

MERCHANT SHIPPING (SEAFARERS) (MEDICAL EXAMINATION) REGULATION

(Cap. 478 sections 96 and 134)

[2 September 1996]

1. (Omitted as spent)

2. Interpretation

(1) In this Regulation, unless the context otherwise requires—

“applicant” (申請人) means an applicant for a medical fitness certificate;

approved medical practitioner (認可醫生) means a medical practitioner approved under section 18(1); (*L.N. 74 of 2016*)

“bulk chemical carrier” (散裝化學品運載船) means a ship carrying in bulk any chemical listed in Chapter VI of the Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (1993 edition) or Chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk (1990 edition), published by the International Maritime Organization, together with any supplement thereto published by that Organization, as in force from time to time;

Guidelines (《指引》) means the “Guidelines on the Medical Examinations of Seafarers” published by the International Labour Organization and the International Maritime Organization, as amended from time to time; (*L.N. 74 of 2016*)

“International Labour Office” (國際勞工局) means the office of that name established by the International Labour Organization;

“medical fitness certificate” (健康證明書) means a certificate issued under section 6(1B) or 11(5)(a) or (b) and includes, except in section 6, a certificate treated under section 5(1) as equivalent to one issued under section 6(1B); (*L.N. 74 of 2016*)

“medical review panel” (醫務覆核小組) means a medical review panel appointed by the Authority under section 10;

“seagoing” (海域航行), in relation to a ship, means a ship other than one which navigates exclusively within inland waters or in areas where port regulations apply;

“valid medical fitness certificate” (有效健康證明書) means a medical fitness certificate which is in force and covers the type of sea service being performed by the holder.

(*L.N. 74 of 2016*)

(2) Any approval given pursuant to this Regulation shall—

(a) be in writing; and

(b) specify—

(i) the date on which it takes effect; and

(ii) the conditions, if any, to which it is subject.

3. Application

- (1) Subject to subsections (2) and (3)—
 - (a) this Regulation, except section 14, shall apply to all seagoing Hong Kong ships; and
 - (b) sections 2 and 14 shall apply to all seagoing ships of 500 gross tonnage and over— (*L.N. 74 of 2016*)
 - (i) which are not Hong Kong ships;
 - (ii) while they are within the waters of Hong Kong; and
 - (iii) if they have entered those waters in the normal course of business or for operational reasons.
- (2) This Regulation shall not apply to fishing vessels.
- (3) The Authority may grant exemptions from all or any of the provisions of this Regulation for classes of cases or individual cases on such conditions, if any, as he thinks fit and may, subject to giving reasonable notice, alter or cancel any such exemption.
- (4) In this section—

gross tonnage (總噸位), in relation to a ship, means the gross tonnage of the ship determined in accordance with regulation 6 of the Merchant Shipping (Registration) (Tonnage) Regulations (Cap. 415 sub. leg. C). (*L.N. 74 of 2016*)

4. Prohibition on employment

- (1) Subject to subsections (3) and (4), no person shall employ a seafarer on a ship unless that seafarer is the holder of a valid medical fitness certificate.
- (2) No person shall employ a seafarer on a type of ship, in a capacity or in a geographical area, precluded by any restriction in the medical fitness certificate of that seafarer.
- (3) Subject to the conditions specified in subsection (5), a seafarer employed on a ship whose medical fitness certificate expires while in the course of a voyage may continue to be employed on the ship for the remainder of the voyage. (*L.N. 74 of 2016*)
- (4) Subject to the conditions specified in subsection (5), if there is an urgent need relating to the operation of a ship, a seafarer whose medical fitness certificate expired not more than 6 months ago may, with the approval of the Authority, be employed on the ship without a valid medical fitness certificate. (*L.N. 74 of 2016*)
- (5) The conditions are—
 - (a) the seafarer must, as soon as practicable, obtain a valid medical fitness certificate in a port of call; and
 - (b) the period during which the seafarer is employed on the ship, without a valid medical fitness certificate, does not exceed 3 months. (*L.N. 74 of 2016*)

(*L.N. 74 of 2016*)

5. Certificate equivalent to medical fitness certificate issued under section 6(1B)

(*L.N. 74 of 2016*)

- (1) A certificate is to be treated as equivalent to a medical fitness certificate issued under section 6(1B) if—
 - (a) the issuer of the certificate is qualified to practise medicine under the law of a place outside Hong Kong;
 - (b) the issuer has regard to the medical standards, requirements and criteria for seafarers specified in Schedule 1 when determining whether the holder of the certificate is fit for sea service; and
 - (c) the certificate—
 - (i) certifies that the holder is fit for sea service;
 - (ii) contains the information and declarations specified in Schedule 2; and
 - (iii) is in English. (*L.N. 74 of 2016*)
- (2) A certificate treated under subsection (1) as equivalent to a medical fitness certificate issued under section 6(1B) shall continue to be so treated until the expiration of the period of validity specified in such certificate:
Provided that any such certificate issued to a seafarer serving on a Hong Kong ship shall not be so treated for any longer period than would be permitted under section 8 in the case of a medical fitness certificate issued under section 6(1B) to that seafarer. (*L.N. 74 of 2016*)

6. Issue of medical fitness certificate

- (1) A person may apply to an approved medical practitioner for a medical fitness certificate. (*L.N. 74 of 2016*)
- (1A) The medical practitioner must conduct a medical examination in respect of the applicant, having regard to the suggested procedures and recommendations set out in Part 3 of the Guidelines. (*L.N. 74 of 2016*)
- (1B) If, having regard to the medical standards, requirements and criteria for seafarers specified in Schedule 1, the medical practitioner considers that the applicant is fit for sea service, the medical practitioner must issue a medical fitness certificate to the applicant. (*L.N. 74 of 2016*)
- (1C) A medical fitness certificate issued under subsection (1B) must—
 - (a) certify that the holder of the certificate is fit for sea service;
 - (b) contain the information and declarations specified in Schedule 2; and
 - (c) be in English. (*L.N. 74 of 2016*)
- (2) A certificate issued under this section may be restricted to such type of ship, such capacity or such geographical area as the approved medical practitioner thinks fit.

7. Certification on vision standards

(1) Despite section 6(1A), an approved medical practitioner may, instead of examining the vision of an applicant, accept the certification by a registered optometrist as proof of the applicant's vision if the medical practitioner is satisfied that the optometrist, when making the certification, has regard to the vision standards specified in Appendix A to the Guidelines.

(2) In this section—

registered optometrist (註冊視光師) means an optometrist registered under section 13 or 15 of the Supplementary Medical Professions Ordinance (Cap. 359).

(L.N. 74 of 2016)

8. Period of validity of certificate

A medical fitness certificate issued under section 6(1B) or 11(5) (a) or (b) must specify the period, commencing with the date of the medical examination by an approved medical practitioner or a medical review panel (as the case requires), for which the certificate is valid, subject to the following maximum periods— *(L.N. 74 of 2016)*

- (a) in respect of a seafarer under 18 years of age, 1 year;
- (b) in respect of a seafarer 18 years of age and under 55 years of age, 2 years;
- (c) in respect of a seafarer 55 years of age and over, 1 year;
- (d) in respect of a seafarer serving or intending to serve on bulk chemical carriers, 1 year.

9. Suspension or cancellation of medical fitness certificate

(L.N. 74 of 2016)

(1) If an approved medical practitioner has reasonable grounds for believing that—

- (a) there has been a significant change in the medical fitness of a seafarer during the period of validity of his medical fitness certificate;
- (b) when the medical fitness certificate was issued, an approved medical practitioner, had he been in possession of full details of the seafarer's condition, could not reasonably have considered that the seafarer was fit, having regard to the medical standards, requirements and criteria for seafarers specified in Schedule 1; or *(L.N. 74 of 2016)*
- (c) the medical fitness certificate was issued otherwise than in accordance with this Regulation,

he shall notify the seafarer concerned and may—

- (i) suspend the validity of that certificate until the seafarer has undergone a further medical examination;
- (ii) suspend the certificate for such period as he considers the seafarer will remain unfit to go to sea; or
- (iii) cancel the certificate if he considers that the seafarer is likely to remain permanently unfit to go to sea.

- (2) If an approved medical practitioner suspends a medical fitness certificate under subsection (1)(i) or (ii) or cancels a certificate under subsection (1)(iii), he shall notify the Superintendent in writing as soon as reasonably practicable.

10. Appointment of medical review panel

- (1) The Authority may in writing appoint any 3 approved medical practitioners to constitute a medical review panel for the purpose of hearing and determining one or more applications for medical review under this Regulation.
- (2) The Authority shall in writing appoint 1 member of a medical review panel appointed under subsection (1) to be chairman of the panel.
- (3) Subject to this Regulation, a medical review panel may determine its own procedure.

11. Application for a review

- (1) A seafarer who is aggrieved by—
 - (a) the refusal of an approved medical practitioner to issue him with a medical fitness certificate;
 - (b) the imposition of a restriction on a certificate under section 6(2);
 - (c) the suspension of a certificate for more than 3 months under section 9(1)(i) or (ii); or
 - (d) the cancellation of a certificate under section 9(1)(iii),may apply to the Superintendent for the decision to be reviewed by a medical review panel.
- (2) An application under this section shall—
 - (a) be lodged with the Superintendent within 1 month of the date on which the seafarer is given notice of the decision which is the subject of the application for review, or, where delay is caused by the seafarer's employment on board a ship away from Hong Kong, within 1 month of the seafarer's return to Hong Kong; and
 - (b) state the name and address of the approved medical practitioner whose decision is the subject of the application for review.
- (3) The Superintendent shall refer to the medical review panel, any application lodged with him pursuant to subsection (2), as soon as reasonably practicable.
- (4) Where an application is referred under subsection (3), the medical review panel shall—
 - (a) if practicable, obtain a written report from the approved medical practitioner whose decision is the subject of the application for review;
 - (b) medically examine the applicant;
 - (c) if the applicant so requests, disclose to the applicant the written report of the approved medical practitioner and any other evidence not produced by the applicant himself, unless the medical review panel considers that such disclosure would be harmful to the applicant's health;

- (d) have regard to any relevant medical evidence produced to it, whether or not such evidence is disclosed to the applicant under paragraph (c).
- (5) In the light of its medical examination of the applicant and of all other medical evidence before it, the medical review panel shall—
- (a) where the decision which was the subject of the application for review was a refusal to issue a medical fitness certificate, the cancellation of a certificate or the suspension of a certificate for more than 3 months, and if it considers that the applicant is fit, having regard to the medical standards, requirements and criteria for seafarers specified in Schedule 1, issue to the applicant a medical fitness certificate, with or without restriction as to capacity or geographical area and valid for such period as the panel shall specify, subject to section 8; (*L.N. 74 of 2016*)
 - (b) where the decision which was the subject of the application for review was the imposition of a restriction as to type of ship, capacity or geographical area, and if it considers that restrictions other than those imposed on the medical fitness certificate issued to the applicant should be imposed, or that any restrictions so imposed should be deleted or varied, issue to the applicant a medical fitness certificate expressed accordingly and valid for such period as the panel shall specify, subject to section 8;
 - (c) in a case other than those referred to in paragraphs (a) and (b), notify the applicant of its decision; and
 - (d) in every case notify the Superintendent in writing of the result of the review.
- (5A) A medical fitness certificate issued under subsection (5)(a) or (b) must—
- (a) certify that the holder of the certificate is fit for sea service;
 - (b) contain the information and declarations specified in Schedule 2; and
 - (c) be in English. (*L.N. 74 of 2016*)
- (6) Action under subsection (5) shall be taken not later than 2 months from the date on which the application for review is lodged with the Superintendent, or within such longer period as the Authority may determine in any particular case.

12. Records and annual returns

An approved medical practitioner who conducts a medical examination under this Regulation shall—

- (a) make a record in an approved form of every such medical examination and retain the same for 3 years; and

- (b) send an annual return of all such medical examinations to the Superintendent in a form approved by him:
Provided that such form, so far as the Superintendent considers practicable, shall not include medical information which can be identified as applying to a particular person.

13. Inspection and detention of Hong Kong ships

- (1) The Authority, or a person authorized by him for the purposes of this section, may inspect a ship and, if satisfied—
 - (a) that any seafarer on board whose employer is required by this Regulation to ensure that he is the holder of a valid medical fitness certificate is unable to produce such a certificate; and
 - (b) that the state of the seafarer's health is such that the ship could not sail without serious risk to the safety or health of others on board,may detain the ship.
- (2) The Authority and a person referred to in subsection (1) shall not in the exercise of his powers under this section unreasonably delay or detain a ship.

14. Inspection and detention of ships which are not Hong Kong ships

- (1) The Authority, or a person authorized by him for the purposes of this section, may inspect a ship and, if satisfied that any seafarer employed on board is unable to produce a valid medical fitness certificate, he may—
 - (a) send a report to the government of the country in which the ship is registered, with a copy thereof to the Director General of the International Labour Office;
 - (b) where, in his opinion, conditions on board are clearly hazardous to the safety or health of others on board, order the master to take such measures as are necessary to rectify those conditions and, if such measures are not taken in a reasonable time, detain the ship.
- (2) Where the Authority or a person referred to in subsection (1) exercises any of his powers under paragraph (a) or (b) of that subsection in respect of a ship, he shall notify that he has done so to the nearest maritime, consular or diplomatic representative of the country in which the ship is registered.
- (3) The Authority and a person referred to in subsection (1) shall not in the exercise of his powers under this section unreasonably delay or detain a ship.

15. Copies of Regulation to be kept on board

The master of a ship shall keep on board a copy of this Regulation and make such copy temporarily available to any seafarer who so requests, and the employer shall ensure that the ship carries a copy of this Regulation.

16. Offences and penalties

- (1) An employer who contravenes section 4 commits an offence and is liable on conviction to a fine at level 4.
- (2) An employer or master who contravenes section 15 commits an offence and is liable on conviction to a fine at level 3.
- (3) In any proceedings for an offence under this Regulation it shall be a defence to show that all reasonable steps were taken to ensure compliance with the section concerned.

17. Amendment of Schedule 1 or 2

The Authority may, by notice in the Gazette, amend Schedule 1 or 2.

18. Authority to publish certain lists

- (1) The Authority may approve a registered medical practitioner to conduct medical examinations, and issue, suspend or cancel medical fitness certificates, in respect of seafarers. (*L.N. 74 of 2016*)
- (2) The Authority shall publish in the Gazette from time to time a list of approved medical practitioners and of persons appointed to constitute a medical review panel. (*L.N. 74 of 2016*)
- (3) In this section—
registered medical practitioner (註冊醫生) has the meaning given by section 2(1) of the Medical Registration Ordinance (Cap. 161). (*L.N. 74 of 2016*)

Schedule 1

[ss. 5, 6, 9, 11 & 17]

Medical Standards, Requirements and Criteria for Seafarers

The medical standards, requirements and criteria for seafarers are those as specified in the following appendices to the Guidelines—

Appendix A	Vision Standards
Appendix B	Hearing Standards
Appendix C	Physical Capability Requirements
Appendix D	Fitness Criteria for Medication Use
Appendix E	Fitness Criteria for Common Medical Conditions

(Schedule 1 replaced L.N. 74 of 2016)

Schedule 2

[ss. 5, 6, 11 & 17]

Contents of Medical Fitness Certificate

1. The following particulars of the holder of the medical fitness certificate—
 - (a) name;
 - (b) date of birth;
 - (c) gender;
 - (d) nationality.

2. A declaration by the issuer of the medical fitness certificate that the identification documents of the holder of the certificate have been checked at the point of the medical examination.
3. A declaration by the issuer of the medical fitness certificate on whether the holder of the certificate is fit for sea service, and in particular, whether—
 - (a) the holder's hearing meets the standards specified in Appendix B to the Guidelines;
 - (b) the holder's unaided hearing is satisfactory;
 - (c) the holder's visual acuity meets the standards specified in Appendix A to the Guidelines;
 - (d) the holder's colour vision meets the standards specified in Appendix A to the Guidelines;
 - (e) the holder is fit for lookout duties;
 - (f) there is any limitation or restriction on the holder's fitness and, if so, the limitation or restriction; and
 - (g) the holder is free from any medical condition likely to be aggravated by sea service or to render the holder unfit for the service or to endanger the health of other persons on board.
4. The date of the medical examination.
5. The expiry date of the medical fitness certificate.
6. The name of the issuer of the medical fitness certificate and the place where the issuer is qualified to practise medicine.

(Schedule 2 replaced L.N. 74 of 2016)