

MERCHANT SHIPPING (SEAFARERS) (SAFETY OFFICIALS AND REPORTING OF ACCIDENTS AND DANGEROUS OCCURRENCES) REGULATION

(Cap. 478 sections 96, 119 and 134)

[2 September 1996]

PART I

PRELIMINARY

1. *(Omitted as spent)*

2. **Interpretation**

In this Regulation, unless the context otherwise requires—

“access” (上落船過程) means the process of embarking on or disembarking from a ship or a ship’s boat;

“accident” (意外) means any occurrence on board ship or during access which is notifiable under section 11(1)(a);

“Code” (守則) means the United Kingdom Department of Transport publication entitled “Code of Safe Working Practices for Merchant Seamen”, published in 1991 by Her Majesty’s Stationery Office, as in force from time to time;

“crew” (船員) means all seafarers employed on board a ship;

“dangerous occurrence” (危險事故) means any occurrence on board ship or during access which is of a kind specified in the Schedule;

“employer” (僱主) means the person for the time being employing the master;

“incapacitated for work” (喪失工作能力) means, in the case of a member of the crew, unable to undertake the full range of duties normally undertaken by him on board ship, and in the case of any other person means a comparable impairment of that person’s physical condition;

“major injury” (嚴重受傷) means—

- (a) fracture of the skull, spine or pelvis;
- (b) fracture of any bone—
 - (i) in the arm, other than in the wrist or hand;
 - (ii) in the leg, other than in the ankle or foot;
- (c) loss of a hand or foot;
- (d) loss of sight of an eye; or
- (e) any other impairment of a person’s physical condition which results in the person—
 - (i) being admitted to hospital as an in-patient for more than 24 hours; or

- (ii) while at sea, being confined to bed on board, if the impairment would have resulted in admission to hospital as an in-patient for more than 24 hours had the ship been in port;

“Marine Department Notice” (海事處公告) means a notice described as such and issued by the Authority;

“occupational health and safety” (職業健康及安全) means the health and safety of the crew whilst on board ship and during access;

“owner” (船東), in relation to a ship, means owner within the meaning of the Merchant Shipping (Registration) Ordinance (Cap. 415), and includes a charterer by demise;

“petroleum products” (石油產品), “liquid chemical” (液體化學品) and “liquefied gas” (液化氣體) have the meanings respectively ascribed to those terms in the Merchant Shipping (Seafarers) (Tankers) Regulation; (*L.N. 150 of 2016*)

“rating” (普通船員) means a member of a ship’s crew other than—

- (a) the master;
- (b) an officer; or
- (c) a seafarer not directly connected with the normal manning of the ship;

“safety committee” (安全委員會) means a committee appointed under section 4(4);

“safety officer” (安全主任) means a seafarer appointed as such under section 4(1)(a);

“safety official” (安全人員) means a safety officer, a safety representative or a member of a safety committee;

“safety representative” (安全代表) means a seafarer elected as such under section 4(1)(b);

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

“ship” (船、船舶) means a Hong Kong ship;

“tanker” (油船) means a ship which is constructed or adapted and used for the carriage of bulk cargoes consisting in whole or in part of petroleum products, liquid chemicals or liquefied gases.

PART II

SAFETY OFFICIALS

3. Application

(Adaptation amendments retroactively made - see 64 of 1999 s. 3)

- (1) This Part applies to all seagoing ships in which a crew of more than 5 are employed except any such ship which is a fishing vessel.

- (2) Nothing in this Part shall give any person a right to inspect any place, article, substance or document which is the subject of restrictions for reasons of Government security unless he satisfies any test or requirement relating to Government security and imposed by or on behalf of the Chief Executive.
(64 of 1999 s. 3)
- (3) The Authority may grant exemptions from all or any of the provisions of this Part 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. Appointment and election of safety officials

- (1) In respect of every ship—
 - (a) the employer shall appoint a safety officer; and
 - (b) the officers and ratings may in accordance with rules made by the employer for the purposes of this paragraph elect—
 - (i) in a ship carrying a crew of 15 or less, 1 safety representative elected by the officers and ratings jointly;
 - (ii) in a ship carrying a crew of more than 15, either—
 - (A) if the ship carries 30 ratings or less, 1 safety representative elected by the officers and 1 safety representative elected by the ratings; or
 - (B) if the ship carries more than 30 ratings, 1 safety representative elected by the officers and 1 safety representative elected by the ratings in each of the deck, engine and catering departments, general purpose ratings being regarded for this purpose as included in the deck department.
- (2) In every election for a safety representative the candidate receiving most votes shall be elected.
- (3) No seafarer shall be appointed as safety officer or elected as safety representative who has less than 2 years' consecutive sea service since attaining the age of 18 years, and in relation to a safety officer or safety representative on a tanker that period shall include at least 6 months' service on a tanker.
- (4) Where one or more safety representatives are elected under this section in respect of any ship, the employer shall appoint a safety committee in respect of that ship which shall include the master (who shall be chairman), the safety officer and every safety representative.
- (5) The appointment or election under this section of every safety officer, safety representative and safety committee in respect of any ship shall be recorded by the master in the official log book.

5. Termination of office of safety officer or safety representative

- (1) The appointment or election under section 4 of a safety officer or safety representative in respect of any ship shall terminate—
 - (a) on his ceasing to be employed on the ship;

- (b) in the case of a safety officer, on the date his appointment is terminated by the employer;
 - (c) in the case of a safety representative, on the date of his resignation from that position or the election of another seafarer in his stead.
- (2) The appointment under section 4 of a safety committee in respect of any ship shall be terminated by the master when there is no longer a safety representative on the ship.

6. Duties of safety officer

- (1) Subject to subsection (2), the safety officer on any ship shall—
- (a) use his best endeavours to ensure that—
 - (i) the provisions of the Code; and
 - (ii) any occupational health and safety policies adopted by the employer for the ship,are complied with on board ship and during access;
 - (b) use his best endeavours to improve the standard of safety awareness among the crew;
 - (c) investigate—
 - (i) every accident;
 - (ii) every dangerous occurrence; and
 - (iii) any potential hazard to occupational health and safety on the ship:
Provided that the duty to investigate shall not extend to accidents arising from a casualty to the ship;
 - (d) make recommendations to the master with a view to preventing the recurrence of accidents and dangerous occurrences and removing potential hazards to occupational health and safety on the ship;
 - (e) investigate all complaints by crew members about occupational health and safety unless he has reason to believe that a complaint is of a frivolous or vexatious nature;
 - (f) carry out occupational health and safety inspections of every accessible part of the ship at least once every 3 months, or more frequently if there have been substantial changes in the conditions of work on the ship;
 - (g) make representations and, where appropriate, recommendations to the master and through him to the employer about any deficiency in respect of the ship regarding—
 - (i) any legislative requirement relating to occupational health and safety;
 - (ii) any relevant Marine Department Notice;
 - (iii) any relevant provision of the Code;
 - (h) ensure so far as possible that any safety instructions, rules and guidance issued by manufacturers of the ship's equipment or by the ship's owner are complied with;
 - (i) maintain on board a record book—

- (i) describing the circumstances and details of all accidents and dangerous occurrences on board ship or during access (including the date, the persons involved and the nature of the injuries suffered); and
 - (ii) containing all statements made by witnesses to such accidents and dangerous occurrences, any recommendations to prevent future similar accidents or dangerous occurrences, and details of all other investigations, complaints, inspections, representations and recommendations made under this Part, together with the outcome thereof;
 - (j) make the record book maintained under paragraph (i) available on request to any safety representative, the safety committee, the master and the Authority;
 - (k) order any work on board which he reasonably believes may cause a serious accident to be stopped, and immediately inform the master or the master's deputy, who shall be responsible for deciding when the work can safely be resumed; and
 - (l) carry out any occupational health or safety investigation or inspection required by the safety committee under section 8(2).
- (2) Nothing in this section shall require or authorize a safety officer to take any action at a time when emergency action to safeguard life or the ship is being taken.

7. Powers of safety representative

A safety representative on any ship may—

- (a) participate, subject to the concurrence of the safety officer, in any of the investigations or inspections carried out on board by the safety officer under section 6, and, after notifying the master or the master's deputy, undertake similar investigations or inspections himself, whether or not they have already been carried out by the safety officer;
- (b) consult with and make recommendations to the master, the master's deputy and the safety officer on matters affecting the occupational health and safety of the crew he represents, including recommendations to the master that work which the safety representative believes may cause an accident should be suspended;
- (c) make representations through the master to the employer on matters affecting the occupational health and safety of the crew he represents;
- (d) request through the safety committee an investigation by the safety officer of any matter;
- (e) inspect the record book maintained by the safety officer under section 6(1)(i).

8. Duties of safety committee

- (1) The safety committee on any ship shall—

- (a) use its best endeavours to ensure that the provisions of the Code are complied with on board ship and during access;
 - (b) use its best endeavours to improve the standard of safety awareness among the crew;
 - (c) make representations and recommendations on behalf of the crew to the master and the employer on matters affecting the occupational health and safety of the crew;
 - (d) inspect from time to time the record book maintained by the safety officer under section 6(1)(i);
 - (e) ensure so far as possible the observance of any occupational health and safety policies adopted by the employer for the ship and if necessary make recommendations for their improvement;
 - (f) consider and take appropriate action in respect of occupational health and safety matters affecting the ship and its crew which may arise out of reports of accidents or dangerous occurrences, Marine Department Notices, publications relating to occupational health and safety issued by the Government or other bodies, and Hong Kong enactments relating to occupational health and safety; and
 - (g) keep a record of its deliberations and conclusions, of any representations made to the master or the employer, of replies thereto and of any action resulting therefrom.
- (2) In order to perform its duties under this section, a safety committee may require the safety officer to carry out any inspection it considers necessary and to report his findings to it.

9. Duties of employer and master

- (1) Subject to subsection (2), the employer and master shall jointly and severally facilitate the work of every safety official in carrying out his functions under this Regulation, and in particular shall—
- (a) provide access to any necessary information, documents and similar material including any relevant enactment and Marine Department Notice;
 - (b) inform the safety officials—
 - (i) of any dangerous cargoes on board and of the dangers which may arise therefrom; and
 - (ii) of any other known hazard on board which may endanger the ship or its crew;
 - (c) provide necessary accommodation, office equipment supplies and similar materials;
 - (d) permit inspections of the whole or part of the ship for the purposes of this Regulation;
 - (e) allow the safety officer and safety representatives—
 - (i) such absence from ship-board duties without loss of pay; and
 - (ii) to undergo such training on board,
- as may be necessary to enable them to perform their functions

under this Regulation;

- (f) display in a place where it may easily be read by any member of the crew a notice listing the names of the safety officials;
 - (g) receive, at any reasonable time, representations about occupational health and safety from the safety officials or any of them (including recommendations under section 7(b) by a safety representative that certain work should be suspended), discuss their representations with them, and implement any agreed measures as soon as reasonably practicable;
 - (h) specify in writing the reasons for refusing to implement any occupational health and safety measures suggested by a safety official;
 - (i) provide to a safety official on request all relevant information about every accident or dangerous occurrence on board ship or during access;
 - (j) provide to the safety officer or any safety representative on request any information or plans necessary to enable him to undertake an investigation or inspection under section 6 or 7;
 - (k) arrange for the election of a safety representative to be held within 3 days of being requested to do so by any 2 seafarers entitled to vote in such an election and give publicity to the intention to hold such election.
- (2) In performing his duties under subsection (1) an employer or master need not disclose any information the disclosure of which would in his opinion be contrary to the public interest.

PART III

REPORTING OF ACCIDENTS AND DANGEROUS OCCURRENCES

10. Application

- (1) Subject to subsection (2), this Part shall apply to all seagoing ships.
- (2) This Part shall not apply to a fishing vessel except a trawler to which Part XII of the Merchant Shipping Ordinance (Cap. 281) applies.

11. Notification of accidents and dangerous occurrences

- (1) Subject to subsection (2), the following shall be notifiable in accordance with section 12 if they occur on board a ship or during access—
 - (a) every accident to a person employed or carried on a ship which results in—
 - (i) the death of the person;
 - (ii) the person being incapacitated for work for any period; or

- (iii) such impairment of the person's physical condition that the person is put ashore and the ship sails without him;
 - (b) every dangerous occurrence.
- (2) In respect of any ship, an accident or dangerous occurrence involving a person employed as a stevedore, ship builder, ship repairer or diver shall only be notifiable under this section if—
- (a) the person is a member of the crew of the ship; or
 - (b) the accident or dangerous occurrence involved a failure of the ship's equipment.

12. Reporting and investigation of accidents and dangerous occurrences

- (1) The following provisions of this section shall apply whenever an accident or dangerous occurrence which is notifiable under section 11 occurs on board a ship or during access.
- (2) In the event of an accident—
- (a) the master, or if he is not available, the most senior officer available, shall report to the Superintendent as soon as possible and not later than—
 - (i) 24 hours after the accident if the ship is within the waters of Hong Kong at the time of the accident; or
 - (ii) 24 hours after the ship arrives at its next port of call if the ship is not within the waters of Hong Kong at the time of the accident; and
 - (b) every such report shall include the name and official number of the ship, its position at the time of the accident, the number of people involved in the accident, the injuries suffered, details of any damage to the ship or its equipment, any previous defect in its equipment, and, if the ship is at sea at the time of the accident, its next port of call and estimated date and time of arrival.
- (3) In the event of an accident or dangerous occurrence—
- (a) if the ship carries a safety officer the master, or, if he is not available, the most senior officer available shall, whether or not a report is made under subsection (2), complete and sign a report in the prescribed form, and forward it to the Superintendent within 7 days of the date of the accident or dangerous occurrence or, if the ship is at sea at that date, within 7 days of arrival at its next port of call;
 - (b) if the ship does not carry a safety officer, the employer shall, whether or not a report is made under subsection (2)—
 - (i) require the master or most senior officer available, or, if the accident or dangerous occurrence occurs while the ship is in port, the owner's representative ashore responsible for safety, to—
 - (A) investigate the accident or dangerous occurrence;
 - (B) complete and sign a report in the prescribed form; and

- (C) forward the report to the Superintendent within the time prescribed in paragraph (a); and
- (ii) require the master, or the owner's representative ashore responsible for safety, to record in writing—
 - (A) the circumstances and details of the accident or dangerous occurrence (including the date, the persons involved and the nature of the injuries suffered);
 - (B) all statements made by witnesses thereto; and
 - (C) any recommendations to prevent future similar accidents or dangerous occurrences,and the employer or owner, as the case may be, shall make any such record available to the Superintendent on request.

PART IV

ADMINISTRATION

13. Copies of Regulation to be kept on board

The master of a ship to which Part II or III applies shall keep on board a copy of this Regulation and make such copy temporarily available to any person employed or carried on the ship who so requests, and the employer shall ensure that the ship carries a copy of this Regulation.

14. Offences and penalties

- (1) Any employer who—
 - (a) fails to appoint a safety officer or a safety committee or to make rules for the election of safety representatives in accordance with section 4;
 - (b) fails to carry out any duty specified in section 9; or
 - (c) fails to comply with section 12(3)(b) or 13,commits an offence and is liable on conviction to a fine at level 3.
- (2) Any—
 - (a) master who fails to carry out any duty specified in section 9; and
 - (b) person required under section 12(2) or (3) to make a report who without reasonable excuse fails to make such a report in accordance with that section or to forward it as required therein,commits an offence and is liable on conviction to a fine at level 2.
- (3) Any safety officer who fails to comply with section 6(1)(c) (i) or (ii), (e), (f), (i), (j) or (l) commits an offence and is liable on conviction to a fine at level 1.
- (4) 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 this Regulation.

15. Amendment of Schedule

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

SCHEDULE

[ss. 2 & 15]

**DANGEROUS OCCURRENCES WHICH ARE
NOTIFIABLE UNDER
SECTION 11 OF THIS REGULATION**

Any of the following occurrences, if not notified under this Regulation as an accident, shall be notifiable as a dangerous occurrence if, taking into account the circumstances, it could have caused damage to the health of any person, whether it did so or not—

- (a) the collapse or overturning of any lift, hoist, crane, davit, derrick, ramp, mobile powered platform, embarkation or disembarkation equipment, staging or bosun's chair;
- (b) the failure of any load-bearing part of any equipment listed in paragraph (a);
- (c) the explosion, collapse or bursting of any closed vessel, including a boiler or boiler tube, in which there was—
 - (i) any gas (including air);
 - (ii) any liquid; or
 - (iii) any vapour at a pressure greater than atmospheric pressure;
- (d) an electrical short circuit or overload resulting in fire or explosion;
- (e) the sudden, uncontrolled release from any system, plant or pipeline of—
 - (i) highly flammable liquid;
 - (ii) flammable gas; or
 - (iii) flammable liquid above its boiling point;
- (f) the uncontrolled release or escape of any harmful substance or agent;
- (g) either of the following occurrences in respect of any pipeline, valve or piping system in a ship—
 - (i) the bursting, explosion or collapse of a pipeline or any part thereof excluding minor leaks in pipes carrying non-noxious substances; or
 - (ii) the accidental ignition of anything in a pipeline or of anything which, immediately before it ignited, was in a pipeline;
- (h) any contact with loose asbestos fibre except when full protective clothing is being worn;
 - (i) any collapse or significant movement of cargo;
- (j) the failure or collapse of any hatch cover or hatch cover control-wire or mechanism;
- (k) a fall overboard; or
- (l) the parting of a tow-rope.