

**THE MERCHANT SHIPPING (INSPECTION OF SEAFARERS'  
LIVING AND WORKING CONDITIONS) REGULATIONS 2001**

**The Legislative Drafting Project Submitted in Partial Fulfillment of the  
Requirements for the Award of the Degree of Master of Laws (LL.M.)  
IMO International Maritime Law Institute**

**Object of the draft:** To implement the ILO Convention concerning the Inspection of Seafarers' Working and Living Conditions 1996 (No. 178) and the Labour Inspection (Seafarers) Recommendation 1996 (No.185) under the Merchant Shipping Act 1986 as amended 1992.

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# THE MERCHANT SHIPPING (INSPECTION OF SEAFARERS' LIVING AND WORKING CONDITIONS) REGULATIONS 2001

## ARRANGEMENT OF SECTIONS:

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## EXPLANATORY NOTE

The purpose of the Merchant Shipping (Inspection of Seafarers' Living and Working Conditions) Regulations 2001 is to implement the ILO Convention concerning the Inspection of Seafarers' Working and Living Conditions) 1996 (No. 178) and the Labour Inspection (Seafarers) Recommendation 1996 (No.185). These two ILO instruments are means for the further enforcement of the ILO Convention No. 147 on Minimum Standards, which in turn is one of the pillars on which port state control is based.

The present regulations are intended to enable the enforcement of the powers of inspectors and surveyors under section 7 of the Merchant Shipping Act 1986 to carry out such inspections and surveys as requested by the Director. Moreover, the authorized officer referred to in the regulations may also be the Superintendent of Shipping who, under section 6 of the Merchant Shipping Act has the general duty of looking after the welfare of seamen and can be requested to perform other cognate duties by the Director of Shipping.

The provisions of the regulations are to be applied to Mauritius ships, including fishing vessels operating beyond the territorial waters of Mauritius and also to foreign ships within the Mauritius territorial waters, in accordance with the Indian Ocean Memorandum of Understanding on Port State Control to which Mauritius is a party.

The list laid down in **section 2** with respect to the meaning to be ascribed to “living and working conditions” purports to be exhaustive as the present regulations are to complement the existing provisions as regards safety on board vessels as laid down under the Merchant Shipping Act (Part V) and other regulations made under the Act.

**Section 4** gives the right to the seafarer who considers that there are failings in his living and working conditions on board the vessel to report the matter to the Director. The complaint may either be made by the seafarer himself or on his behalf by a representative of a seamen’s organization or union of which he is a member. The procedure for making the complaint is kept as simple as possible, the requirement being a letter of complaint being addressed to the Director, who, in the alternative, has the discretion to accept verbal complaints.

**Sections 5&6** set the mechanism for the inspection to be carried out by the authorized officer and provides for the recourse to appropriate ministries to clear certain issues if needed (**section 8**). The relevant ministries would here be the Ministry of Health, the Ministry of Labour or the Immigration Office. It is to be noted that the authorized officer has the discretion, following an inspection, to give the appropriate advice to the master or ship owner for the rectification of any deficiency detected.

**Section 7** lays down the duty on the authorized officer to inform the master or the person on the watch of his presence on the ship on commencing an inspection and when he takes any sample on the ship for the purpose of analysis.

**Section 9** provides for the notification to be given to the flag state in case any deficiency is noted on the foreign vessel under inspection.

The issue of confidentiality of information is addressed under **section 10** whereby the Director of Shipping and the authorized officer appointed to carry out an inspection have the duty to keep confidential the identity of the complainant and any information coming to their knowledge in the course of the inspection.

**Section 11** makes it a duty for the authorized officer to make a report subsequent to every inspection to the Director of Shipping who in turn has the duty to keep a record of the inspections carried out.

**Sections 12 and 13** deal with the instances where a ship may be detained and is to be released following detention. Here there is a duty on the Director to avoid any undue delay or detention of a ship under inspection. It is important to note that notwithstanding the fact that the present regulations do not make provisions for the recourse to judicial or administrative authority in case of wrongful detention or delay, recourse to the courts for a judicial review of the Director of Shipping's decision is available under the general law.

**Section 14** is in pursuance to the inspection of Mauritius ships which is to be carried out annually or within 3 months after any major change in the construction or accommodation arrangements on such ships, over and above any inspection which may be carried out on receipt of a complaint, and provides for the issue of a certificate of compliance to be issued to the vessels after inspection.

**Section 15** makes provision for compensation to be paid to the ship owner in case there has been an unreasonable detention or delay. The quantum of such compensation is to be decided by the Court.

**Section 16** provides for penalties to be levied in case of breach of the standards of living and working conditions by the owner and/or master of the vessel.

Finally, **section 17** gives the discretion to the Minister who is responsible for shipping matters to exempt any Mauritius ship from the application of the present regulations.

## THE MERCHANT SHIPPING ACT 1986

Regulations made by the Minister under section 199 of the Merchant Shipping Act 1986

### 1. Short Title

These regulations may be cited as the Merchant Shipping (Inspection of Seafarers' Living and Working Conditions) Regulations 2001.

### 2. Interpretation

“**Act**” means the Merchant Shipping Act 1986;

“**appropriate Ministry**” means the Ministry whose advice or assistance is sought with respect to an inspection;

“**authorized officer**” means an officer who is designated by the Director to carry out an inspection;

“**Director**” means the Director of Shipping;

“**Fishing vessel**” means deep sea fishing vessel engaged in commercial fishing beyond the territorial waters of Mauritius;

“**living and working conditions**” means conditions relating to –

- (a) standards of maintenance and cleanliness of shipboard living and working areas;
- (b) minimum age;
- (c) articles of agreement;
- (d) food and catering;
- (e) accommodation;
- (f) manning;
- (g) qualification;
- (h) hours of work;
- (i) medical requisites;
- (j) terms and conditions of employment;
- (k) prevention of shipboard accidents;
- (l) recruitment;
- (m) sickness and injury benefits;
- (n) social welfare; or
- (o) freedom of association,

as laid down under the Act and other relevant regulations.

“**Mauritius ship**” means any ship registered in Mauritius under the Merchant Shipping Act 1986;

“**Minister**” means the Minister to whom the subject of shipping is assigned;



“**relevant regulations**” means regulations made under the Merchant Shipping Act 1986;

“**representative**” means a person acting in the capacity of representative of a seamen’s organization of which the seaman is a member;

“**seafarer**” means any person employed or engaged in any capacity to work on board a ship, other than –

- (a) the master of the ship;
- (b) a person temporarily employed on the ship in port; or
- (c) a person engaged to work on pleasure crafts as defined under the Pleasure Crafts Act 1993.

### **3. Application**

(1) Unless expressly provided otherwise, these regulations shall apply to-

- (a) Mauritius ships, including fishing vessels, wherever they are;
- (b) other ships while they are within Mauritius territorial waters.

(2) These regulations shall not apply to –

- (a) ships under 15 registered tons or not exceeding 24 metres;
- (b) naval vessels;
- (c) pleasure crafts as defined in the Pleasure Crafts Act 1993.

#### **4. Right to make complaint**

(1) Where any seafarer considers that his living and working conditions on board a ship on which he is engaged are deficient, he or his representative may make a complaint to the Director.

(2) Any complaint under subsection (1) shall, as far as practicable, be made in writing.

(3) Notwithstanding the provisions of subsection (2), the Director may deem a complaint made orally as being acceptable.

#### **5. Inspection**

(1) On receipt of a complaint under section 4, the Director shall, where he deems appropriate, designate an authorized officer to carry out an inspection on board the ship as soon as practicable.

(2) Notwithstanding the provisions of subsection (1) the Director shall ensure that all Mauritius ships are inspected –

(a) annually; or

(b) within three (3) months, in case of substantial changes in construction or accommodations arrangements, to ensure that the seafarers' living and working conditions are in accordance with the standards laid down under the Act and other relevant regulations;

## **6. Powers of the authorized officer**

(1) The authorized officer shall be empowered –

- (a) to board the ship in respect of which the complaint has been lodged freely and without previous notice at any hour of the day or night;
- (b) to carry out any examination or test which he may consider necessary in order to check conformity with the standards required under the Act and the relevant regulations;
- (c) to question the master, seafarers or any other person including the ship owner or his representative with respect to the living and working conditions on board;
- (d) to request the production of any books, log books, certificates, or other document or information directly related to matters subject to inspection;

- (e) to take or remove, for the purposes of analysis, samples of products, cargo, drinking water, provisions and materials and substances used and handled; and
  - (f) to require that deficiencies be remedied.
- (2) The authorized officer may, following an inspection, give advice to the master or the ship owner on the appropriate measures to be taken for the rectification of any deficiency.

### **7. Duty to notify during inspection**

- (1) On boarding a ship on which he is about to carry out an inspection, the authorized officer shall notify his presence to the master or other person in charge on the ship.
- (2) The authorized officer shall, as far as practicable, notify the master or any other person in charge on the ship of any sample being taken or removed during an inspection pursuant to section 6(1)(e).

### **8. Consultation of appropriate ministries**

The authorized officer may, for the purpose of carrying out an inspection –

- (a) request the assistance of any other appropriate Ministry to carry out further examination; and
- (b) in such case request the proponent to submit its findings in writing.

### **9. Inspection of Non Mauritius ships**

(1) The Director may designate an authorized officer to inspect any ship in Mauritius territorial waters for the purpose of ascertaining that the living and working conditions on board are satisfactory.

(2) Where any deficiency in the living and working conditions is found under subsection (1), the authorized officer shall give due notice of such deficiency to—

- (a) the master of the ship; and
- (b) the consular office of the country to which the ship belongs.

### **10. Confidentiality**

(1) The Director and the authorized officer designated under section 5 shall take the appropriate measures to preserve the confidentiality of the source of any complaint.

(2) The authorized officer shall not disclose, otherwise than in the performance of his duty, any information given to him or obtained by him on any commercial secret or commercial working processes coming to his knowledge in the course of an inspection.

### **11. Report**

(1) Notwithstanding the provisions of subsection (2) the authorized officer shall report any deficiency in living and working conditions found on any ship within a reasonable time to the Director.

(2) Where the authorized officer carrying out an inspection on board a ship has reasonable grounds to believe that a deficiency in the living and working conditions constitutes a danger to seafarers' health and safety, he shall immediately report the matter to the Director.

(3) The authorized officer shall furnish a copy of the report to the master of the ship and, in case of a non-Mauritius ship, a copy of the report shall be forwarded to the consular office of the country to which the ship belongs.

(4) The Director shall maintain a record of the inspections of living and working conditions for each Mauritian ship.

## **12. Power to detain**

(1) The Director may detain a ship where –

- (a) the report of the authorized officer under section 11 reveals a deficiency in the living and working conditions which constitutes a danger to seafarers' health and safety; or
- (b) the authorized officer has been obstructed by the master or the owner of the ship when carrying out an inspection; or
- (c) the master/owner unreasonably refuses to rectify the deficiency.

(2) Notwithstanding the provisions of subsection (1) the Director shall ensure that the ship is not unreasonably detained or delayed.

## **13. Release from detention**

The Director shall, on being satisfied that the deficiency has been rectified, waive the detention.

#### **14. Issue of certificate**

- (1) This section applies only to Mauritius ships.
- (2) The authorized officer shall, on completion of an inspection under section 5 and on being satisfied that the living and working conditions on board the ship meet the required standards as laid down under the Act and other relevant regulations, issue a certificate of compliance to the ship.
- (3) The certificate shall be valid for one (1) year from the date it is issued.

#### **15. Penalties**

- (1) Any master or owner who, by his act or omission causes a deficiency in the living and working conditions, which constitutes a danger to the health and safety of seafarers working on board a ship, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.
- (2) It shall be a defence for the master and/or owner to establish that he took all reasonable steps to avoid the deficiency from occurring.



- (3) Any person who obstructs an authorized officer in the carrying out of an inspection shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees.

## **16. Compensation**

(1) Where a ship has been unreasonably detained or delayed, the ship owner shall be entitled to compensation for any loss or damage suffered.

(2) The burden of proof shall lie on the ship owner to establish any instance of alleged unreasonable detention or delay.

## **17. Exemptions**

The Minister may grant, on such conditions as he deems fit, exemptions to any Mauritius ship from all or any of the standards of seafarers living and working conditions.

Made by the Minister                      2001.