard duties and rest periods.

16.7 Once agreed, the owner or operator is obliged to ensure that as far as reasonably practicable the minimum safe manning level is maintained and that operations are in compliance with the Hours of Work Regulations. A copy of the agreed schedule must be displayed prominently in the crew accommodation on board the vessel for the information of all the seamen.

17.0 Documentation and Record Keeping

17.1 When the proposal for the safe manning of a vessel has been agreed, a record of the consultation process should be maintained by the owner or operator together with a document outlining the agreed minimum manning level.

17.2 Records of seafarers' daily hours of rest shall be maintained as described in paragraph 8 above, and procedures should be in place for keeping such records. This record should be in an appropriate format and available for Malta Maritime Authority inspection. If on inspection, the records or other evidence indicates that manning levels are so low as to require the working of hours which exceed the permitted levels or the taking of insufficient hours of rest, the Malta Maritime Authority will require that manning levels be adjusted so that the ship can be operated safely within the permitted hours available.

17.3 Checking of a ship's documentation will be carried out by the Malta Maritime Authority as part of the normal routine of inspecting vessels and will include a check that records are being maintained and that the appropriate schedules are posted. Following examination the records will be endorsed as part of the examination process.

17.4 The record must be retained for five years.

18.0 Specialist Ship Types

18.1 **Offshore support vessels** - These present special problems because of the diverse nature of their operations and the conditions under which they are required to operate. Owners and operators are particularly reminded of the restrictions placed on working hours under the Regulations and should set manning level accordingly.

18.2 **Inshore craft including harbour craft and harbour tugs** – given the diverse working patterns and operational cycle of these vessels, owners and operators shall take into account the working pattern, rota and/or work schedules of crews, the particular operational requirements of a ship or group of ships and any call-out requirements of a port, harbour or other organization.

18.3 **All Passenger Ships** - The need to handle large numbers of passengers unfamiliar with the marine environment must be taken into account in determining manning levels. Personnel should be appropriately trained and certificated and owners and operators must give attention to the requirements for minimum numbers of trained crew to take charge of survival craft.

19.0 Application for a Safe Manning Document

19.1 Any application for a Safe Manning Document should be made by the owner, or a person authorised to act on their behalf on a form which can be obtained from any Malta Maritime Officer. All applications, together with the appropriate fee, should be sent to the Malta Maritime Authority at the address indicated at the end of this Notice.

19.2 **Information to be provided** - When applying to the Malta Maritime Authority for a Safe Manning Document, owners or operators should submit a clear and concise explanation of: -

- 1 how the proposed manning level has been determined;
- 2 how it takes account of the guidance of this Notice; and
- 3 how it takes account of the hours of work provisions in the Regulations

20.0 Approval by the Malta Maritime Authority

20.1 The Malta Maritime Authority will consider a ship to be safely manned when it is satisfied that the crew includes a sufficient number of officers and ratings with appropriate skills and experience.

20.2 A proposal will only be approved and safe manning document issued provided the manning level fully satisfies the principles, recommendations and guidelines outlined in this Notice. The Malta Maritime Authority may require an owner or operator to amend a proposal if, after evaluation, the proposal is considered inadequate.

20.3 When the Malta Maritime Authority has agreed to a proposal regarding manning of a particular ship, a Safe Manning Document will be issued for that ship in a format which

complies with the requirements of SOLAS, as amended. It should be retained on board and be available for inspection by an authorised person, whenever required.

20.4 A Safe Manning Document of a ship may be withdrawn if an owner or operator fails to submit a new proposal where a ship changes trading area(s), construction, machinery or equipment, or operation and/or method of maintenance have changed, or a ship persistently fails to comply with the rest hours requirements.

21.0 Notification of Changes

21.1 Ship owners must also inform the Malta Maritime Authority of any change in circumstances, which is relevant to a Safe Manning Document. The Malta Maritime Authority will then review the document's continuing validity or approve fresh proposals from the owner or operator.

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